DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 9

Amend: R18-9-101

New Section: R18-9-A215

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: May 6, 2025

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

FROM: Council Staff

DATE: April 22, 2025

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

New Section: R18-9-A215

Amend: R18-9-101

Staff Update:

As a reminder, this rulemaking from the Department of Environmental Quality was tabled at the May 6, 2025 Council meeting in order for the Council to have sufficient time to review supplemental information provided by the Department. This supplemental information was forwarded to Council members and also included as part of the materials for the meeting scheduled June 3, 2025.

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend one (1) rule and add one (1) rule in Title 18, Chapter 9, regarding Aquifer Water Quality Standards.

Specifically, the amended rule will be to add the defined term of ""New or adjusted aquifer water quality standard" or "New or adjusted AWOS"" and to amend other definitions to accommodate the addition of the new term.

The new rule R18-9-A215 is intended to create a process for Aquifer Protection Permit (APP) holders to implement new or adjusted aquifer water quality standards (AWQS), and to update their permits with these new standards. The Department has indicated when either the Department adopts new or amends existing AWQSs there is no process in place for when an APP holder has to comply with the new standards or what steps they need to take to begin compliance. The Department has also indicated that these rules, while primarily impacting APP holders, may impact some remediation projects as well.

The new rule will cover both permit holder and Department responsibilities. The Department will be required to issue schedules for amending permits for new adjusted AWQSs and permit holders will be required to submit a complete application within that scheduled timeframe. An APP holder is expected to begin baseline monitoring within three months of the Department approving a new or amended AWQS. The Department indicated that this timeframe has caused some concern with stakeholders and that APP holders can apply for an alternative timeframe upon a showing of reasonable cause that the three month time period cannot be reached. The Department has also indicated that the new rule will detail what is required for baseline monitoring and what is required in the baseline monitoring report that is sent to the Department. Additionally, permit holders will be provided an opportunity to show why certain pollutants may not exist in their facilities and may receive an exemption from testing. The Department expects the cost for the new rule to be approximately $15,000 for APP holders. There are 500 APP holders in the state.

The Department has indicated that they received a total 63 public comments regarding these rules, and the Department has indicated to Council Staff that these stakeholders were able to view and discuss the changes that were made as a result of these comments.

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

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

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

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

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

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

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

The Department states that this rulemaking is being taken by the Arizona Department of Environmental Quality (ADEQ) in order to establish a clear procedure for implementation of new or adjusted Aquifer Water Quality Standards (AWQS) to the issued and existing individual Aquifer Protection Permits (APP). The Department says that before this

rulemaking, such implementation was unaddressed and unclear. The Department states that the new or adjusted Aquifer Water Quality Standards (AWQS) are added to an existing list when the Federal Environmental Protection Agency (EPA) establishes new or adjusts existing Safe Drinking Water Act Maximum Contaminant Levels (MCL). The Department indicates that the AWQSs are designed to protect the State's aquifers, all of which have been designated for drinking water-protected use (see A.R.S. § 49-224(B)). The Department states the AWQSs are primarily used in ADEQ's Aquifer Protection Permit program (APP), and (to a lesser extent) in some remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the voluntary Remediation Program (VRP), and elsewhere.

The Department states that the full scope of stakeholders who may incur direct impacts from this rulemaking include individual APP Permittees, such as Mines, Industrial Facilities and Wastewater Treatment Plants, and, to a lesser extent, regulated parties under certain remediation projects, such as WQARF and VRP. The Department indicates that while not all costs and benefits are borne evenly, these are the identified groups generally impacted from this "AWQS Implementation" rulemaking. The Department believes a general benefit is provided to the State of Arizona and its constituents, due to this rulemaking's functional part in protecting the state's aquifers, allowing them to remain a viable asset to community water portfolios and individual well users alike.

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

The Department states it worked closely with stakeholders in the development of this new or adjusted AWQS implementation rule, focusing on the goal of clarity in administration and expectation for the Department and the applicable permittees, respectively. The Department indicates that neither A.R.S. § 49-223 nor the rules in the individual APP article at Title 18, Chapter 9, Article 2 of the A.A.C. address how to implement those new or adjusted AWQs into the existing and issued permits. The Department says for that reason ADEQ receive overwhelming support for this clarifying rule from the regulated parties. The Department states that after years of drafting, editing and stakeholder feedback ADEQ believes the structure of this rule properly balances the agency's mission of protecting public health and the environment with any requisite costs to stakeholders.

6. <u>What are the economic impacts on stakeholders?</u>

The Department says general costs to permittees as a result of this new or adjusted AWQS implementation rule are likely minimal, potentially significant and indeterminant at this time. The Department states that benefits to stakeholders include significant clarity in administering and expectation for the Department and the applicable permittees, respectively, as to how new or adjusted AWQSs are to be implemented into existing and issued permits. The Department indicates that applicable permittees will be required to conduct Baseline Monitoring at discharge and groundwater monitoring locations, which could come at a considerable cost. The Department says, however, permittees will have

much of the infrastructure to conduct this monitoring already in place, as the rule requires monitoring to occur at existing established locations. In addition, with that said, the Department estimates that the analytical laboratory fees for applicable permittees will cost $4,500 for eight monitoring events for all seven of the new or adjusted AWQSs at one monitoring location. The Department estimates that monitoring equipment could cost around $1,500 which includes rental for a water quality meter, meter and depth to groundwater level sounder, plus purchase of consumable products such as deionized water, conductivity and pH calibration solutions, and nitrile sampling gloves. The Department estimates the employee labor costs at $35 per hour and each monitoring event would require 4 hours of sampling equipment preparation, 12 hours for sample collection and lab delivery, and 4 hours to review the laboratory analytical results. The Department states that this was estimated to cost $5,600 for all eight monitoring events. Then the Department estimated the employee labor costs for preparing the Baseline Monitoring

Report with a request to establish Alert Levels, Discharge Limitations and/or Aquifer Quality Limits for all seven parameters. The Department indicates that this effort includes a draft report, internal review, final report edits, and submission by the permittee to the Department. The Department states that the employee effort for the Baseline Monitoring Report was estimated at $3,400. The Department estimates that altogether the cost estimate includes: $4,500 lab + $1,500 equipment + $5,600 employee labor for sampling + $3,400 employee labor for baseline monitoring report, for an estimated total of $15,000. The Department believes that although many facilities will absorb the additional work load and infrastructure/incidental needed into their existing labor force and equipment on site, certain permittees may need to acquire additional employees to help achieve the requirements.

The Department believes there should be little to no cost to private persons and consumers as this rule compels permittees to conduct Baseline Monitoring for all new or adjusted AWQSs. The Department says it is conceivable that a Wastewater Treatment Plant may increase the rates in their service area as a result of the requirement to conduct Baseline Monitoring, but that would be a relatively small amount due to the cost estimates projected for Baseline Monitoring.

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

The Department indicates that there were changes between the proposed draft and final rules before the Council. The changes can be found in full at pg.(13-23) of the NFR preamble, and the comments with responses are attached as part of the materials. For R18-9-101, the Department made strictly grammatical changes with the exception of updating a cross reference.

For R18-9-A215, the Department made changes that went beyond grammatical changes. These changes were mostly a result of stakeholder input. Council staff reviewed the NPR and the NFR, and do not consider these changes to be substantively different because the persons affected by the rule understood why these changes were made, the subject matter did not change, and the effects of the rule do not appear to change.

Council staff does not believe these changes make the current rules in the Notice of Final Expedited Rulemaking substantially different from the proposed rules in the Notice of Proposed Expedited Rulemaking pursuant to A.R.S. § 41-1025.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals? Pg 23-57

The Department indicates it received 63 public comments as it relates to this rulemaking, with 55 of those comments resulting in revisions to the rules. The Department indicates that they conducted stakeholder meetings on 9/29/22, 6/8/23, 9/11/23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, and 2/20/25. The Department has also indicated to Council staff that stakeholders were able to review and comment on changes made as a result of these 63 comments. These comments and their responses can be found in the NFR in Item 12, pgs. (23-57). The comments were made by utilities, interest groups, and industry stakeholders.

The four most common concerns were:

- Baseline Reporting Requirements: The language in the NPR required APP holders to submit reports during the entirety of the baseline reporting period, which stakeholders stated were overly burdensome. The Department agreed and removed this language and clarified that a baseline monitoring report must be submitted at the conclusion of the three month implementation period.
- Baseline Monitoring Time Period: Stakeholders were concerned with the three month effective date for when APP holders must begin monitoring for new or revised AWQS. The Department responded by adding language to the rule for an alternative timeframe if an APP holders shows a reasonable reason for why additional time is needed. Additionally, the Department has indicated to Department staff that because AWQS come from EPA rulemaking activities, APP holders are made aware of the possibility of new or amended AWQS when the EPA begins its rulemaking. The Department has indicated to Department staff that between EPA rulemaking and Department rulemaking, all stakeholders would effectively have at least a year's notice of potential changes.
- Sampling Conducted if No Department of Health Services (DHS) approved method: Stakeholders raised concerns that DHS may not have implemented rules for testing for certain pollutants. The Department clarified that should DHS not have a testing method in place, stakeholders can either use an EPA approved method or another method approved by the Department.
- Absence of Pollutants: Stakeholders were concerned with the existing language regarding testing requirements for pollutants that would not be found in their facilities. The Department amended the rule to clarify the requirements for a not likely demonstration.

Council staff believes that the department adequately addressed the comments in accordance with A.R.S. § 41-1052(D)(7).

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

This specific rulemaking does not create a permit or a license.

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

The Department indicates that the rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking by the Department seeks to amend one rule and add one rule concerning the process that Aquifer Protection Permit (APP) holders need to do to receive a revised permit that considers the implementation of new or adjusted aquifer water quality standards (AWQS). Specifically, the Department will be creating a process for APP holders to show that they are in compliance with the new or amended AWQS, allowing APP holders to show that they need additional time to implement baseline reporting requirements, or if they need an alternative testing method.

The Department is seeking a standard 60-day delayed effective date.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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602-771-2300

KATIE HOBBS
GOVERNOR

KAREN PETERS
DIRECTOR

March 13, 2025

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

Re: Aquifer Water Quality Standards Update Regular Rulemaking: Title 18, Environmental Quality, Chapters 9 and 11

Dear Chair Klein:

The Arizona Department of Environmental Quality (ADEQ) hereby submits this final rulemaking package to the Governor's Regulatory Review Council (GRRC) for consideration and approval at the Council Meeting scheduled for May 6th, 2025.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. §§ 41-1039, 41-1052 and A.A.C. R1-6-201:

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

(A)(1)(a) The public record closed for all rules on December 16th, 2024 at 11:59 p.m.

(A)(1)(b) The rulemaking activity does relate to a five-year review report. The report on 18 AAC 11, Articles 4 and 5 was approved on November 3rd, 2020.

(A)(1)(c) The rulemaking activity does not establish a new fee.

(A)(1)(d) The rulemaking does not contain a fee increase.

(A)(1)(e) An immediate effective date is not requested.

(A)(1)(f) The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

(A)(1)(g) The Department's preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S. § 41-1055(B)(3)(a) (*see* subheading IV, below).

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

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

(A)(2) Five (5) Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule (*see* subheading IV, below);
(A)(3) The preambles contain economic, small business, and consumer impact statements that contain the information required by A.R.S. § 41-1055 (*see* subheading IV, below);
(A)(4) The preambles contain comments received by the agency, both written and oral, concerning the proposed rule (*see* subheading IV, below);
(A)(5) No analyses were submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
(A)(6) No materials were incorporated by reference in this rulemaking;
(A)(7) The general and specific statutes authorizing the rule, including relevant statutory definitions (*see* subheading IV, below);
(A)(8) All statutes referred to in the definitions are represented in the general and specific statues authorizing the rule.

III. Governor's office approvals pursuant to A.R.S. § 41-1039:

(A) ADEQ received prior written approval from the Governor's Office twice. Once for Title 18, Chapter 11, Article 4 on August 24, 2022 and then again for Title 18, Chapter 9, Articles 1 and 2 on February 5th, 2024 (*see* subheading IV, below);
(B) ADEQ received written final approval from the Governor's Office for this rulemaking on March 11th, 2025 (*see* subheading IV, below).

IV. List of documents enclosed (25 documents total):

- One (1) Cover Letter (R1-6-201(A)(1));
  - AWQS_CL.pdf
- One (1) JLBC email (R1-6-201(A)(1)(g));
  - AWQS_JLBC.pdf
- Five (5) NFRMs (R1-6-201(A)(2));
  - AWQS_NFRM_18_AAC_9_Impl.pdf
  - AWQS_NFRM_18_AAC_11_As.pdf
  - AWQS_NFRM_18_AAC_11_U.pdf
  - AWQS_NFRM_18_AAC_11_DBP.pdf
  - AWQS_ NFRM_18_AAC_11_MBC.pdf
- Five (5) EISs (R1-6-201(A)(3));
  - AWQS_EIS_18_AAC_9_Impl.pdf
  - AWQS_EIS_18_ AAC_11_As.pdf
  - AWQS_EIS_18_ AAC_11_U.pdf
  - AWQS_EIS_18_ AAC_11_DBP.pdf
  - AWQS_EIS_18_ AAC_11_MBC.pdf
- Five (5) Public Comments Received Documents (R1-6-201(A)(4));

- AWQS_Cmts_18_AAC_9_Impl.pdf
- AWQS_Cmts_18_ AAC_11_As.pdf
- AWQS_Cmts_18_ AAC_11_U.pdf
- AWQS_Cmts_18_ AAC_11_DBP.pdf
- AWQS_Cmts_18_ AAC_11_MBC.pdf

- Five (5) General and Specific Authorizing Statutes (R1-6-201(A)(7));
  - 49-104 - Powers and duties of the department and director.pdf
  - 49-203 - Powers and duties of the director and department.pdf
  - 49-221 - Water quality standards in general; protected surface waters list.pdf
  - 49-223 - Aquifer water quality standards.pdf
  - 49-224 - Aquifer identification, classification and reclassification.pdf
- Three (3) A.R.S. § 41-1039 Governor's Approvals
  - 8_24_22_Gov_Approval.pdf
  - 2_5_24_Gov_Approval.pdf
  - 25_3_11_Gov_Approval.pdf

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

Sincerely,

Karen Peters, Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

PREAMBLE

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

August 24, 2022, &

February 5, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R18-9-101	Amend
R18-9-A215	New Section

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

Authorizing statute: A.R.S. §§ 49-104(B)(13), 49-203(A)(5), (A)(8), (A)(10), 49-221, 49-223, 49-224

Implementing statutes: A.R.S. §§ 49-221, 49-223

4. The effective date of the rule:

July 7, 2025

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

Not applicable.

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

Not applicable.

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

Notice of Proposed Rulemaking: 30 A.A.R. 3402, Issue Date: November 15, 2024, Issue Number: 46, File Number: R24-228.

Notice of Rulemaking Docket Opening: 30 A.A.R. 2136, Issue Date: June 28, 2024, Issue Number: 26, File Number: R24-114.

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

Name: Jon Rezabek

Title: Legal Specialist

Division: Water Quality

Address: Arizona Department of Environmental Quality

1110 W. Washington Ave.

Phoenix, AZ 85007

Telephone: (602) 771-8219

Fax: (602) 771-2366

Email: awqs@azdeq.gov

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

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

General Explanation of this Rulemaking: The Arizona Department of Environmental Quality (ADEQ) is required under A.R.S. § 49-223(A) to open a rulemaking docket for the adoption of federal drinking water maximum contaminant levels (MCLs) as state aquifer water quality standards (AWQSs) within one year of the Environmental Protection Agency's (EPA's) establishment of new or adjusted MCLs. AWQSs for Arsenic, Bromate, Chlorite, Haloacetic Acids, Microbiological Contaminants, Total Trihalomethanes and Uranium with corresponding MCLs are either unestablished as AWQSs or are established but currently have a misaligned value as the standard. In the four (4) associated *Notices of Final Rulemaking* (NFRM) for Title 18, Chapter 11, Article 4, ADEQ adopts the MCLs for the above listed contaminants or, in one case, an alternative MCL (Microbiological Contaminants). Please see the above-mentioned NFRMs for details.

Neither the AWQS statute at A.R.S. § 49-223, nor the rules that make up the Aquifer Protection Program (APP) address how ADEQ should implement new or adjusted AWQSs once the APP program is established. As of the writing of this NFRM, the APP has close to 500 individual permits, a majority of which have requirements for discharge and / or groundwater monitoring based on the AWQSs. In order to determine whether an amendment to an APP permit to effectuate the new or adjusted AWQSs is necessary (in accordance with A.R.S. § 49-243(B)) and to properly and orderly implement such a process, ADEQ proposes with this NFRM a new rule in Title 18, Chapter 9, Article 2 (Aquifer Protection Permits - Individual Permits) and a few new or adjusted associated definitions in Title 18, Chapter 9, Article 1 (Aquifer Protection Permits - General Provisions).

What are Aquifer Water Quality Standards and what is their purpose? Aquifer Water Quality Standards or "AWQSs" are protective groundwater standards that were put in place and designated by the Arizona Legislature to preserve Arizona's aquifer

quality for drinking water-protected use (see A.R.S. § 49-224(B)).

How are Aquifer Water Quality Standards Used? The AWQSs are used in ADEQ's Aquifer Protection Program (APP), and, to a lesser extent, remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), and elsewhere.

How does the proposed new or adjusted AWQS implementation rule work?

Subsection A: Subsection (A) of the proposed rule at R18-9-A215 requires the ADEQ Director to develop a schedule to amend Individual APP permits that were issued on or before a new or adjusted AWQSs' effective date.

Subsection B: Subsection (B) requires the APP permittee to submit an administratively complete application to amend their permit to reflect new or adjusted AWQS pursuant to the schedule specified in Subsection A. It further specifies that an administratively complete application shall be submitted to the Department no later than four years after a new or adjusted AWQS effective date. Also, a waiver of the application submission is made available to permittees that can demonstrate that a pollutant with a new or adjusted AWQS is not likely to be in their discharge pursuant to Subsection (H) and A.R.S. § 49-223(G).

Subsection C: Subsection (C) requires permittees with issued individual APP permits at the time of a new or adjusted AWQS effective date to begin Baseline Monitoring for new or adjusted AWQS within three months, unless the permit has no ongoing monitoring requirements, the permittee has not begun ongoing monitoring, the permittee has submitted a request for an alternative timeframe, duration or frequency pursuant to subsection (D), or the permittee has submitted a demonstration pursuant to subsection (H). The rule continues to define "ongoing monitoring" for the purposes of subsection (C) as permit-required monitoring at groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205.

Subsection D: Subsection (D) allows permittees subject to Baseline Monitoring to submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and/or sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein.

Subsection E: Subsection (E) provides all of the detailed requirements necessary to conduct Baseline Monitoring, if the permittee is applicable to Baseline Monitoring as is detailed in subsection (C).

Subsection F: Subsection (F) provides detail on the requirements of the Baseline Monitoring Report that is required to be developed at the conclusion of Baseline Monitoring.

Subsection G: Subsection (G) provides detail on the requirement to submit the Baseline Monitoring Report to the Department as a central component of a permit amendment application in accordance with the amendment schedule specified by the Department, itself detailed in subsection (A). This subsection also details the Department's requirement to review, process and

determine whether Alert Levels, Discharge Limitations and / or Aquifer Quality Limits are necessary parts of the pending amendment.

Subsection H: Subsection (H) provides detail on a permitted right to remove a pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring if a demonstration is made showing the pollutant is not likely to be present in a facility's discharge.

Subsection I: Subsection (I) provides detail on the Department's right to require permittees with issued individual APP permits that do not have ongoing monitoring to characterize their discharge if the Department has a reasonable basis to believe that the pollutant is likely to be in the facility's discharge. The subsection further defines "ongoing monitoring" for the purposes of the subsection in the exact same manner as it is defined in subsection (C) and allows a subjected permittee to this subsection the right to remove a pollutant with a new or adjusted AWQS upon a subsection (H) demonstration.

Sampling and Analytical Methodologies. In the Baseline Monitoring Requirement subsection of the final rule at R18-9-A215(E)(4), the following is provided,

> "[s]ampling for each pollutant with a new or adjusted AWQS shall be conducted using Arizona Department of Health Services-approved (ADHS) methods under A.A.C. R9-14-610, including methods on the ADHS Director Approved List, if available. If an ADHS-approved method does not exist, sampling shall be conducted using an appropriate EPA-approved method or a method specified by the ADEQ Director."

At the time this NFRM was compiled, wastewater methods for some of the pollutants with new or adjusted AWQSs were not ADHS-Approved (*see* A.A.C. Title 9, Chapter 14, Article 6, Tables 6.2.A and 6.2.B). In March 2025, ADEQ formally requested that the following sampling methods be reviewed and considered for addition to ADHS's "Director Approved" list of sampling methods pursuant to A.A.C. R9-14-610, found published outside of the rule on ADHS's website, here: https://www.azdhs.gov/documents/preparedness/state-laboratory/lab-licensure-certification/environmental-laboratory/application/application-part-e.pdf

Table 1. Analytical Methods for Baseline Monitoring

Analyte	**Analytical Method**
Arsenic	EPA 200.8, SM 3113B, SM 3114B
Bromate	EPA 300.1, EPA 317.0 Rev 2.0, EPA 321.8, EPA 326.0
Chlorite	EPA 300.0, EPA 300.1, EPA 317.0 Rev 2.0, EPA 326.0
Haloacetic Acids	EPA 552.1, EPA 552.2, EPA 552.3, SM 6251B
Fecal coliform	SM 9223B
E. coli	SM 9223B
Total Trihalomethanes	EPA 502.2, EPA 524.2, EPA 551.1, SM 6251B
Uranium (Total)	EPA 200.8

* "EPA" - Environmental Protection Agency; "SM" - Standard Methods

Applicability of Microbiological Contaminants AWQS Indicator Parameters to Baseline Monitoring. In Final Rule R18-9-A215(C), all persons with issued individual permits as of a new or adjusted AWQS effective date shall begin Baseline Monitoring, pursuant to R18-9-A215(E), for a new or adjusted AWQS within three months. The associated NFRM for Title 18, Chapter 11, Article 4 (specifically for Microbiological Contaminants) specifies that either Fecal Coliform or *E. coli* may be used in routine monitoring as indicator parameters. ADEQ understands that for various reasons, issued APP permits may be sampling for one or both or none of these indicator parameters already. In accordance with the rule, ADEQ's expectation is that an applicable permittee may choose one or both indicator parameters for the purpose of Baseline Monitoring under Final Rule R18-9-A215.

Who are the stakeholders in this rulemaking? The stakeholders for this rulemaking are predominantly the permittees of the APP, and to a lesser extent, remediation projects under the Water Quality Assurance Revolving Fund (WQARF) and the Voluntary Remediation Program (VRP). Other stakeholders include private well owners, community water systems and the constituents they serve, as well as all Arizonans who benefit from the state's aquifers being protected for drinking water use.

What has been the stakeholder process for this rulemaking? ADEQ has conducted a number of general and specific stakeholder meetings concerning this rulemaking, including tribal listening sessions and rule language sessions with major industry associations and their counsel, representing a majority of the individual APP regulated parties. The dates of those events are as follows: 9/29/22, 6/8/23, 9/11/23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25 and others. In particular, the Department met with representatives of the Arizona Mining Association and the Arizona Chamber of Commerce and Industry over the implementation rule language which is the subject of this rulemaking. After a collaborative effort, ADEQ is confident that the requirements of the proposed implementation rule put the least amount of burden on stakeholders that is necessary to achieve the goal of proper, orderly and environmentally protective implementation of new or adjusted AWQSs.

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

Not applicable

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

Not applicable.

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

This Economic, Small Business, and Consumer Impact Statement (EIS) has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this EIS has the scope of adding a new section at R18-9-A215 in Title 18, Chapter 9, Article 2 of the Arizona Administrative Code (A.A.C.) This rulemaking action is being taken by the Arizona Department of Environmental Quality (ADEQ) in order to establish a clear procedure for implementation of new or adjusted Aquifer Water Quality Standards (AWQS) to the issued and existing individual Aquifer Protection Permits (APP). Before this rulemaking, such implementation was unaddressed and unclear. New or adjusted Aquifer Water Quality Standards (AWQS) are added to an existing list when the Federal Environmental Protection Agency (EPA) establishes new or adjusts existing Safe Drinking Water Act Maximum Contaminant Levels (MCL). Pursuant to Arizona Revised Statutes (A.R.S.) § 49-223, upon this EPA action, ADEQ must, within one year, open a rule making docket pursuant to A.R.S. § 41-1021 for adoption of the MCL as an AWQS. However, neither A.R.S. § 49-223 nor the rules in the individual APP article at Title 18, Chapter 9, Article 2 of the A.A.C. address how to implement those new or adjusted AWQSs into the existing and issued permits. As is detailed in Section 7 of this Notice of Final Rulemaking (NFRM), ADEQ conducted the rulemaking in conformance with the statutory administrative procedure in A.R.S. Title 41, Chapter 6, and is hereby submitting this EIS, in conformance with the requirements of A.R.S. §§ 41-1055 and 41-1035. ADEQ has determined that this rulemaking will impact the regulated community, ADEQ customers, the environment, and may impact public health. This EIS was developed to evaluate the rulemaking's impacts and compare the benefits and detriments of adopting a rule on the implementation of new or adjusted AWQSs into applicable, existing and issued individual APPs. The AWQSs are designed to protect the State's aquifers, all of which have been designated for drinking water-protected use (*see* A.R.S. § 49-224(B)). The AWQSs are primarily used in ADEQ's Aquifer Protection Permit program (APP), and (to a lesser extent) in some remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), and elsewhere.

B. A summary of the EIS:

General Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include individual APP Permittees (hereinafter: "permittees"), such as Mines, Industrial Facilities and Wastewater Treatment Plants, and, to a lesser extent, regulated parties under certain remediation projects, such as WQARF and VRP. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from this "AWQS Implementation" rulemaking.

A general benefit includes the State of Arizona and its constituents, due to this rulemaking's functional part in protecting the state's aquifers, allowing them to remain a viable asset to community water portfolios and individual well users alike.

General costs to permittees as a result of this new or adjusted AWQS implementation rule are likely minimal, potentially significant and indeterminate at this time. According to the proposed rule, applicable permittees with permit-required discharge

and/or groundwater monitoring at the effective date of a new or adjusted AWQS would be required to begin "Baseline Monitoring" for any and all new or adjusted AWQSs with three months unless an alternative Baseline Monitoring timeframe, duration and/or frequency is proposed or a demonstration that a pollutant with a new or adjusted AWQS is not likely to be in a facility's discharge pursuant to A.R.S. § 49-223(G). At the conclusion of Baseline Monitoring, a requirement to submit a Baseline Monitoring report to the Department as a component of an application to amend the individual permit comes into effect; where, after review, the Department determines whether new or adjusted Alert Levels, Discharge Limitations or Aquifer Quality Limits based on the AWQS are necessary pursuant to A.A.C. R18-9-A205.

Specific Impacts

Benefits to Stakeholders include significant clarity in administration and expectation for the Department and the applicable permittees, respectively, as to how new or adjusted AWQSs are to be implemented into existing and issued permits. Applicable permittees will be required to conduct Baseline Monitoring at discharge and groundwater monitoring locations, which could come as a considerable cost. However, permittees will have much of the infrastructure to conduct this monitoring already in place, as the rule requires the monitoring to occur at existing and established locations. With that said, the Department estimates that the analytical laboratory fees for applicable permittees will cost $4,500 for (eight) 8 monitoring events for all seven (7) of the new or adjusted AWQSs at one monitoring location. The seven (7) new or adjusted AWQSs are detailed in the other four (4) Notices of Final Rulemaking (NFRMs) associated with this NFRM. The Department estimates that monitoring equipment could cost around $1,500 which includes rental for a water quality meter and a depth to groundwater level sounder, plus purchase of consumable products such as deionized water, conductivity and pH calibration solutions, and nitrile sampling gloves. The Department estimates the employee labor costs at $35 per hour and each monitoring event would require 4 hours of sampling equipment preparation, 12 hours for sample collection and lab delivery, and 4 hours to review the laboratory analytical results. This was estimated to cost $5,600 for all (eight) 8 monitoring events. Then, the Department estimated the employee labor costs for preparing the Baseline Monitoring Report with a request to establish Alert Levels, Discharge Limitations and/or Aquifer Quality Limits for all 7 parameters. This effort includes a draft report, internal review, final report edits, and submission by the permittee to the Department. The employee effort for the Baseline Monitoring Report was estimated at $3,400. Altogether the cost estimate includes: $4,500 lab + $1,500 equipment + $5,600 employee labor for sampling + $3,400 employee labor for baseline monitoring report, for an estimated total of $15,000.

Although many facilities will absorb the additional work load and infrastructure / incidentals needed into their existing labor force and equipment on site, certain permittees may need to acquire additional employees to help achieve the requirements.

Stakeholder Process

ADEQ has conducted a number of general and specific stakeholder meetings concerning this rulemaking, including tribal listening

sessions and rule language sessions with major industry associations and their counsel, representing a majority of the individual APP regulated parties. The dates of those events are as follows: 9/29/22, 6/8/23, 9/11/23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25 and others. A repository of stakeholder materials is published on ADEQ's dedicated AWQS Rulemaking website here: https://www.azdeq.gov/rulemaking/awqs-update/resources.

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

Costs to Stakeholders

Permittees will be the primary bearers of costs associated with this rulemaking. Other potential costs to stakeholders addressed include the following:

- Rate payers in municipal systems, where rates could conceivably increase to cover increased costs for expanded treatment.
- Regulated parties under ADEQ remediation programs such as WQARF and VRP (minimal impact).
- ADEQ, although any additional staff efforts and other expenses associated with monitoring proposed expanded treatment requirements will generally be covered through permittees' fee increases.

Benefits to Stakeholders

Benefits to Stakeholders include significant clarity in administration and expectation for the Department and the applicable permittees, respectively, as to how new or adjusted AWQSs are to be implemented into existing and issued permits. Generally, the state and the constituents of the state benefit through the efficiency unto which protection of the aquifer resource is administered, safeguarding aquifers as an asset for drinking water use both now and in the future, pursuant to statutory mandate at A.R.S. § 49-224.

D. Benefit/Cost Analysis:

1. Part I – Benefit / Cost Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Note: all benefits and cost figures in this document are in annualized amounts.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
Permittees: Mines, Industrial Facilities, Wastewater Treatment Plants	Applicable permittees will be required to conduct Baseline discharge and/or groundwater monitoring for new or adjusted AWQSs, which entail sampling and analytical costs	Minimal to Moderate	
ADEQ	ADEQ believes some new costs will be incurred, despite the fact that some infrastructure for processing	Minimal to Moderate	

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
	permits is already in place. ADEQ anticipates that hundreds of permits may need to be amended to update monitoring tables associated with new or adjusted AWQS. Any additional costs incurred would generally be covered by increased fees paid by permittees.		
Small businesses as a segmented category	Coming into compliance with new standards. Small businesses are generally cost-disadvantaged when compared to larger businesses because treatment costs generally decline as the scale (processing capacity) of a processing facility increases.	Minimal to Moderate	

2. Part II – Individual Stakeholder Summaries / Calculations:

The following subsection provides an explanatory discussion of expected stakeholder costs and benefits. The subsection outlines the key factors and analysis used to determine the impact findings reported in Part 1 of subsection D, above.

***Costs to Stakeholders*:**

Permittees

Permittees could see minimal to moderate costs due to this rulemaking. Applicable permittees will be required to conduct Baseline discharge and/or groundwater monitoring for new or adjusted AWQSs, which entail sampling and analytical costs. The Department estimates that monitoring equipment could cost around $1,500 which includes rental for a water quality meter and a depth to groundwater level sounder, plus purchase of consumable products such as deionized water, conductivity and pH calibration solutions, and nitrile sampling gloves. The Department estimates the employee labor costs at $35 per hour and each monitoring event would require 4 hours of sampling equipment preparation, 12 hours for sample collection and lab delivery, and 4 hours to review the laboratory analytical results. This was estimated to cost $5,600 for all 8 monitoring events. Then, the Department estimated the employee labor costs for preparing the Baseline Monitoring Report with a request to establish Alert Levels, Discharge Limitations and/or Aquifer Quality Limits for all 7 parameters. This effort includes a draft report, internal review, final report edits, and submission by the permittee to the Department as a component of a permit amendment application. The employee effort for the Baseline Monitoring Report was estimated at $3,400. Altogether the cost estimate includes: $4,500 lab + $1,500 equipment + $5,600 employee labor for sampling + $3,400 employee labor for baseline monitoring report, for an estimated total of $15,000. Additional costs include an internally or externally developed amendment application and Departmental hourly fees for application review, permit writing, etcetera – pursuant to A.A.C. R18-14-102(B).

Small businesses as a segmented category

Generally, the same as the Permittees section above; albeit, taking into account the fact that small businesses are generally cost-disadvantaged when compared to larger businesses because treatment costs generally decline as the scale (processing capacity) of a processing facility increases.

ADEQ

ADEQ could see minimal to moderate costs due to this rulemaking. ADEQ believes some new costs will be incurred, despite the fact that some infrastructure for processing permits is already in place. ADEQ anticipates that hundreds of permits may need to be amended to update monitoring tables associated with new or adjusted AWQS. Any additional costs incurred would generally be covered by increased fees paid by permittees.

In order to process the large number of individual APP permits that will need to be amended as a product of this rule and new or adjusted AWQS, ADEQ will incur costs for AWP-related staff expansion and performance of new AWQS-associated administrative responsibilities needed. ADEQ currently anticipates that it will need to hire new staff with the necessary technical expertise. These positions will include permit reviewers with engineering and hydrogeologic backgrounds, as well as, non-engineer staff for administrative tasks.

In order to support the implementation of this new rule, ADEQ plans on hiring 3 new full-time employees (FTE). Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees and annual fees.

***Benefits to Stakeholders*:**

Permittees, Small Businesses as a segmented category & ADEQ

Benefits to stakeholders include significant clarity in administration and expectation for the Department and the applicable permittees, respectively, as to how new or adjusted AWQSs are to be implemented into existing and issued permits. Generally, the state and the constituents of the state benefit through the efficiency unto which protection of the aquifer resource is administered, safeguarding aquifers as an asset for drinking water use both now and in the future, pursuant to statutory mandate at A.R.S. § 49-224.

E. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ estimates that, for the most part, this rulemaking will not have much of an impact on public or private employment. As is noted above, some permittees may need to hire additional help to meet the requirements of Baseline Monitoring for new or adjusted AWQSs, but, in most cases, will be able to absorb the responsibility through existing employees, infrastructure and equipment. ADEQ believes some new costs will be incurred, despite the fact that some infrastructure for processing permit applications is already in place. ADEQ anticipates that potentially hundreds of permits may need to be amended to update monitoring tables associated with new or adjusted AWQS. Any additional costs incurred would generally be covered by increased fees paid by permittees.

However, and as mentioned above, all applicable permittees, whether public or private, stand to benefit through the state establishment of a streamlined new or adjusted AWQS implementation process. As explained in subsection A of this EIS above,

neither A.R.S. § 49-223 nor the rules in the individual APP article at Title 18, Chapter 9, Article 2 of the A.A.C. address how to implement new or adjusted AWQSs into the existing and issued permits, which would lead to significant confusion and waste for ADEQ and the permittees.

F. A statement on the probable impact of the rules on small business:

Economic costs to comply with the new or adjusted AWQS implementation rule that are borne by small businesses may be minimal to moderate. Small businesses tend to be disadvantaged because treatment costs generally decline as the scale (processing capacity) of a processing facility increases. Many small businesses subject to this rule likely have personnel, infrastructure and equipment already in place for conducting Baseline Monitoring. It is possible that permittees may need to hire additional personnel or a contractor in complying with these rules. Also, samples must be analyzed at a laboratory at a cost to the permittee. Additionally, permittees may choose to hire a consultant in developing their Baseline Monitoring Report, an alternative Baseline Monitoring timeframe, duration and/or frequency request or a demonstration that a pollutant with a new or adjusted AWQS is not likely to be in a facility's discharge pursuant to A.R.S. § 49-223(G).

1. An identification of the small businesses subject to the rules:

Small businesses constitute a distinct category for which the impacts of rulemaking need to be considered. For this EIS, impacted small businesses will be wastewater facility permittees meeting the following criteria:

- According to A.R.S. 41-1001 and as applied in this EIS, "'Small business' means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than $4 million in its last fiscal year."
- ADEQ estimates that small businesses make up just over 30% of permittees, or 135 entities in total. As noted previously in this EIS, not all of these facilities will necessarily need to incur costs to meet the proposed new or adjusted AWQS implementation rule.

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

Permittees small and large likely have personnel, infrastructure and equipment already in place for conducting Baseline Monitoring. It is possible that permittees may need to hire additional personnel or a contractor in complying with these rules. Also, samples must be analyzed at a laboratory at a cost to the permittee. Additionally, permittees may choose to hire a consultant in developing their Baseline Monitoring Report, an alternative Baseline Monitoring timeframe, duration and/or frequency request or a demonstration that a pollutant with a new or adjusted AWQS is not likely to be in a facility's discharge pursuant to A.R.S. § 49-223(G).

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

A.R.S. § 41-1035 Methods	ADEQ Decision to use or not use and reason
1. Establishing less stringent compliance or reporting requirements in the rule for small businesses	Used for all applicable permittees. Through stakeholder input, the Department removed from a previous draft a requirement for all applicable permittees to report throughout Baseline Monitoring in lieu of simply reporting all at once through the Baseline Monitoring Report at the end of the Baseline Monitoring period. The rule also allows permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS.
2. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses	Used for all applicable permittees. Through stakeholder input, the Department built more flexibility into the rule through the allowance of an alternative Baseline Monitoring timeframe, duration and/or frequency request, as well as an ability for a permittee to make a demonstration that a pollutant with a new or adjusted AWQS is not likely to be in a facility's discharge pursuant to A.R.S. § 49-223(G), which results in the pollutant not being subject to Baseline Monitoring.
3. Consolidating or simplifying the rule's compliance or reporting requirements for small businesses	Used for all applicable permittees. Through stakeholder input, the Department removed from a previous draft a requirement for all applicable permittees to report throughout Baseline Monitoring in lieu of simply reporting all at once through the Baseline Monitoring Report at the end of the Baseline Monitoring period. The rule also allows permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS.
4. Establishing performance standards for small businesses to replace design or operational standards in the rule	Not used. In administering the APP program, performance, design and operational standards are all built into a review of a facility's employment of the best available demonstrated control technologies, processes, operating methods or other alternatives. ADEQ believes these requirements are no more prescriptive than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243).
5. Exempting small businesses from any or all requirements of the law	Not used. In administering the APP program, all persons discharging a pollutant into the environment must obtain an APP permit under A.R.S. § 49-241, unless exempted through A.R.S. § 49-250. Eliminating small business from the scope of the APP program is not supported by statute and would undermine the purpose of the program, to protect the state's aquifers to a drinking water standard (*see* A.R.S. §§ 49-223, 224, 241, 243).

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

There should be little to no costs to private persons and consumers as this rule compels permittees to conduct Baseline Monitoring for all new or adjusted AWQSs. It is conceivable that a Wastewater Treatment Plant may increase the rates in their service area as a result of the requirement to conduct Baseline Monitoring, but that would be a relatively small amount due to the cost estimates projected for Baseline Monitoring outlined above.

G. A statement of the probable effect on state revenues:

This rulemaking will not result in a significant increase, nor decrease in state revenues. Increased and decreased costs to ADEQ are expected to be minimal, as explained above in the analysis of costs and benefits to ADEQ. Investments in sampling, analytical

and report / request / demonstration work through employees or consultants could result in the generation of additional employment through indirect and induced (secondary) economic activity, and subsequent tax revenues.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

ADEQ worked closely with stakeholders in the development of this new or adjusted AWQS implementation rule, focusing on the goal of clarity in administration and expectation for the Department and the applicable permittees, respectively. Neither A.R.S. § 49-223 nor the rules in the individual APP article at Title 18, Chapter 9, Article 2 of the A.A.C. address how to implement those new or adjusted AWQSs into the existing and issued permits. For this reason, ADEQ received overwhelming support for this clarifying rule from the regulated parties. After years of drafting, editing and stakeholder feedback, ADEQ believes the structure of this rule properly balances the agency's mission of protecting public health and the environment with any requisite costs to stakeholders.

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

No data was used in the development of this rule. ADEQ closely examined the relevant and existing statutes and rules, as well as multiple rounds of stakeholder feedback.

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

Generally: As a result of meeting with stakeholders between the proposed and final rules, some restructuring and clarification was made to draft rules, R18-9-101 and R18-9-A215. However, concerning R18-9-A215, it is important to note that changes to the rule are limited to logical re-arrangement and clarification. Upon careful comparison between the proposed and final rule, ADEQ believes the two versions of the rules do not differentiate substantially. Briefly overviewing the changes to R18-9-A215 can be described as follows: the Baseline Monitoring requirements in proposed subsection (C) are broken into four subsections in final rule, specifically subsections (C), (D), (E) and (F). This was done at the request of the stakeholders for clarification, flexibility and functionality purposes by way of developing dedicated Baseline Monitoring applicability language in final subsection (C), dedicated alternative Baseline Monitoring timeframe, duration and/or frequency request language in final subsection (D), dedicated Baseline Monitoring requirements language in final subsection (E), and dedicated Baseline Monitoring Report language in final subsection (F). Proposed subsections (A), (B), (D), (E) and (F) are largely the same in the final rule, although proposed subsections (D), (E) and (F) have moved to final subsections (G), (H) and (I) due to the breaking up of proposed subsection (C), as is described above.

Specifically:

Final Rule R18-9-101(4) - Definitions - "Aquifer Protection Permit"

- Removed “or ‘APP’ or ‘APPs’” because the acronym is not used in the Article.
- Revised “...means an individual or general permit or permits issued under...” to “...means an individual or general permit issued under…” for clarity.

Final Rule R18-9-101(31) - Definitions - “New or adjusted aquifer water quality standard”

- Changed “...an established AWQS for the purposes…” to “...an established AWQS, pursuant to R18-9-101(5), for the purposes…” for clarity.
- Changed “APP” to “Aquifer Protection Permit” for clarity.
- Changed citation “R18-9-A215(D)” to “(G)” to conform with final rule restructure.

Final Rule R18-9-A215(A) - New or Adjusted Aquifer Water Quality Standards

- Added subsection title, “Permit Amendment Schedule” for clarity in rule navigation.
- Replaced “Individual APPs” with “issued individual permits” to make more clear the temporal applicability.
- Replaced “[u]pon the establishment of a new or adjusted AWQS, the Director shall develop a schedule to amend Individual APPs that were issued as of the effective date of a new or adjusted AWQS pursuant to R18-9-A211” with “[u]pon the effective date of a new or adjusted AWQS, the Director shall develop a schedule to amend issued individual permits to reflect the new or adjusted AWQS pursuant to R18-9-A211”. This was done due to stakeholder feedback in order to increase clarity and to add the purpose of the schedule’s creation into the rule.

Final Rule R18-9-A215(B) - New or Adjusted Aquifer Water Quality Standards

- Added subsection title, “Permit Amendment” for clarity in rule navigation.
- Replaced “Individual APPs” with “issued individual permits” due to stakeholder feedback in order to make more clear the temporal applicability.

Final Rule R18-9-A215(B)(2) - New or Adjusted Aquifer Water Quality Standards

- Replaced, “[t]he subsection (B)(1) requirement may be waived if a demonstration is submitted to and approved by the Department that a pollutant with a new or adjusted AWQS is not likely to be present in a facility’s discharge pursuant to subsection (E)” with “[t]he requirement to submit an application to amend in subsection (B) is not applicable for pollutants with a new or adjusted AWQS that are within the scope of a demonstration submitted pursuant to subsection (H)” due to stakeholder feedback in order to supplant the waiving of the four year amendment application submission with the waiving of the requirement to submit an amendment application altogether for a particular pollutant as the effect of a subsection (H) demonstration indicates waiver of more than just the four year application submission deadline.

Final Rule R18-9-A215(C) - New or Adjusted Aquifer Water Quality Standards

- Final rule, subsection (C) is the first of four subsections that were split out from proposed rule due to stakeholder feedback, subsection (C) in order to add clarification, flexibility and functionality to Baseline Monitoring (*see* Heading No. 11, subheading "Generally", above). Proposed subsection (C) language, "[p]ersons holding Individual APPs that were issued as of the effective date of a new or adjusted AWQS … shall begin Baseline Discharge and/or Groundwater Monitoring … within three months of the effective date…" is largely retained in final rule, subsection (C). Much of the language which was in proposed subsection (C) can be found in final rule, subsection (C); specifically, below final subsection (C)(4), as part of the definition of "ongoing monitoring". Additionally, proposed subsection (C)'s language, "unless a demonstration is approved by the Department pursuant to subsection (E)" can be found in final subsection (C)(4), now referencing final subsection (H). Further clarifications brought up by stakeholders are represented in final subsections (C)(1), (2) and (3).

Final Rule R18-9-A215(C), (E) and (F) - New or Adjusted Aquifer Water Quality Standards

- "[A]ctive" was replaced with "issued" due to stakeholder feedback in order to make more clear the temporal applicability in four locations in these three subsections.

Final Rule R18-9-A215(D) - New or Adjusted Aquifer Water Quality Standards

- Final subsection (D) was added to address stakeholder concerns about flexibility when it comes to Baseline Monitoring, including flexibility in timeframes, duration and frequency.

Final Rule R18-9-A215(E) - New or Adjusted Aquifer Water Quality Standards

- The requirement to report Baseline Monitoring to the Director throughout the monitoring period (proposed subsection (C)(1)(a)) was removed from the final rule due to stakeholder feedback and a determination that reporting during the Baseline Monitoring periods is unnecessary as the results of the Baseline Monitoring periods will be submitted to the Department through the Baseline Monitoring Report and the amendment application pursuant to final subsection (F) and (G)
- The language in final rule, subsection (E)(1) was moved from proposed rule, subsection (C)(1)(c) for clarity, functionality and structural purposes.
- The language in final rule, subsection (E)(2) was moved from proposed rule, subsection (C)(1)(d) for clarity, functionality and structural purposes.
- The language in final rule, subsection (E)(3) was moved from proposed rule, subsection (C)(1)(f) for clarity, functionality and structural purposes.

- The language in final rule, subsection (E)(3), "[p]ermittees that have collected relevant samples prior to the Baseline Monitoring period at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205…" was changed from proposed language in subsection (C)(1)(f) "[p]ermittees that have collected samples prior to a Baseline Discharge and/or Groundwater Monitoring period at active discharge, groundwater point of compliance and/or other monitoring locations specified in the permit that are subject to limits based on AWQSs…" due to stakeholder feedback because:
    - "Baseline Monitoring" captures both Discharge and Groundwater Monitoring;
    - "permit-required" adds more clarity to which monitoring locations are applicable than the word "active";
    - "...subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205…" is a more exacting, clarifying phrase, further specifying which monitoring locations are applicable, as opposed to "...specified in the permit that are subject to limits based on AWQSs…"
- The language in final rule, subsection (E)(3), "[p]reviously collected data may be used to shorten or eliminate a Baseline Monitoring period if all data components…" was changed from proposed language in subsection (C)(1)(f), "...[p]reviously collected data submissions may result in a reduction of the sampling duration…" because stakeholders asked for criteria in submitting previously collected data and the language needed to set up a subsequent list.
- Final rule, subsections (E)(3)(a), (b), (c) and (d) were developed due to stakeholder feedback in order to add clarity in submitting previously collected data for Baseline Monitoring credit.
    - (E)(3)(a) references appropriate sampling and analytical methodologies in final rule, subsection (E)(4);
    - (E)(3)(b) establishes a standard for quality assurance and quality control procedures;
    - (E)(3)(c) establishes that while previous data may be used to shorten or eliminate a Baseline Monitoring period, the Baseline Monitoring Report and component submission must collectively be representative of a complete data set per the applicable requirements of Baseline Monitoring in R18-9-A215.
    - (E)(3)(d) establishes that while previous data may be used to shorten or eliminate a Baseline Monitoring period, the Baseline Monitoring Report and component submission must collectively meet the other applicable requirements of Baseline Monitoring in R18-9-A215.
- The language in final rule, subsection (E) no longer includes proposed subsection (C)(1)(E), "[b]aseline groundwater monitoring may additionally occur at up, cross or down gradient wells in relation to the facility, if available…" due to stakeholder feedback. Monitoring data beyond the requirements of Baseline Discharge and Groundwater monitoring may be submitted as part of a Baseline Monitoring Report in final subsection (F), as "additional information" (*see* final subsection (F)(5)).

- The language in final rule, subsection (E)(4) was moved from proposed rule, subsection (C)(1)(h) for clarity, functionality and structural purposes due to stakeholder feedback. While final subsection (E)(4) is similar to proposed (C)(1)(h), a citation to the Arizona Department of Health Services (ADHS) approved methods rule, R9-14-610, was added, along with a reference to the ADHS "Director Approved" list, due to stakeholder feedback in order to functionally capture the current and future state of appropriate sampling and analytical methodologies for the purposes of Baseline Monitoring pursuant to R18-9-A215.
- The language in final rule, subsection (E)(5) was moved from proposed rule, subsection (C)(1)(d) for clarity, functionality and structural purposes due to stakeholder feedback. Final subsection (E)(5) adds a subsection title, "Groundwater Monitoring" for clarity in rule navigation. The applicability language in final subsection (E)(5) was changed from "[p]ermittees that monitor groundwater at their site, pursuant to an existing Individual APP, shall conduct sampling for baseline groundwater monitoring at the applicable point(s) of compliance for eight quarters…" to "[p]ermittees that are required to monitor groundwater shall conduct Baseline Monitoring for a new or adjusted AWQS at the point of compliance monitoring location(s) for eight quarters…" due to stakeholder feedback in order to add clarity by specifying the permit's monitoring requirements and the scope of the new or adjusted AWQSs. Final subsection (E)(5) adds language recognizing the exception to this requirement, which is an alternative timeframe, duration or frequency request approved by the Department (*see* final subsection (D)). Also, the following was removed from final subsection (E)(5) based on stakeholder feedback and reconsideration of the need, "[p]ermittees shall continue quarterly monitoring under this subsection until a determination is made by the Department on whether new or adjusted Alert Levels, Discharge Limits and/or AQLs are required pursuant to subsection (D) of this section." Additionally, the following language in final subsection (E)(5) was changed from, "[t]he Director may shorten or lengthen the monitoring period if one or more of the following events occur…" to "[t]he Director may lengthen the monitoring period if one or more of the following events occur…" due to stakeholder feedback and Departmental reconsideration of the inappropriate nature of setting Alert Levels, Discharge Limits and/or AQLs based on a shortened data set. The list or criteria in final subsections (E)(5)(a), (b), (c), (d) and (e) were slightly edited due to stakeholder feedback in order to provide clarity:
    - (E)(5)(a) - "individual" was removed due to the tradition that the usage of "permit" in A.A.C. Title 18, Chapter 9, Article 2 refers to the namesake, individual aquifer protection permit, through a contextual certainty;
    - (E)(5)(b) - "alert or" was removed after a determination that "alert" level exceedances are not appropriate for lengthening the Baseline Monitoring period;
    - (E)(5)(c) - Typo fix. Proposed subsection (C)(1)(d)(iii) read, "[a]n exceedance of a new of adjusted AWQS"; final rule, subsection (E)(5)(c) reads, "[a]n exceedance of a new or adjusted AWQS";

- (E)(5)(d) - “increasing” was replaced with “significant” to better scope the events that might appropriately lead to lengthening the Baseline Monitoring period;
- (E)(5)(e) - “increasing” was replaced with “significant” to better scope the events that might appropriately lead to lengthening the Baseline Monitoring period.

- The language in final rule, subsection (E)(6) was moved from proposed rule, subsection (C)(1)(g) for clarity, functionality and structural purposes due to stakeholder feedback. Final subsection (E)(6) adds a subsection title, “Discharge Monitoring” for clarity in rule navigation.” The applicability language in final subsection (E)(6) was changed from “[p]ermittees that monitor their discharge, pursuant to an existing Individual APP, shall conduct baseline discharge monitoring for newly established or adjusted AWQSs on a monthly frequency for one year” to “[p]ermittees that are required to monitor discharge or water quality shall conduct Baseline Monitoring for a new or adjusted AWQS at the discharge monitoring location(s) on a monthly frequency for one year…” due to stakeholder feedback in order to add clarity by using more inclusive language that encompasses the full scope of APP facilities specifying the permit’s monitoring requirements and the scope of the new or adjusted AWQSs. Final subsection (E)(6) adds language recognizing the exception to this requirement, which is an alternative timeframe, duration or frequency request that is approved by the Department. Final subsection (E)(6) adds the following language, “[i]f a permittee conducting Discharge Baseline Monitoring collects a sample that is at or above a new or adjusted AWQS, the permittee shall notify ADEQ within five (5) days of becoming aware…” in order to address the original Departmental concern that led to the “shorten or lengthen” language in proposed subsections (C)(1)(d) and (g), specifically “shorten”. After receiving stakeholder feedback expressing concern that setting Alert Levels, Discharge Limits and/or AQLs based on a shortened data set is inappropriate, the Department added the notification language above to final subsection (E)(6). In both cases (“notification” & “shorten” language), the Department aimed and now aims to ascertain information from the permittee in the case where a facility is discharging at or above a new or adjusted AWQS during Baseline Monitoring. This is because, when a permittee notifies the Department of discharges at or above the new or adjusted AWQS, ADEQ can not only become aware, but be prompted to monitor the discharges in the meantime before an amendment application is submitted, in order to be properly informed of the potential impacts to local groundwater. Additionally, the following language in final subsection (E)(6) was changed from, “[t]he Director may shorten or lengthen the monitoring period if one or more of the following events occur…” to “[t]he Director may lengthen the monitoring period if one or more of the following events occur…” due to stakeholder feedback and Departmental reconsideration of the inappropriate nature of setting Alert Levels, Discharge Limits and/or AQLs based on a shortened data set. The list or criteria in final subsections (E)(6)(a), (b), (c), (d) and (e) were slightly edited due to stakeholder feedback in order to provide clarity:

- (E)(6)(a) - “individual” was removed due to the tradition that the usage of “permit” in A.A.C. Title 18, Chapter 9, Article 2 refers to the namesake, individual aquifer protection permit, through a contextual certainty;
- (E)(6)(b) - “alert or” was removed after a determination that “alert” level exceedances are not appropriate for lengthening the Baseline Monitoring period;
- (E)(6)(c) - Typo fix. Proposed subsection (C)(1)(g)(iii) read, “[a]n exceedance of a new of adjusted AWQS”; final rule, subsection (E)(5)(c) reads, “[a]n exceedance of a new or adjusted AWQS”.
- (E)(6)(d) - “increasing” was replaced with “significant” to better scope the events that might appropriately lead to lengthening the Baseline Monitoring period;
- (E)(5)(e) - “[a]ny other significant issue that affects baseline monitoring” was replaced with “[a]ny other significant issue that affects the representativeness of Baseline Monitoring” to better scope the events that might appropriately lead to lengthening the Baseline Monitoring period.

Final Rule R18-9-A215(F) - New or Adjusted Aquifer Water Quality Standards

- The language in final rule, subsection (F) was moved from proposed rule, subsection (C)(2) for clarity, functionality and structural purposes due to stakeholder feedback.
- The language in final rule, subsection (F)(1) was moved from proposed rule, subsection (C)(2)(a) for clarity, functionality and structural purposes due to stakeholder feedback. Final subsection (F)(1) was changed from, “[a]t the conclusion of the baseline discharge and/or groundwater monitoring, permittees shall submit to the Department a Baseline Monitoring Report within three months of the date of the last sample collected” to “[a]t the conclusion of Baseline Monitoring, or upon the compilation of a complete and representative data set pursuant to subsection (E)(3) above, permittees shall develop a Baseline Monitoring Report within three months of receipt of the last sample result” due to stakeholder feedback in order to clarify the ability of a permittee to use certain previously recorded data for the purposes of Baseline Monitoring pursuant to final subsection (E)(3), as well as, to change “submit” to “develop” so as to reflect the Baseline Monitoring Report’s status as a component of the amendment application, specified in final subsection (G), and the fact that the report and amendment application are subject to the amendment schedule specified in final subsection (A) and to change “..of the date of the last sample collected…” to “...of receipt of the last sample result…” due to stakeholder feedback / preference.

- The language in final rule, subsection (F)(2) was added due to stakeholder feedback pointing out that permittees subject to both Baseline Discharge and Groundwater Monitoring would have staggered start and finish dates (per the final rule, Baseline Discharge Monitoring lasts for 1 year, whereas Baseline Groundwater Monitoring lasts for 2 years). In the case where a permittee is subject to both monitoring periods, the Department found no issue clarifying that such permittees shall develop a Baseline Monitoring Report within three months of receipt of the last sample result between the two monitoring periods.
- The language in final rule, subsection (F)(3) was moved from proposed rule, subsection (C)(2)(b) for clarity, functionality and structural purposes due to stakeholder feedback. Final subsection (F)(3) was changed from, "[t]he samples collected and the report shall, at a minimum, characterize the discharge and/or groundwater quality at the compliance monitoring locations in the permit in relation to the pollutants with new or adjusted AWQSs…" to "[t]he report shall characterize the discharge and/or groundwater quality at the permit-required monitoring locations pursuant to subsections (C) and (E) of this section…" due to stakeholder concern about clarity.
- The language in final rule, subsection (F) no longer includes proposed subsection (C)(2)(c), "[c]haracterization may also include up, cross or down gradient wells in relation to the facility that were sampled for the purposes of baseline groundwater monitoring, if available.…" due to stakeholder feedback. Monitoring data beyond the requirements of Baseline Discharge and Groundwater monitoring may be submitted as part of a Baseline Monitoring Report pursuant to final subsection (F)(5), "[a] permittee may include additional information in a Baseline Monitoring Report…".
- The language in final rule, subsection (F)(4) was moved from proposed rule, subsection (C)(2)(d) for clarity, functionality and structural purposes due to stakeholder feedback. The list of items to be included in the report, final subsections (F)(4)(a), (b) and (d), were slightly edited through stakeholder feedback to provide additional clarity:
    - (F)(4)(a) - "The sampling results of any pollutants with new or adjusted AWQSs detected through discharge or groundwater monitoring…" was changed to "[t]he sampling results of discharge and/or groundwater monitoring for a pollutant with a new or adjusted AWQS…" for purpose of alignment with the scopes and language in the other subsections in the rule;
    - (F)(4)(b) - "A demonstration of the baseline concentrations of each new or adjusted AWQS at the applicable point(s) of compliance and other locations subject to active discharge and/or groundwater monitoring in the permit…" was changed to "[a] demonstration of the baseline concentration of a new or adjusted AWQS at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205…" for purpose of alignment with the scopes and language in the other subsections in the rule;

- (F)(4)(d) - “An Alert Level, Discharge Limit and AQL proposal, as applicable, for each pollutant with a new or adjusted AWQS…” was changed to “[a]n Alert Level, Discharge Limitation and/or AQL proposal in accordance with R18-9-A205, as applicable, for each pollutant with a new or adjusted AWQS…” for purpose of scoping the proposals to the relevant rule, R18-9-A205;

- The language in final rule, subsection (F)(5) was added in order to allow for additional information to be submitted as part of the report, if a permittee sees merit in doing so; such as, including data from up, cross or down gradient wells in relation to the facility.
- The language in final rule, subsection (F)(6) was added in order to allow the Department to require monitoring data in a specified manner so as to keep quality assurance and quality control of the monitoring data. This addition reflects a component of the now removed proposed subsection (C)(1)(a) which was not commented upon by stakeholders. Proposed (C)(1)(a) read, “[b]aseline discharge and groundwater monitoring shall be reported to the Director throughout the monitoring period in a method specified by the Director…”. Monitoring throughout Baseline Monitoring was removed due to stakeholder feedback. The submission manner remains in the final rule here.
- The language in final rule, subsection (F)(7) was moved from proposed rule, subsection (C)(2)(e) for clarity, functionality and structural purposes due to stakeholder feedback. Final subsection (F)(7) was changed from, “[f]ollowing receipt of the Baseline Monitoring Report and review by the Department, additional information may be required…” to “[a]fter review by the Department, additional information may be required…” in order to clarify that “review” not “receipt” is the event that would occur before additional information would be required.

Final Rule R18-9-A215(G) - New or Adjusted Aquifer Water Quality Standards

- Added subsection title, “Report Review and Permit Amendment” for clarity in rule navigation.
- The language in final rule, subsection (G) was moved from proposed rule, subsection (D) for clarity, functionality and structural purposes due to stakeholder feedback.
- Added subsection title, “Report Review and Permit Amendment” for clarity in rule navigation.

- Due to stakeholder feedback on a lack of clarity and guidelines for both the permittee and the Department in proposed subsection (D), the language in the beginning of final subsection (G) was changed to specify when the report should be compiled, that the report is a component of the amendment application, and that the amendment application should be submitted in accordance with the amendment schedule pursuant to final subsection (A). The language in the second half of final subsection (G) more clearly specifies, in relation to proposed subsection (D), the requirements of the Department upon receipt of the amendment application, including the reviewing, processing, determination and incorporation of the report and any Alert Levels, Discharge Limitations and/or AQLs in the permit for any new or adjusted AWQSs in accordance with R18-9-A205.

Final Rule R18-9-A215(H) - New or Adjusted Aquifer Water Quality Standards

- Added subsection title, "Unlikely to be Present in Discharge Demonstration" for clarity in rule navigation.
- The language in final rule, subsection (H) was moved from proposed rule, subsection (E) for clarity, functionality and structural purposes due to stakeholder feedback.
- Added subsection title, "Unlikely to be Present in Discharge Demonstration" for clarity in rule navigation.
- Due to stakeholder feedback, the language in final subsection (H) removes the requirement for the "unlikely" demonstration to be "successful" as the statutory right to not be subject to monitoring if a pollutant is not likely to be in a facility's discharge, pursuant to A.R.S. § 49-223(G), does not grant the Department a right to gatekeep whether a pollutant is likely or not to be in a permittee's discharge. Therefore, "may" was changed to "shall", in addition to the removal of the "successful demonstration" language. The requirement to demonstrate that a pollutant is not likely to be in a facility's discharge remains. However, language was added for clarity which allows the Department to require a permittee to begin Baseline Monitoring for a pollutant with a new or adjusted AWQS after review of an "unlikely" demonstration if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Lastly, final rule (H)(3), one of three examples of what a demonstration could include, was changed due to stakeholder feedback from, "[a] demonstration of the background concentrations of the pollutant at the facility's site" to "...[p]rocess or other information demonstrating that the pollutant is not used or generated at the site or is otherwise not likely to be present in discharges at the site" because the final language is simply a more appropriate demonstrative example.

Final Rule R18-9-A215(I) - New or Adjusted Aquifer Water Quality Standards

- Added subsection title, "Permits Without Monitoring" for clarity in rule navigation.
- The language in final rule, subsection (I) was moved from proposed rule, subsection (F) for clarity, functionality and structural purposes due to stakeholder feedback.

- Final rule, subsection (I) is based on proposed rule, subsection (F). Final subsection (I) uses similar language to proposed (F), but, at the request of stakeholders, puts a standard on when the Department may require a reasonable characterization, "...if the Department has a reasonable basis to believe a pollutant with a new or adjusted AWQS is, or is likely to be, present in the facility's discharge." Also, in accord with a subsection-specific definition for "ongoing monitoring" being added to final rule subsection (C), the same subsection-specific definition is added to this subsection for clarity, under final subsection (I)(1). Lastly, final subsection (I)(2) recognizes a permittee's right to remove a pollutant from the scope of a reasonable characterization if it is unlikely to be present in the facility's discharge. Similarly to final subsection (H), language was added for clarity which allows the Department to require an applicable permittee to reasonably characterize their discharge and/or groundwater quality in relation to a pollutant with a new or adjusted AWQS if, after review of a subsection (H) demonstration, the Department has a reasonable basis to believe a pollutant with a new or adjusted AWQS is, or is likely to be, present in the facility's discharge. These additions were the result of stakeholder feedback.

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

Comment 1: Utility

Proposed R18-9-Preamble and R18-9-A215. New or Adjusted Aquifer Water Quality Standard

30 AAR 3403 - Paragraph 9 – Subsection C

"Preliminary estimates on the cost of baseline monitoring based on an eight quarter time period at one sampling location for all seven (7) of the new AWQSs that are being established in the associated NPRMs is around $15,000…".

We request ADEQ share the information used to determine the cost of the new or adjusted AWQSs baseline monitoring with stakeholders.

ADEQ Response 1:

ADEQ appreciates the comment. ADEQ estimated that the analytical laboratory fees would cost $4,500 for 8 monitoring events for all seven (7) of the new or adjusted AWQSs at one monitoring location. The monitoring equipment could cost around $1,500 which includes rental for a water quality meter and a depth to groundwater level sounder, plus purchase of consumable products such as deionized water, conductivity and pH calibration solutions, and nitrile sampling gloves. The employee labor costs were estimated at $35 per hour and each monitoring event would require 4 hours of sampling equipment preparation, 12 hours for sample collection and lab delivery, and 4 hours to review the laboratory analytical results. This was estimated to cost $5,600 for all 8 monitoring events. Then ADEQ estimated the employee labor costs for preparing the baseline monitoring report with a request to establish Alert Levels and Aquifer Quality Limits for all 7 parameters. This effort included a draft report, internal review, final

report edits, and submission to ADEQ. The employee effort for the baseline monitoring report was estimated at $3,400. Altogether the cost estimate includes: $4,500 lab + $1,500 equipment + $5,600 employee labor for sampling + $3,400 employee labor for baseline monitoring report, for a total of $15,000.

Comment 2: Utility

R18-9-A215. New or Adjusted Aquifer Water Quality Standard

30 AAR 3407 - Paragraph C.1.A --"Baseline discharge and groundwater monitoring shall be reported to the Director throughout the monitoring period in a method specified by the director."

We request ADEQ clarify how the permittee is going to be notified of the method specified by the director to report baseline discharge and groundwater monitoring since it is not defined in the proposed rule or in the permittee's current permit.

ADEQ Response 2:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A).

Comment 3: Utility

30 AAR 3407 - Paragraph C.2.A --"…permittees shall submit to the Department a Baseline Monitoring Report within three months of the date of the last sample collection."

Our individual APP permits have discharge and groundwater monitoring locations. Please clarify if two separate baseline monitoring reports will be required since the frequency for baseline discharge and groundwater monitoring are different. We request ADEQ consider allowing flexibility for permittees with both discharge and groundwater monitoring locations to align the baseline monitoring schedules to eliminate preparing and submitting two separate baseline monitoring reports.

We request ADEQ revise the statement "within three months of the date of the last sample collection" to "within three months of receipt of the last sample result" since analytical results may take up to 30 days to be reported by the laboratory after sample collection.

ADEQ Response 3:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the relevant language. Final Rule, subsection (F)(2) states, "[p]ermittees subject to both Groundwater and Discharge Baseline Monitoring may develop a combined, comprehensive Baseline Monitoring Report within three months of receipt of the last sample

result." Additionally, concerning flexibility, Final Rule subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 4: Utility

Currently, an ADHS - approved method for wastewater does not exist for Chlorite, Bromate or Haloacetic acids. Until there is an approved wastewater method, these parameters should not be required to have baseline monitoring or permitted monitoring on effluent discharge. Is ADEQ collaborating with ADHS to make sure this will occur prior to when monitoring will be required?

ADEQ Response 4:

ADEQ appreciates the comment. ADEQ has notified ADHS of the proposed establishment of Bromate, Chlorite, Haloacetic acids and Uranium as Aquifer Water Quality Standards (AWQSs). ADEQ agrees that at the time of this rulemaking, there are no ADHS - approved wastewater methods for Bromate, Chlorite, nor Haloacetic acids. However, the final rule accounts for this situation with the following language, "[s]ampling shall be conducted using an [ADHS] approved method for each pollutant with a newly established or adjusted [Aquifer Water Quality Standard] AWQSs, if available. If an [ADHS] approved method for a pollutant with a newly established or adjusted AWQSs does not exist, sampling shall be conducted using an EPA approved method or a method specified by the Director." For example, EPA Method 300.1 is an appropriate method for chlorite and bromite baseline monitoring in drinking water and groundwater. Additionally, Standard Methods 6251 for Haloacetic acids (HAAs) is an appropriate method for determining the concentration of HAAs in water and wastewater. Please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 5: Utility

The rule allows for the submission of a demonstration showing a pollutant with a new or adjusted AWQS is not likely to be present in the discharge in order to waive monitoring; however, the demonstrations allowed require submitting data from monitoring... How can ADEQ require monitoring to prove, "not likely to be present"? Is there another example demonstration of not likely to be present that does not include monitoring?

ADEQ Response 5:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the "not likely" demonstration language. Final Rule R18-9-A215, subsection (H) reads, "[a] pollutant with a new or adjusted AWQS shall be removed from the scope of Baseline Monitoring upon a demonstration that the pollutant is not likely to be present in a facility's discharge. The Department may require a permittee to begin Baseline Monitoring for a pollutant with a new or adjusted AWQS after review of the demonstration if the Department has a

reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Demonstrations may include, but are not limited to: (1) [a] characterization of the facility's discharge in relation to the pollutant with a new or adjusted AWQS; (2) [p]ast monitoring and sampling data at the facility and the facility's site; or (3) [p]rocess or other information demonstrating that the pollutant is not used or generated at the site or is otherwise not likely to be present in discharges at the site." This new language and non-exhaustive list on how demonstrations may be made serves to show some of the methods a permittee might use in making a demonstration.

Comment 6: Utility

Permittees are expected to initiate baseline monitoring within 3 months of the effective date of a new or adjusted AWQS unless a demonstration is approved by the Department. Three months is a very brief amount of time for a permittee to submit a demonstration and the agency to approve it. How does ADEQ realistically plan to process these waiver requests, or are they not anticipating many? May a permittee pause monitoring if a demonstration is submitted (while waiting for approval)?

ADEQ Response 6:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the relevant rule language. Final Rule subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee to conduct and submit a "not likely" demonstration pursuant to subsection (H). The submission of an Alternative Baseline Monitoring Timeframe, Duration and Frequency Request does not pause the Baseline Monitoring requirement until ADEQ approves or denies. However, scheduling a meeting with the Department to discuss any concerns with the Baseline Monitoring requirement is welcomed and encouraged. Additionally, the rule language (*see* Final Rule R18-9-A215, subsection (H)) for the "not likely" demonstration has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 7: Utility

We're thinking through our complicated permits and trying to understand where Baseline Monitoring would occur. Our facilities

have impoundments so… we're thinking about the perceived differences between initial characterization and Baseline Monitoring.

ADEQ Response 7:

ADEQ appreciates the comment. The Department believes the revisions made to the proposed rule, represented in Final Rule R18-9-A215, subsections (C), (H) and (I), address your concern.

Comment 8: Utility

Proposed rule R18-9-A215(C)(1) says baseline monitoring will be reported throughout the monitoring period in a method specified by the Director. How will the permittee be expected to submit the monitoring throughout the monitoring period and at what frequency?

ADEQ Response 8:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A).

Comment 9: Utility

Will there be notification to permittees of the effective date of the new/adjusted limits (now and in the future) for permittees to know when to start the baseline monitoring?

ADEQ Response 9:

ADEQ appreciates the comment. Yes, there will be notification to permittees of upcoming effective dates of new or adjusted AWQSs. Please be on the lookout for those communications in the future. Also, yes, ADEQ is aware that communicating the commencement dates is critical to the function of the rule and will be communicated for this AWQS rulemaking and all future AWQS rulemakings. At a minimum, these communications will specify the effective date for the AWQSs and when baseline monitoring should start according to the final rule.

Comment 10: Utility

Will a Self Monitoring Report Form (SMRF) template be available for permittees or will they be submitted through myDEQ?

ADEQ Response 10:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore, no Self Monitoring Report Form (SMRF) template is necessary. However, the development of a Baseline Monitoring Report within

three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A).

Comment 11: Utility

With respect to implementation - Is there any intention to require baseline monitoring for permits that don't currently require any discharge or groundwater compliance monitoring?

ADEQ Response 11:

ADEQ appreciates the comment. The answer is: Potentially. The final rule does not mandate, but gives the Department the discretion to require permittees without ongoing monitoring requirements in their permit to reasonably characterize their discharge and/or groundwater quality in relation to a pollutant with a new or adjusted AWQS within a reasonable amount of time if the Department has a reasonable basis to believe a pollutant with a new or adjusted AWQS is, or is likely to be, present in the facility's discharge (*See* Final Rule R18-9-A215(I)). This requirement applies to issued APP permits as of the AWQS effective date and that do not have permit-issued groundwater point of compliance, discharge, nor other monitoring locations specified in their permit which are, themselves, subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205. ADEQ plans to notify these permittees on a case-by-case basis. Also, the requirement to reasonably characterize does not apply upon the demonstration that a pollutant is not likely to be present in a facility's discharge; unless, upon demonstration review, the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge (*See* Final Rule R18-9-A215(H)).

Comment 12: Utility

How soon after the effective date of the new rule would ADEQ have the amendment schedule so permittees can budget for the APP amendment application?

ADEQ Response 12:

ADEQ appreciates the comment. ADEQ plans to notify permittees of the effective date of the new or adjusted limits, as well as the permit amendment schedule, as soon as possible after the establishment or effective date of a new or adjusted AWQS. Please be on the lookout for these communications. At a minimum, these communications will specify the effective date for the AWQSs, when baseline monitoring should begin according to Final Rule R18-9-A215 and will lay out the amendment schedule.

Comment 13: Utility

Proposed Rule R18-9-A215(C)(l)(c) - Please clarify what an "active" discharge is. Is use of the word "active" meant to exclude contingency monitoring locations?

ADEQ Response 13:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "active" with "permit-required". The new term's usage eliminates ambiguity and makes it patently clear that baseline monitoring requirements are meant to occur at the permit-required compliance monitoring locations.

Comment 14: Utility

Proposed Rule R18-9-A215(C)(l)(c) - Suggest deletion of "that are subject to limits based on AWQSs." Is it ADEQ's intent that baseline monitoring is not required at locations where a permit limit is set at a level greater than the AWQS?

ADEQ Response 14:

ADEQ appreciates the comment. The Final Rule language at R18-9-A215(E)(1) states that, "[b]aseline Monitoring shall occur at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205." It is not the intention of the Department to not require Baseline Monitoring at locations where a permit limit is set at a level greater than the AWQS. The language "based on AWQSs" is intended to distinguish any monitoring that may be required outside of compliance monitoring for an AWQS. Furthermore, the language "pursuant to R18-9-A205" includes the scenario referenced by the commenter, where an AQL is set at a level greater than the AWQS. If a parameter with an adjusted AWQS, such as Arsenic or Total Trihalmethanes, has an AQL set higher than the corresponding AWQS, the parameter is required to be within the scope of Baseline Monitoring, barring an exception outlined in R18-9-A215.

Comment 15: Utility

Proposed Rule R18-9-A215(C)(l)(d) - Include an option to add the new or adjusted parameters at the sampling frequency in the current APP. For example, if semi-annual groundwater sampling is conducted under the current APP, the permittee could add parameters to the existing sampling schedule rather than sample quarterly.

ADEQ Response 15:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 16: Utility

Proposed Rule R18-9-A215(C)(l)(e) - Please clarify if use of the word "may" in this provision allows the permittee (not ADEQ) to

decide whether or not up, cross or down gradient wells will be sampled.

ADEQ Response 16:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has eliminated the proposed subsection R18-9-A215(C)(l)(e) which read, "[b]aseline groundwater monitoring may additionally occur at up, cross or down gradient wells in relation to the facility, if available." The Final Rule, at subsection (E)(1), reads, "Baseline Monitoring Requirements: [1] Baseline monitoring shall occur at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs pursuant to R18-9-A205." However, the final rule also provides, in the Baseline Monitoring Report subsection, that a permittee may include additional information in the report for any reason, which may include data from up, cross or down gradient wells in relation to the facility.

Comment 17: Utility

Proposed Rule R18-9-A215(C)(1)(h)(i) - Please clarify if "a method specified by the Director" requires the permittee to request and receive approval from the Director of ADEQ prior to use of a method that is not ADHS-approved.

ADEQ Response 17:

ADEQ appreciates the comment. The final rule language specifies that sampling for Baseline Monitoring "...shall be conducted using an Arizona Department of Health Services (ADHS) approved method for each pollutant with a new or adjusted AWQS, if available. If an ADHS-approved method does not exist, sampling shall be conducted using an appropriate EPA-approved method or a method specified by the Director." Please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 18: Utility

Proposed Rule R18-9-A215(E) - According to the proposed rule, a pollutant may be removed from baseline discharge and groundwater monitoring "upon a successful demonstration …". Does "successful" mean the demonstration is "approved by ADEQ"? Suggest using the same language as proposed in R18-9-A215(B)(2): " .. .if a demonstration is submitted to and approved by the Department. .. " If the demonstration is not "successful," is the permittee required to begin baseline discharge and/or groundwater monitoring upon receipt of ADEQ's denial? Baseline monitoring is required to begin within three months of the effective date of a new or adjusted AWQS and it will likely take a permittee time to prepare the demonstration. Therefore, will ADEQ review a facility's demonstration and issue an approval or denial within three months of the effective date of a new or adjusted AWQS? If ADEQ's review extends beyond three months from the effective date of a new or adjusted AWQS, is the permittee required to conduct baseline discharge and/or groundwater monitoring while ADEQ is reviewing the demonstration? Is ADEQ's decision to approve or deny the demonstration subject to public notice (R18-9-108) and/or public participation

(R18-9-109)?

ADEQ Response 18:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the relevant rule language. Final Rule subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. The submission of an Alternative Baseline Monitoring Timeframe, Duration and Frequency Request does not pause the Baseline Monitoring requirement until ADEQ approves or denies. However, scheduling a meeting with the Department to discuss any concerns with the Baseline Monitoring requirement is welcomed and encouraged. A Final Rule subsection (D) request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language (*see* Final Rule R18-9-A215, subsection (H)) for the "not likely" demonstration has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 19: Utility

The proposed rule does not mention how new or adjusted AWQSs fit into the APP closure (R18-9-A209(B)) and post-closure (R18-9-A209(C)) process. Would a permittee be required to complete baseline monitoring before submitting a closure plan to ADEQ?

ADEQ Response 19:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (C) and (D). The answer to this question is "yes, generally". The final rule governing Baseline Monitoring requires persons with issued individual permits as of a new or adjusted AWQS effective date to begin Baseline Monitoring within three months unless: (1) [t]he permit has no ongoing monitoring requirements, (2) [t]he permittee has not begun ongoing monitoring, (3) [t]he permittee has received approval of a submitted request for an alternative timeframe, duration or frequency pursuant to subsection (D) below, or (4) [t]he permittee has submitted a demonstration pursuant to subsection (H). The subsection continues, stating that for the purposes of this subsection,

"ongoing monitoring" means permit-required monitoring at groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205.

Despite a permittee's intention to close, if a permittee is applicable to Baseline Monitoring per Final Rule R18-9-A215, Baseline Monitoring is required. However, in the case of a permittee either planning on closing soon or currently in a permitted closure process, Final Rule R18-9-A215(D) allows for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and/or frequency, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include, for example, the adjustment of when to begin Baseline Monitoring, a proposal to combine Baseline Monitoring with a closure plan or another reasonable orientation that meets the applicable rule requirements, subject to review and approval by the Department. Additionally, the Department notes that the statute governing APP closure is A.R.S. § 49-252 and the rule governing APP closure is R18-9-A209.

Comment 20: Interest Group

We understand that if the required baseline monitoring envisioned under the NPRM (see proposed A.A.C. R18-9-A215(C)) confirms that a pollutant with a new or adjusted AWQS already exceeds the AWQS at the applicable POC, then no alert level will be set and the aquifer quality limit ("AQL") for that pollutant will be established at an appropriate level higher than the new or adjusted AWQS and the pollutant will be subject to the "no further degradation" standard in A.R.S. § 49-243(B)(3). We request that ADEQ confirm and clarify this intent in the rule and preamble when ADEQ publishes the final version of the rule.

ADEQ Response 20:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (G). Yes, after the conclusion of Baseline Monitoring, a permittee shall submit an administratively complete application to amend their permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A). The Baseline Monitoring Report shall be a component of the amendment application. Upon receipt, the Department shall review, process and determine whether a new or adjusted Alert Level, Discharge Limitation and/or AQL is required for a new or adjusted AWQS in accordance with R18-9-A205. Thereafter, the Department may incorporate, through a permit amendment, a new or adjusted Alert Level, Discharge Limitation and/or AQL for a new or adjusted AWQS in accordance with R18-9-A205. R18-9-A205(C) allows ADEQ to establish in individual permits an AQL that is higher than the corresponding AWQS in order to meet the criteria in A.R.S. § 49-243(B)(2) or (3).

Comment 21: Interest Group

Although we support what appears to be the Notice of Proposed Rulemaking's (NPRM's) statutorily-based approach of implementing new or adjusted AWQS into existing individual APPs consistent with the statutory language at A.R.S. § 49-243(B)(2) and (3) and the implementing regulatory language at A.A.C. R18-9-A205(C), we are concerned that some of the language in the NPRM appears to be inconsistent with this approach.

ADEQ Response 21:

ADEQ appreciates the comment. Due to this comment and others submitted on the propped rule language showing concern over whether the language is in accord with the governing statute at A.R.S. § 49-243(B)(2) and (3), ADEQ has revised the rule language to make clear that it is in accord. For example, consider Final Rule R18-9-A215, subsection (G), which requires a permittee, after the conclusion of Baseline Monitoring, to submit an administratively complete application to amend their permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A). The Baseline Monitoring Report shall be a component of the amendment application. Upon receipt, the Department shall review, process and determine whether a new or adjusted Alert Level, Discharge Limitation and/or AQL is required for a new or adjusted AWQS *in accordance with R18-9-A205*. Thereafter, the Department may incorporate, through a permit amendment, a new or adjusted Alert Level, Discharge Limitation and/or AQL for a new or adjusted AWQS *in accordance with R18-9-A205*. R18-9-A205(C) allows ADEQ to establish in individual permits an AQL that is higher than the corresponding AWQS in order to meet the criteria in A.R.S. § 49-243(B)(2) or (3). While difficult to address with specificity a broad concern like the one in this comment, ADEQ believes the edits to the rule incorporating R18-9-A205 (including R18-9-A205's reference to A.R.S. § 49-243(B)(2) and (3)) address this stakeholder concern.

Comment 22: Interest Group

We are also concerned, as applied particularly to the required monthly discharge monitoring, that the rule will create increased costs and regulatory burdens for permittees that may not be necessary in all situations. For instance, many facilities with discharges subject to limits based on AWQS have stable discharges with consistent quality. Consequently, we recommend that language be added to the discharge baseline monitoring requirements to clarify that the frequency and duration of monitoring for discharges can be negotiated with ADEQ on a case-by-case basis. This would, in part, address the increased cost concern.

ADEQ Response 22:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (D). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and/or frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative

timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 23: Interest Group

We support the recognition in the NPRM of the statutory language at A.R.S. § 49-223(G), which provides that monitoring or any other APP-related requirements cannot be imposed on pollutants with AWQS that are not likely to be present in a facility's discharge (see proposed R18-9-A215(E)). Although we support this aspect of the NPRM, some of the language in the proposal is not consistent with the statutory language in A.R.S. § 49-223(G).

ADEQ Response 23:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to more closely align with the governing statute, A.R.S. § 49-223(G).

Comment 24: Interest Group

The suggestion that ADEQ "may" waive monitoring in proposed R18-9-A215(B)(2) and (E), the requirement in proposed R18-9-A215(B)(2) and (C) that ADEQ "approve" submittals showing that a certain pollutant is not likely to be present in a facility's discharge, and the concept of a "successful" demonstration in proposed R18-9-A215(E) are not consistent with the statutory language in A.R.S. 49-223(G). The statutory language simply provides that ADEQ may impose APP monitoring requirements only for pollutants for which AWQS have been established that are likely to be present in a discharge. There is no requirement under the statute to obtain ADEQ's approval for such a demonstration or for the agency to decide whether or not to waive monitoring when presented with a demonstration or what demonstrations are "successful." Accordingly, we request that any suggestion or requirement that a demonstration under A.R.S. § 49-223(G) must be approved, determined to be "successful", or subject to administrative discretion be removed. Obviously, if ADEQ disagrees or has concerns with a particular demonstration it can raise its concerns with the submitter and request additional information.

ADEQ Response 24:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to more closely align with the governing statute, A.R.S. § 49-223(G). The final rule language allows the submission of a "not likely" demonstration itself to be sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 25: Interest Group

The use of the term "active discharge" is confusing and it is not clear how the term relates to the statutory definition of "discharge" in A.R.S. § 49-201(12). We believe that the intent of the rule is to apply the baseline monitoring requirements to existing groundwater point of compliance monitoring locations or discharge monitoring locations specified in an existing individual permit for which monitoring has commenced. Also, the baseline monitoring requirements should not apply to facilities that have been permitted but not yet constructed. Consequently, in lieu of referring to "active discharge, groundwater points of compliance, and/or other monitoring locations," we recommend that the following phrase be used in R18-9-A215: "existing groundwater point of compliance monitoring locations, discharge monitoring locations, or other monitoring locations specified in the permit." We also recommend that the phrase "and that have commenced monitoring pursuant to the permit" be added to R18-9-A215(C).

ADEQ Response 25:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (C), (D) and (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "active" with "permit-required". The new term's usage eliminates ambiguity and makes it patently clear that baseline monitoring requirements are meant to occur at the permit-required compliance monitoring locations. Additionally, the final rule exempts from Baseline Monitoring permittees who have not begun permit-required, ongoing monitoring. This includes facilities that are permitted, but have yet to be constructed and other circumstances where ongoing monitoring is not occurring.

Comment 26: Interest Group

It is not clear what is meant by "limits based on AWQS" since different terms are used in A.A.C. R18-9-A205, namely alert levels, discharge limitations, and aquifer quality limits ("AQLs"). To eliminate this confusion, we request that the phrase "limits based on AWQS" be replaced with the phrase "alert levels, discharge limitations or AQLs based on AWQS pursuant to R18-9-A205." The NPRM inconsistently uses and intermingles the terms "baseline monitoring" and "baseline discharge and/or groundwater monitoring." We request that a single term (i.e., "baseline monitoring") be used to include both baseline groundwater and baseline discharge monitoring.

ADEQ Response 26:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "limits based on AWQS" with "alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205." Additionally, the inconsistency in usage of "Baseline Monitoring" has been addressed in the final rule. As is suggested by the commenter, the single term, "Baseline Monitoring" is used throughout.

Comment 27: Interest Group

Because it may be difficult in some instances (such as with complex individual APPs) to initiate baseline monitoring or to prepare

a demonstration under R18-9-A215(E) within three months after the effective date of new or adjusted AWQSs, we request that language be added to the rule to give permittees and ADEQ flexibility to reach agreements to extend the three month period for initiating baseline monitoring or for submitting a demonstration under R18-9-A215(E).

ADEQ Response 27:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (C) and (D). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H).

Comment 28: Interest Group

To provide more clarity to permittees with respect to baseline monitoring, we believe that the general baseline monitoring subsections in R18-9-A215(C)(1) should be grouped upfront and then followed by the language that distinguishes between groundwater versus discharge monitoring. We recommend the following reorganization: move subsection (c) to (a); move subsection (f) to (c); move subsection (h) to (d); and then put subsections (d) and (g) at the end.

ADEQ Response 28:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E). Due to this comment and others submitted on the proposed rule language, ADEQ has reorganized the structure of the Baseline Monitoring Requirements as is recommended by the commenter above.

Comment 29: Interest Group

We request that the discharge monitoring section of the baseline monitoring section include the ability for permittees with discharges subject to limits based on AWQSs to negotiate a different frequency and duration of baseline monitoring on a permit-by-permit basis. This addition to the rule is critical to reduce unnecessary costs and burdens and to recognize that many discharges are stable and consistent in quality.

ADEQ Response 29:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (C) and (D). Due to this comment and

others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H).

Comment 30: Interest Group

We request that the language in this subsection should be removed. The language creates an unnecessary regulatory burden to report data that will eventually be submitted to ADEQ as part of the required baseline monitoring report. Current existing individual permits do not require intermittent reporting of ambient monitoring data. Rather, such data is submitted at the end of the required monitoring period. In addition, early submittal of such data ignores the technical reality that sufficient numbers of sampling events spread across an appropriate timeframe is required to establish an accurate baseline of either groundwater or effluent discharge. Early submittal of data before completing full baseline monitoring is therefore improper and could be used by ADEQ or others to support incorrect assertions regarding the state of groundwater or discharges at monitoring locations specified in the permit for new or adjusted AWQSs.

ADEQ Response 30:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (E) and (F). Due to this comment and others submitted on the proposed rule language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A). Additionally, proposed rule language allowing the Director to both shorten or lengthen the monitoring period if one or more events on a subsequent list occur has been revised to only allow the Director to lengthen if such an occurrence happens. The reasoning for this language adjustment is to require a full set of data be collected before characterization determinations are made (i.e. - "shorten" has been removed) and to retain an ability for the Director to lengthen the baseline monitoring period should the data collected not be usable or reliable for any appropriate reason. However, the original usage of the word "shorten" in the proposed language

reflects the concern that data may come to light of a significant AWQS exceedance well before the end of the monitoring period and no notice to the Department would be made despite the potential degradation to public health and the environment. To address this concern, language has been added to Final Rule, subsection (E)(6) as follows, "[i]f a permittee conducting Baseline Discharge Monitoring collects a sample that is at or above a new or adjusted AWQS, the permittee shall notify ADEQ within five (5) days of becoming aware." This language has been added to the final rule for Baseline Discharge Monitoring and not Baseline Groundwater Monitoring as discharge monitoring shows the immediate discharge of a facility; whereas, groundwater point of compliance monitoring's representative scope is larger, including natural background concentration and sources, as well as, off-property sources of a constituent.

Comment 31: Interest Group

ADEQ appears to have added language to the specific groundwater monitoring and discharge monitoring sections that was not in prior stakeholder drafts of the implementation rule. This language appears to give ADEQ broad discretion to set limits in permits even before the full baseline monitoring period has concluded for certain reasons, including an exceedance of a new or adjusted AWQS or an increasing trend in the monitoring data. Arbitrarily cutting short the baseline monitoring period is not only inconsistent with the statutory process in A.R.S. 49-243(B)(2) and (3) but also creates permit implementation concerns and other problems. This language must be removed as it appears to disregard the intended purpose of the rule as represented by ADEQ. A potential alternative to this language is to provide that the baseline monitoring period may be shortened or lengthened if the permittee so requests and ADEQ approves the request.

ADEQ Response 31:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (E) and (F). Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that proposed rule language allowing the Director to both shorten or lengthen the monitoring period if one or more events on a subsequent list occur has been revised to only allow the Director to lengthen if such an occurrence happens. The reasoning for this language adjustment is to require a full set of data be collected before characterization determinations are made (i.e. - "shorten" has been removed) and to retain an ability for the Director to lengthen the baseline monitoring period should the data collected not be usable or reliable for any appropriate reason. However, the original usage of the word "shorten" in the proposed language reflects the concern that data may come to light of a significant AWQS exceedance well before the end of the monitoring period and no notice to the Department would be made despite the potential degradation to public health and the environment. To address this concern, language has been added to Final Rule, subsection (E)(6) as follows, "[i]f a permittee conducting Baseline Discharge Monitoring collects a sample that is at or above a new or adjusted AWQS, the permittee shall notify ADEQ within five (5) days of becoming aware." This language has been added to the final rule for Baseline Discharge Monitoring and not Baseline Groundwater Monitoring as discharge monitoring

shows the immediate discharge of a facility; whereas, groundwater point of compliance monitoring's representative scope is larger, including natural background concentration and sources, as well as, off-property sources of a constituent.

Comment 32: Interest Group

Although this language makes collection of groundwater monitoring at up, cross, or down gradient wells discretionary, the language should be removed because it creates unexplained suggestions contrary to the statutory process for setting limits at applicable points of compliance in A.R.S. § 49-243(B)(3). For instance, although the rule explains where groundwater sampling should be conducted for purposes of baseline monitoring (i.e., at applicable point of compliance monitoring locations), this language in proposed (C)(1)(e) suggests that baseline monitoring can be conducted at other locations, which creates confusion.

ADEQ Response 32:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E). Due to comments submitted on this proposed rule language, ADEQ has eliminated the proposed subsection R18-9-A215(C)(l)(e) which read, "[b]aseline groundwater monitoring may additionally occur at up, cross or down gradient wells in relation to the facility, if available." The Final Rule, at subsection (E)(1), reads, "Baseline Monitoring Requirements [1] Baseline monitoring shall occur at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205." However, the final rule also provides, in the Baseline Monitoring Report subsection, that a permittee may include additional information in the report for any reason, which may include data from up, cross or down gradient wells in relation to the facility.

Comment 33: Interest Group

The requirement to provide "a demonstration of the background concentrations of the pollutant at the facility's site" to support a demonstration that a pollutant is not likely to be present in a facility's discharge is counterintuitive and should be removed. The requirement appears to require background monitoring of groundwater or effluent when the purpose of the demonstration is to exempt a permittee from background or baseline monitoring. This requirement should be removed from the text of the rule. In its place, we recommend inserting the following: "Process or other information demonstrating that the pollutant is not used or generated at the site or is otherwise not likely to be present in discharges at the site."

ADEQ Response 33:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has endorsed the commenter's suggested language in the final rule.

Comment 34: Interest Group

Proposed rule R18-9-A215(F) appears to give ADEQ broad authority to require facilities without discharge or groundwater monitoring locations in their existing individual APPs to mandate installation of groundwater monitoring wells or discharge

monitoring when prior determinations were made that such monitoring was not required. This language should be removed or at least some type of reasonable criteria should be added to ensure that ADEQ only exercises the authority envisioned under the language when appropriate based on the presence of other relevant and reliable information.

ADEQ Response 34:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (I). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the language in the final rule to include a central criterion for when the Department may require permittees ***without*** ongoing monitoring specified in their individual permit to reasonably characterize their discharge and/or groundwater quality in relation to a pollutant with a new or adjusted AWQS. That criterion is "...if the Department has a reasonable basis to believe a pollutant with a new or adjusted AWQS is, or is likely to be, present in the facility's discharge." In preparation for this rulemaking, ADEQ scrutinized the individual permits and found that around 30 permits (out of approximately 500) do not have ongoing monitoring requirements. In most cases, this was specified in the permits due to the fact that the facilities released process water into sealed and contained, double-lined impoundments which can be assumed with reasonable certainty that no release or discharge from them can occur to the surrounding soils, vadose zone or aquifers under the approved design, construction and operation. With that said, and despite the fact that it is unlikely ADEQ would exercise this right, the Department wishes to retain the ability to require the reasonable characterization of such a facility's discharge and/or groundwater quality in relation to a pollutant with a new or adjusted AWQS if the above criterion is present. This is because the determinations to not require discharge and/or groundwater monitoring during the original application review and permit issuance were made under a previous set of Aquifer Water Quality Standards. Given the new and adjusted AWQSs being added through this collective set of rulemakings to the previous set of AWQSs, the Department's determinations concerning ongoing monitoring and other aspects of the permit may need to be re-evaluated as the factors relied upon in making those determinations have changed.

Comment 35: Industry

We support ADEQ's apparent intent to incorporate new or adjusted AWQS into existing individual APPs consistent with the statutory language at A.R.S. § 49-243(B)(2) and (3) and the implementing regulatory language at A.A.C. R18-9-A205(C). For groundwater points of compliance ("POCs"), this approach calls for a determination of existing aquifer water quality at the POCs before aquifer quality limits are imposed in the permit. However, we request that this approach could be reflected more clearly in the proposed rule, and that some elements of the proposed rule are confusing and not fully consistent with the overall approach.

ADEQ Response 35:

ADEQ appreciates the comment. Due to this comment and others submitted on the propped rule language showing concern over whether the language is in accord with the governing statute at A.R.S. § 49-243(B)(2) and (3), ADEQ has revised the rule

language to make clear that it is in accord. For example, consider Final Rule R18-9-A215, subsection (G), which requires a permittee, after the conclusion of Baseline Monitoring, to submit an administratively complete application to amend their permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A). The Baseline Monitoring Report shall be a component of the amendment application. Upon receipt, the Department shall review, process and determine whether a new or adjusted Alert Level, Discharge Limitation and/or AQL is required for a new or adjusted AWQS in accordance with R18-9-A205. Thereafter, the Department may incorporate, through a permit amendment, a new or adjusted Alert Level, Discharge Limitation and/or AQL for a new or adjusted AWQS in accordance with R18-9-A205. R18-9-A205(C) allows ADEQ to establish in individual permits an AQL that is higher than the corresponding AWQS in order to meet the criteria in A.R.S. § 49-243(B)(2) or (3).

Comment 36: Industry

ADEQ should not have to "approve" a demonstration under A.R.S. § 49-223(G) that a particular pollutant with a new or adjusted AWQS is not likely to be present in a discharge.

ADEQ Response 36:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to more closely align with the governing statute, A.R.S. § 49-223(G). The final rule language allows the submission of a "not likely" demonstration itself to be sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 37: Industry

ADEQ should have the flexibility to allow for different schedules for commencement of baseline monitoring or submission of demonstrations under A.R.S. § 49-223(G).

ADEQ Response 37:

ADEQ appreciates the comment. Due to this comment and others, ADEQ has revised the relevant rule language. Final Rule subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which

would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language (*see* Final Rule, subsection (H)) for the "not likely" demonstration has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 38: Industry

ADEQ should not have the ability to cut short the baseline monitoring period unless the permittee concurs with this decision.

ADEQ Response 38:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (E) and (F). Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A). Additionally, proposed rule language allowing the Director to both shorten or lengthen the monitoring period if one or more events on a subsequent list occur has been revised to only allow the Director to lengthen if such an occurrence happens. The reasoning for this language adjustment is to require a full set of data be collected before characterization determinations are made (i.e. - "shorten" has been removed) and to retain an ability for the Director to lengthen the baseline monitoring period should the data collected not be usable or reliable for any appropriate reason. However, the original usage of the word "shorten" in the proposed language reflects the concern that data may come to light of a significant AWQS exceedance well before the end of the monitoring period and no notice to the Department would be made despite the potential degradation to public health and the environment. To address this concern, language has been added to Final Rule, subsection (E)(6) as follows, "[i]f a permittee conducting Baseline Discharge Monitoring collects a sample that is at or above a new or adjusted AWQS, the permittee shall notify ADEQ within five (5) days of becoming aware." This language has been added to the final rule for Baseline Discharge Monitoring and not Baseline Groundwater Monitoring as discharge monitoring shows the immediate discharge of a facility; whereas, groundwater point of compliance monitoring's representative scope is larger, including natural background concentration and sources, as well as, off-property sources of a constituent.

Comment 39: Industry

Permittees should not have to submit baseline monitoring data during the monitoring period, but instead only at the end of that

period as part of the baseline monitoring report (note that periodic monitoring for some pollutants covered in the new proposals, such as arsenic, will be occurring under existing permits, and that data will be promptly reported to ADEQ under those permits).

ADEQ Response 39:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A).

Comment 40: Industry

A.A.C. R18-9-A215(C)(1) would benefit from reorganization to improve clarity.

ADEQ Response 40:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E). Due to this comment and others submitted on the proposed rule language, ADEQ has reorganized the structure of the Baseline Monitoring Requirements.

Comment 41: Industry

References to monitoring at up, down or cross gradient wells, even if such monitoring is not mandatory, create confusion and should be eliminated.

ADEQ Response 41:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has eliminated the proposed subsection R18-9-A215(C)(l)(e) which read, "[b]aseline groundwater monitoring may additionally occur at up, cross or down gradient wells in relation to the facility, if available." The Final Rule, at subsection (E)(1), reads, "Baseline Monitoring Requirements [1] Baseline monitoring shall occur at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205." However, the final rule also provides, in the Baseline Monitoring Report subsection, that a permittee may include additional information in the report for any reason, which may include data from up, cross or down gradient wells in relation to the facility.

Comment 42: Industry

The criteria for making a demonstration under A.R.S. § 49-223(G) should be modified.

ADEQ Response 42:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the "not likely" demonstration language. Final Rule R18-9-A215,

subsection (H) reads, "[a] pollutant with a new or adjusted AWQS shall be removed from the scope of Baseline Monitoring upon a demonstration that the pollutant is not likely to be present in a facility's discharge. The Department may require a permittee to begin Baseline Monitoring for a pollutant with a new or adjusted AWQS after review of the demonstration if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Demonstrations may include, but are not limited to: (1) [a] characterization of the facility's discharge in relation to the pollutant with a new or adjusted AWQS; (2) [p]ast monitoring and sampling data at the facility and the facility's site; or (3) [p]rocess or other information demonstrating that the pollutant is not used or generated at the site or is otherwise not likely to be present in discharges at the site." This new language and non-exhaustive list on how demonstrations may be made serves to show some of the methods a permittee might use in making a demonstration. This new language and non-exhaustive list on how demonstrations may be made serves to show some of the methods a permittee might use in making a demonstration. It should be noted that the submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 43: Utility

While we support the agency's goal of ensuring environmental protection, we believe the proposed measures will lead to significant operational challenges and unintended consequences for regulated facilities, other stakeholders, and analytical laboratories.

ADEQ Response 43:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (D), (E) and (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule language for proposed R18-9-A215, specifically addressing stakeholder concerns pertaining to operational challenges, unintended consequences for regulated facilities and analytical laboratory considerations. Concerning operational challenges, the Department notes that subsections (D) and (H) address many of the concerns stakeholders have cited on this topic. For example, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the

adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H).

Final Rule, subsection (E)(4) addresses approved sampling methods for new or adjusted AWQS. ADEQ has notified the Arizona Department of Health Services (ADHS) of the proposed establishment of Bromate, Chlorite, Haloacetic acids and Uranium as new Aquifer Water Quality Standards (AWQSs). ADEQ agrees that at the time of this rulemaking, there are no ADHS - approved wastewater methods for Bromate, Chlorite nor Haloacetic acids. However, the final rule accounts for this situation with the following language, "[s]ampling shall be conducted using an [ADHS] approved method for each pollutant with a newly established or adjusted [Aquifer Water Quality Standard] AWQSs, if available. If an [ADHS] approved method for a pollutant with a newly established or adjusted AWQSs does not exist, sampling shall be conducted using an EPA approved method or a method specified by the Director." For example, EPA Method 300.1 is an appropriate method for chlorite and bromite baseline monitoring in drinking water and groundwater. Additionally, Standard Methods 6251 for Haloacetic acids (HAAs) is an appropriate method for determining the concentration of HAAs in water and wastewater. Please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 44: Utility

Monthly Discharge Sampling Frequency. The requirement for monthly discharge sampling is excessively burdensome, especially for facilities with consistent, stable discharge characteristics. In cases where there are no significant operational or process changes, the value of frequent sampling is minimal and does not justify the associated costs or effort. Less frequent sampling, such as semiannually, would provide sufficient data for regulatory oversight while reducing undue strain on facilities and laboratories and control the potential for undue costs to be passed on to utility customers. Recommendation: Adopt a tiered or site-specific sampling frequency that reflects discharge stability and operational changes rather than imposing a uniform monthly requirement.

ADEQ Response 44:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (D). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 45: Utility

Challenges with Empty Impoundments. Another area of concern involves the treatment of impoundments that are routinely kept in an empty state (e.g., stormwater ponds). Facilities often face significant challenges in addressing these structures due to the

practical inability to collect samples when no water is present. This limitation could lead to delays in site characterization or, worse, unintentional noncompliance if the agency does not approve a facility's demonstration that specific pollutants are absent from its discharge. Providing clearer guidance and flexibility in demonstrating pollutant absence is essential to prevent unnecessary compliance risks and operational disruptions. Recommendation: Provide guidance for addressing empty impoundments that ensures compliance while recognizing the practical limitations of sampling under such conditions.

ADEQ Response 45:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (D) and (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Furthermore, a request for an alternative baseline monitoring timeframe, duration and frequency could leverage or include in a proposal a similar approach to that specified in the individual APP "Technical Requirements" rule, specifically R18-9-A202(A)(4), R18-9-A202(A)(8)(B)(vi), etcetera.

Comment 46: Utility

Substantial Increase in Costs, Personnel, and Backlog. The proposed rule changes will result in a substantial increase in costs at the site level and resource demands for analytical laboratories. The heightened sampling and analytical requirements will necessitate additional personnel, equipment, and infrastructure to manage the increased workload. Due to other routine job functions, on site personnel do not have the bandwidth to address the increased sampling and this task will require hiring additional contractors at an increased cost. Smaller facilities, in particular, may struggle to comply due to limited budgets and

resources, leading to potential backlogs and delays in meeting regulatory deadlines.

ADEQ Response 46:

ADEQ appreciates the comment. While ADEQ acknowledges that the Final Rule at R18-9-A215 will result in a cost increase for applicable permittees and a resource demand for analytical laboratories, the Department believes this rule language and its structure represent the least burdensome orientation necessary to properly implement new or adjusted AWQSs into (potentially) 500 individual permits (*see* statutory mandate at A.R.S. § 49-223).

In preparation for this rulemaking, ADEQ estimated that the analytical laboratory fees would cost $4,500 for 8 monitoring events for all seven (7) of the new or adjusted AWQSs at one monitoring location. The monitoring equipment could cost around $1,500 which includes rental for a water quality meter and a depth to groundwater level sounder, plus purchase of consumable products such as deionized water, conductivity and pH calibration solutions, and nitrile sampling gloves. The employee labor costs were estimated at $35 per hour and each monitoring event would require 4 hours of sampling equipment preparation, 12 hours for sample collection and lab delivery, and 4 hours to review the laboratory analytical results. This was estimated to cost $5,600 for all 8 monitoring events. Then, ADEQ estimated the employee labor costs for preparing the baseline monitoring report with a request to establish Alert Levels and Aquifer Quality Limits for all 7 parameters. This effort included a draft report, internal review, final report edits, and submission to ADEQ. The employee effort for the baseline monitoring report was estimated at $3,400. Altogether the cost estimate includes: $4,500 lab + $1,500 equipment + $5,600 employee labor for sampling + $3,400 employee labor for baseline monitoring report for a total of $15,000.

Additionally, due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule for flexibility purposes, allowing for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency (*see* generally, Final Rule R18-9-A215, subsections (D) and (H)). Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if

the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 47: Utility

Submittal of Baseline Discharge and Groundwater Monitoring Data Throughout Monitoring Period. Given the objective of characterizing discharges and associated impacts, submittal of incomplete/partial data throughout the monitoring period is unwarranted, burdensome, and does not contribute to regulatory compliance. The data set as a whole will be presented in the Baseline Monitoring Report where it can be properly evaluated, and conclusions supported.

ADEQ Response 47:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A).

Comment 48: Utility

Consider developing clear, streamlined procedures for facilities to demonstrate the absence of pollutants without requiring extensive sampling or lengthy approval processes.

ADEQ Response 48:

Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule for flexibility purposes, allowing for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency (*see* generally, Final Rule R18-9-A215, subsections (D) and (H)). Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if

the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 49: Utility

We appreciate the agency's commitment to stakeholder engagement and urge you to carefully weigh the potential impacts of these proposals on the regulated community. By incorporating greater flexibility and clarity into the rulemaking process, the agency can achieve its regulatory objectives without imposing undue burdens.

ADEQ Response 49:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to be more flexible and clear while still achieving regulatory objections in an orientation that the Department believes is the least burdensome necessary to properly implement new or adjusted AWQS into (potentially) 500 individual permits (*see* statutory mandate at A.R.S. § 49-223).

Comment 50: Local Government / Utility

Due to the number of APP permitted facilities operated by us and thereby the number of compliance monitoring locations, we are concerned that section R18-9-A215(C) will require us to begin baseline monitoring for routine discharge and groundwater within 3 months from the effective date of new or adjusted AWQS. This will also be a requirement each time that ADEQ releases new or adjusted AWQS in the future. Due to the extra burden this will place on our already tight budget, we request that ADEQ modify this timeline to allow for the baseline monitoring for a given permit to begin within 18 months from the effective date of new or adjusted AWQS. This would allow entities with many permits to begin baseline monitoring for one permit at a later date than another permit, and across several budget years.

This modification will not interfere with ADEQ's requirement to have all permit holders submit an administratively complete amendment application no later than four years after the effective date as proposed in R18-9-A215(B). Because the baseline monitoring will take 24 months of sampling, even a permit holder who begins baseline monitoring at the very end of our proposed 18 months would be able to complete the baseline monitoring at 42 months. In the given example, this permit holder would complete their monitoring with 6 months until the application deadline. Extending this time line is a justified request, and will allow entities with many permits to balance their baseline monitoring efforts across the four year implementation instead of starting baseline monitoring for all permits within the first 3 months.

ADEQ Response 50:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule for flexibility purposes, allowing for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency (*see* generally, Final Rule R18-9-A215, subsections (D) and (H)). Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline

Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. While ADEQ acknowledges that the Final Rule at R18-9-A215 (including the changes described above) will result in a cost increase at facilities, the Department believes this rule represents the least burdensome orientation necessary to properly implement new or adjusted AWQSs into (potentially) 500 individual permits (*see* statutory mandate at A.R.S. § 49-223).

Comment 51: Interest Group

Concerns About Timelines and Exemptions. ADEQ's proposed timelines for compliance - up to four years - are excessive, given that many federal standards have been in place for decades. Additionally, provisions allowing exemptions under R18-9-A215 undermine the effectiveness of these standards. We recommend that ADEQ:

- Reduce compliance timelines to no more than two years.
- Eliminate exemptions that weaken the protective intent of AWQS.
- Conduct immediate reviews of high-risk facilities, prioritizing those with documented violations.

ADEQ Response 51:

ADEQ appreciates the comment. ADEQ followed the lead of EPA in allowing individually permitted facilities a reasonable number of years to come into compliance with new water quality standards (*see* 89 *Federal Register* 32533). In EPA's Final Rule for the new PFAS MCLs (effective 6/25/24) under the Safe Drinking Water Act (SDWA) regulating Public Water Systems (PWSs) the following timeline for compliance is laid out, including conducting monitoring within approximately 3 years of the effective date and installation of any necessary capital improvements in order to come into compliance within approximately 5 years of the effective date,

> *Consistent with the timelines set out under* [Safe Drinking Water Act] *SDWA,* [Public Water Systems] *PWSs are required to conduct their initial monitoring by April 26, 2027, and to conduct* [Public Notice] *PN and include PFAS information in the* [Consumer Confidence Reports] *CCR. After carefully considering public comment, the EPA is extending the*

compliance deadline for all systems nationwide to meet the MCL to allow additional time for capital improvements. As such, PWSs are required to make any necessary capital improvements and comply with the PFAS MCLs by April 26, 2029 [89 FR 32533].

The only exemption present in the final rule at R18-9-A215 is for a "not likely" demonstration (*see* Final Rule, subsection (H)). This exemption is mandated by Arizona statute at A.R.S. § 49-223(G). The Department is considering a risk-based priority in the development of an amendment schedule pursuant to Final Rule subsection (A). ADEQ believes the structure of this rule properly balances the agency's mission of protecting public health and the environment with a reasonable time frame for compliance for the regulated community.

Comment 52: Interest Group

Environmental Justice Considerations. We are concerned that the draft rule does not adequately address environmental justice impacts. Communities near high-risk facilities, such as the Havasupai Tribe near the Pinyon Plain Mine, face disproportionate risks of groundwater contamination. ADEQ must incorporate environmental justice analyses and engage directly with impacted communities, particularly Tribal nations, to ensure equitable protections.

ADEQ Response 52:

ADEQ appreciates the comment. Concerning Environmental Justice (EJ), in the case of this rulemaking, A.R.S. § 49-223 mandates that ADEQ open a rulemaking docket for the adoption of federal drinking water maximum contaminant levels (MCLs) as state aquifer water quality standards (AWQSs) within one year of the Environmental Protection Agency's (EPA's) establishment of new or adjusted MCLs. Through the Aquifer Protection Program (APP), the AWQSs apply to facilities discharging regulated pollutants to the ground in all Arizona lands under state jurisdiction. No special application of the standards exists beyond the specifics of the individual APP permits themselves. Besides the ability of the Department to establish an alternative AWQS upon receipt of "substantial opposition" from stakeholders, the AWQS statutory mandate from the Department is clear and simple. ADEQ carefully considered and took actions to ensure both fair treatment and meaningful involvement as part of the AWQS rulemaking. All stakeholders, including communities near high-risk facilities, tribes and other interested parties were welcome to participate in ADEQ's extensive public participation process for this rulemaking. As part of this process, ADEQ held a 30 day public comment period in accordance with A.R.S. 41-1023(B), as well as, held nine formal stakeholder events over the course of over 2 years (9/29/22, 6/8/23, 9/11/23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25). With respect to tribal outreach, ADEQ Leadership presented a rulemaking briefing on the AWQS rulemaking at the Intertribal Council of Arizona (ITCA) - Tribal Leaders' Water Policy Council Meeting on 8/23/23 (the Havasupai Tribe is a member of ITCA). Additionally, the Department held dedicated Tribal Listening Sessions throughout the development of the rule; specifically on 9/11/23, 12/12/23 and 11/20/24. ADEQ has for years aimed to meet the requirements in statute for tribal relation responsibilities pursuant to A.R.S. § 41-2051(C).

ADEQ believes the terms in the current tribal consultation and collaboration policy were followed while conducting this rulemaking. The policy can be reviewed here: https://static.azdeq.gov/policy/ADEQ_Tribal_Policy.pdf.

Comment 53: Utility

We encourage ADEQ to consider the timing of the process by which a regulated entity subject to R18-9-A215 would make a demonstration pursuant to R18-9-A215(E). As written, APP permittees subject to the rule must initiate Baseline Monitoring within three months of the effective date of a new or adjusted AWQS unless a demonstration is made pursuant to R18-9-A215(E). It is unclear exactly what this demonstration must entail, and it is likely that permittees will seek a pre-demonstration meeting with ADEQ to better understand the requirements. Three months does not leave sufficient time to compile a demonstration and obtain approval from ADEQ – particularly if there are multiple entities seeking to make similar demonstrations.

ADEQ Response 53:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (D) and (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Also, the Department has plans to release an amendment schedule pursuant to Final Rule R18-9-A215(A), and other guidance on Baseline Monitoring and the "not likely" demonstration, pursuant to Final Rule R18-9-A215(H).

Comment 54: Utility

It is less clear how the Proposed Rule would be applied to complex permits. A Baseline Monitoring plan will likely need to be tailored to capture relevant information that ADEQ seeks. It may not be relevant or necessary to conduct Baseline Monitoring at all groundwater points of compliance, discharge monitoring locations, and/or other monitoring locations identified in a complex

APP. ADEQ should provide a process for complex permits to develop a Baseline Monitoring plan in consultation with ADEQ.

ADEQ Response 54:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule for clarity. The Department believes the Final Rule at R18-9-A215 delineates the requirements of Baseline Monitoring at subsection (E), while also providing sufficient and functional rule language for Baseline Monitoring timing and applicability at subsection (C), an opportunity for submission of a request for an alternative Baseline Monitoring timeframe, duration and/or frequency at subsection (D) and the Baseline Monitoring report requirements at subsection (G). The Department notes that Final Rule R18-9-A215(E) specifies which monitoring locations are required for baseline monitoring, limiting the scope to "...permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205." The addition of Final Rule R18-9-A215, subsection (D), allows for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 55: Utility

Usage of the Terms "Active Discharge" and "Limits Based on AWQS". We recommend that ADEQ remove the term "active discharge" from the Proposed Rule. The term "active discharge" is undefined and differs from the definition of discharge in A.R.S. § 49-201(12), leading to confusion. Instead of referring to "active discharge, groundwater points of compliance and/or other monitoring locations" in R18-9-A215, we recommend that ADEQ refer to "groundwater points of compliance, discharge monitoring locations, or other monitoring locations specified in the permit."

ADEQ Response 55:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "active" with "permit-required". The new term's usage eliminates ambiguity and makes it patently clear that baseline monitoring requirements are meant to occur at the permit-required compliance monitoring locations.

Comment 56: Utility

It is not clear what is meant by "limits based on AWQS." We recommend that ADEQ utilize the terms from R18-9-A205 and replace the language "limits based on AWQS" with "alert levels, discharge limitations or AQLs based on AWQS pursuant to R18-9-A205."

ADEQ Response 56:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "limits based on AWQS" with "alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205".

Comment 57: Utility

Definition of "Baseline Monitoring". The Proposed Rule is inconsistent in its use of the terms Baseline Monitoring, Baseline Discharge and/or Groundwater Monitoring. We believe that Baseline Monitoring should be a defined term meant to encompass baseline groundwater monitoring and baseline discharge and/or other monitoring locations.

ADEQ Response 57:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215. Due to this comment and others submitted on the proposed rule language, ADEQ has made its usage of the term "Baseline Monitoring" more consistent in the final rule. ADEQ does not believe the term "Baseline Monitoring" needs to be defined for the purposes of final rule as the term inherently describes its function for the purpose of developing data to be used to appropriately implement new or adjusted AWQS into the applicable, issued individual permits.

Comment 58: Utility

Waivers and Demonstrations of Constituents Not Likely to be Present. A demonstration that a pollutant is not likely to be present in a facility's discharge, per proposed rule subsection (E), provides only examples where monitoring has already occurred and submitted as evidence. We suggest adding language to allow for operational or design practices to demonstrate that pollutants with new or adjusted AWQS are not likely to be present. For example, if a facility does not utilize disinfection products, a facility should not be required to have data establishing the absence of disinfection byproducts.

ADEQ Response 58:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the "not likely" demonstration rule language to more closely reflect A.R.S. § 49-223(G). Additionally, the revised rule makes more clear that the submission of a demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Also, the final rule language allows demonstrations to include, but to not be limited to, (1) a characterization of the facility's discharge in relation to the pollutant with a new or adjusted AWQS, (2) past monitoring and sampling data at the facility and the facility's site; or (3) process or other information demonstrating that the pollutant is not used or generated at the site or is otherwise not likely to be present in discharges at the site.

Comment 59: Utility

Monitoring Timeline. Proposed rule R18-9-A215(B)(2) requires monitoring to begin "within three months of the effective date of a new or adjusted AWQS unless a demonstration is approved by the Department." As noted above, three months is an insufficient amount of time for a facility to make, and for ADEQ to approve, a demonstration. In addition, regulated entities should not be required to conduct baseline sampling while waiting for ADEQ to review and make a decision regarding a demonstration. Consistent with its comments above, we suggest the following revision:

R18-9-A215(C) - *Persons holding Individual APPs that were issued as of the effective date of a new or adjusted AWQS with ~~active discharge,~~ groundwater point<u>s</u> of compliance<u>, discharge monitoring locations</u> and/or other monitoring locations specified in the permit that are subject to ~~limits~~ <u>alert levels, discharge limitations, or AQLs</u> based on AWQSs <u>pursuant to R18-9-A205</u> shall begin Baseline ~~Discharge and/or Groundwater~~ Monitoring for all new or adjusted <u>AWQS or submit a demonstration pursuant to subsection (E) to the Department</u> within three months of the effective date of a new or adjusted AWQS ~~unless a demonstration is approved by the Department~~*.

ADEQ Response 59:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (C) and (D). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Additionally, at Final Rule, R18-9-A215, subsection (E)(1), ADEQ has replaced "active" with "permit-required". The new term's usage eliminates ambiguity and makes it patently clear that baseline monitoring requirements are meant to occur at the permit-required compliance monitoring locations. Also, at Final Rule R18-9-A215, subsection (E)(1), ADEQ has replaced "limits based on

AWQS" with "alert levels, discharge limitations or AQLs pursuant to R18-9-A205".

Comment 60: Utility

Clarification of Sample Collection Requirements. We request that ADEQ improve the clarity of the Baseline Monitoring sampling requirement by specifying whether samples should be discrete or "grab" samples, or composite samples.

ADEQ Response 60:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(2). Similarly to the applicability of Baseline Monitoring on individual APP permittees in subsection (C), the type of sampling (when it comes to discrete or grab or composite) expected when conducting Baseline Monitoring remains the same as the original permit's routine discharge or groundwater monitoring sampling requirements, pursuant to R18-9-A206.

Comment 61: Utility

Clarification is necessary on the Baseline Monitoring Report submittal as to when a permit that has both discharge and groundwater monitoring specified in the permit should submit the report. Provided that the baseline report is to be submitted within three months following the last sample collection and that the discharge and monitoring well points are on different monitoring schedules, clarification is necessary as to whether separate baseline reports are required or a baseline report including both.

ADEQ Response 61:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the relevant language. Final Rule, subsection (F)(2) states, "[p]ermittees subject to both Groundwater and Discharge Baseline Monitoring may develop a combined, comprehensive Baseline Monitoring Report within three months of receipt of the last sample result." Additionally, Final Rule, subsection (G) requires, "[a]fter the conclusion of Baseline Monitoring, a permittee shall submit an administratively complete application to amend their permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in subsection (A). The Baseline Monitoring Report shall be a component of the amendment application…" Also, concerning flexibility, Final Rule subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 62: Utility

Clarification is necessary if analytes can be excluded or not from Baseline Monitoring if the compound is already on the permit and significant historical data sets already exist. For example, Arsenic and *E. coli* are already listed in our permits for both

discharge and groundwater monitoring, with significant historical data sets in existence.

ADEQ Response 62:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (D), (E) and (F). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule. Final Rule, subsection (E)(3) allows, "[p]ermittees that have collected relevant samples prior to the Baseline Monitoring period at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs pursuant to R18-9-A205, may use that data to develop the Baseline Monitoring Report. Previously collected data may be used to shorten or eliminate a Baseline Monitoring period if all data components are (a) [m]ethodologically sound, (b) [r]epresent a complete data set per the applicable requirements of Baseline Monitoring, and (c) [m]eets other applicable requirements of Baseline Monitoring." Additionally, Final Rule, subsection (F)(1) states, "[a]t the conclusion of Baseline Monitoring, or upon the compilation of a complete and representative data set pursuant to subsection (E)(3) above, permittees shall develop a Baseline Monitoring Report within three months of receipt of the last sample result." Also, concerning flexibility, Final Rule, subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 63: Utility

Proposed Rule R18-9-A215(F) - The term "active discharge" is used. Please refer to the comment above under R18-9-A215(C)(l)(c).

ADEQ Response 63:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "active" with "permit-required". The new term's usage eliminates ambiguity and makes it patently clear that baseline monitoring requirements are meant to occur at the permit-required compliance monitoring locations.

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

There are no other matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking.

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

This rulemaking does not create a requirement for a permit.

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

Federal law is not applicable to the subject matter of the rule.

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

Not applicable.

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

Not applicable.

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

Not applicable.

16. The full text of the rule follows:

Rule text begins on the next page.

TITLE 18. DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

Section

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

Section

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

Section

R18-9-101. Definitions

1. "Aggregate" No Change
2. "Alert level" No Change
3. "AQL" means an aquifer quality limit and is a permit limitation set for aquifer water quality measured at the point of compliance that either represents an Aquifer Water Quality Standard or, if an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance or amendment to incorporate a new or adjusted aquifer water quality standard, represents the ambient or baseline water quality for that pollutant.
4. "Aquifer Protection Permit" means an individual ~~permit~~ or ~~a~~ general permit issued under A.R.S. §§ 49-203, 49-241 through 49-252, and Articles 1, 2, and 3 of this Chapter.
5. "Aquifer Water Quality Standard" or "AWQS" or "AWQSs" means a standard or standards established under A.R.S. §§ 49-221 and 49-223.
6. "AZPDES" No Change
7. "BADCT" No Change
8. "Bedroom" No Change
9. "Book net worth" No Change
10. "CCR" No Change
11. "CCR landfill" No Change
12. "CCR surface impoundment" No Change
13. "CCR unit" No Change

14. “Cesspool” No Change
15. “Chamber technology” No Change
16. “CMOM plan” No Change
17. “Design capacity” No Change
18. “Design flow” No Change
19. “Direct reuse site” No Change
20. “Disposal works” No Change
21. “Drywell” No Change
22. “Dwelling” No Change
23. “Final permit determination” No Change
24. “Gray water” No Change
25. “Groundwater quality protection permit” No Change
26. “Homeowner’s association” No Change
27. “Injection well” No Change
28. “Intermediate stockpile” No Change
29. “Land treatment facility” No Change
30. “Mining site” No Change
31. “New or adjusted aquifer water quality standard” or “New or adjusted AWQS” means a standard or standards established under A.R.S. §§ 49-221 and/or 49-223 after January 1, 2025, for the purposes of R18-9-A215. A “New or adjusted AWQS” becomes an established AWQS, pursuant to R18-9-101(5), for the purposes of an individual Aquifer Protection Permit when a determination is made by the Department on whether new or adjusted Alert Levels, Discharge Limits and/or AQLs are required pursuant to R18-9-A215(G).
32. “Nitrogen Management Area” means an area designated by the Director for which the Director prescribes measures on an area-wide basis to control sources of nitrogen, including cumulative discharges from on-site wastewater treatment facilities, that threaten to cause or have caused an exceedance of the Aquifer Water Quality Standard for nitrate.
33. “Notice of Disposal” means a document submitted to the Arizona Department of Health Services or the Department before September 27, 1989, giving notification of a pollutant discharge that may affect groundwater.
34. “On-site wastewater treatment facility” means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site. A.R.S. § 49-201(29). An on-site

wastewater treatment facility does not include a pre-fabricated, manufactured treatment works that typically uses an activated sludge unit process and has a design flow of 3000 gallons per day or more.

35. "Operational life" means the designed or planned period during which a facility remains operational while being subject to permit conditions, including closure requirements. Operational life does not include post-closure activities.

36. "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity. A.R.S. § 49-201(33). For the purposes of permitting a sewage treatment facility under Article 2 of this Chapter, person does not include a homeowner's association.

37. "Pilot project" means a short-term, limited-scale test designed to gain information regarding site conditions, project feasibility, or application of a new technology.

38. "Process solution" means a pregnant leach solution, barren solution, raffinate, or other solution uniquely associated with the mining or metals recovery process.

39. "Residential soil remediation level" means the applicable predetermined standard established in 18 A.A.C. 7, Article 2, Appendix A.

~~39~~40. "Seasonal high water table" means the free surface representing the highest point of groundwater rise within an aquifer due to seasonal water table changes over the course of a year.

4~~0~~1. "Setback" means a minimum horizontal distance maintained between a feature of a discharging facility and a potential point of impact.

4~~1~~2. "Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, other plumbing fixtures, and waste pumped from septic tanks in places of human habitation, employment, or recreation. Sewage does not include gray water as defined in A.R.S. § 49-201(20), if the gray water is reused according to 18 A.A.C. 9, Article 7.

4~~2~~3. "Sewage collection system" means a system of pipelines, conduits, manholes, pumping stations, force mains, and all other structures, devices, and appurtenances that collect, contain, and convey sewage from its sources to the entry of a sewage treatment facility or on-site wastewater treatment facility serving sources other than a single-family dwelling.

4~~3~~4. "Sewage treatment facility" means a plant or system for sewage treatment and disposal, except for an on-site wastewater treatment facility, that consists of treatment works, disposal works and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices. A sewage treatment facility does not include components of the sewage collection system or the reclaimed water distribution system.

~~44~~5. “Surface impoundment” means a pit, pond, or lagoon with a surface dimension equal to or greater than its depth, and used for the storage, holding, settling, treatment, or discharge of liquid pollutants or pollutants containing free liquids.

~~45~~6. “Tracer” means a substance, such as a dye or other chemical, used to change the characteristic of water or some other fluid to detect movement.

~~46~~7. “Tracer study” means a test conducted using a tracer to measure the flow velocity, hydraulic conductivity, flow direction, hydrodynamic dispersion, partitioning coefficient, or other property of a hydrologic system.

~~47~~8. “Treatment works” means a plant, device, unit process, or other works, regardless of ownership, used for treating, stabilizing, or holding municipal or domestic sewage in a sewage treatment facility or on-site wastewater treatment facility.

~~48~~9. “Typical sewage” means sewage conveyed to an on-site wastewater treatment facility in which the total suspended solids (TSS) content does not exceed 430 mg/l, the five-day biochemical oxygen demand (BOD5) does not exceed 380 mg/l, the total nitrogen does not exceed 53 mg/l, and the content of oil and grease does not exceed 75 mg/l.

~~49~~50. “Underground storage facility” means a constructed underground storage facility or a managed underground storage facility. A.R.S. § 45-802.01(21).

~~50~~1. “Waters of the United States” means:

a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

b. All interstate waters, including interstate wetlands;

c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any waters:

i. That are or could be used by interstate or foreign travelers for recreational or other purposes;

ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

iii. That are used or could be used for industrial purposes by industries in interstate commerce;

d. All impoundments of waters defined as waters of the United States under this definition;

e. Tributaries of waters identified in subsections (a) through (d);

f. The territorial sea; and

g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subsections (a) through (f).

ARTICLE 2. AQUIFER PROTECTION PERMITS – INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

Section

R18-9-A215. New or Adjusted Aquifer Water Quality Standards

A. Permit Amendment Schedule. Upon the effective date of a new or adjusted AWQS, the Director shall develop a schedule to amend issued individual permits to reflect the new or adjusted AWQS pursuant to R18-9-A211.

B. Permit Amendment Requirement. Persons holding issued individual permits as of the effective date of a new or adjusted AWQS shall submit an administratively complete application to amend their permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in subsection (A).

1. Notwithstanding the amendment schedule described in subsection (A) above, administratively complete applications shall be submitted to the Department no later than four years after a new or adjusted AWQS effective date.
2. The requirement to submit an application to amend in subsection (B) is not applicable for pollutants with a new or adjusted AWQS that are within the scope of a demonstration submitted pursuant to subsection (H).

C. Baseline Monitoring. Persons with issued individual permits as of a new or adjusted AWQS effective date shall begin Baseline Monitoring, pursuant to subsection (E) below, for a new or adjusted AWQS within three months, unless:

1. The permit has no ongoing monitoring requirements,
2. The permittee has not begun ongoing monitoring,
3. The permittee has submitted a request for an alternative timeframe, duration or frequency pursuant to subsection (D) below, or
4. The permittee has submitted a demonstration pursuant to subsection (H).

For the purposes of this subsection, "ongoing monitoring" means permit-required monitoring at groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205.

D. Alternative Baseline Monitoring Timeframe, Duration and/or Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and/or sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein.

E. Baseline Monitoring Requirements.

1. Baseline Monitoring shall occur at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205.
2. Subsection R18-9-A206(B) applies to Baseline Monitoring.
3. Permittees that have collected relevant samples prior to the Baseline Monitoring period at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205, may use that data to develop the Baseline Monitoring Report. Previously collected data may be used to shorten or eliminate a Baseline Monitoring period if all data components:

a. Are sampled pursuant to subsection (E)(4) below,

b. Are analyzed using industry standard quality assurance and quality control procedures,

c. Collectively, are representative of a complete data set per the applicable requirements of Baseline Monitoring, and

d. Collectively, meet other applicable requirements of Baseline Monitoring.

4. Sampling for each pollutant with a new or adjusted AWQS shall be conducted using Arizona Department of Health Services-approved (ADHS) methods under A.A.C. R9-14-610, including methods on the ADHS Director Approved List, if available. If an ADHS-approved method does not exist, sampling shall be conducted using an appropriate EPA-approved method or a method specified by the ADEQ Director.

5. Groundwater Monitoring. Permittees that are required to monitor groundwater shall conduct Baseline Monitoring for a new or adjusted AWQS at the point of compliance monitoring location(s) for eight quarters unless an alternative timeframe, duration or frequency is approved by the Department pursuant to subsection (D) above. The Director may lengthen the monitoring period if one or more of the following events occur:

a. A deviation from an operational practice or design authorized in the permit;

b. An exceedance of any discharge limitation;

c. An exceedance of a new or adjusted AWQS;

d. A significant trend in the monitoring data; or

e. Any other significant issue that affects the representativeness of Baseline Monitoring.

6. Discharge Monitoring. Permittees that are required to monitor discharge or water quality shall conduct Baseline Monitoring for a new or adjusted AWQS at the discharge monitoring location(s) on a monthly frequency for one year unless an alternative timeframe, duration or frequency is approved by the Department pursuant to subsection (D) above. If a permittee conducting Discharge Baseline Monitoring collects a sample that is at or above a new or adjusted AWQS, the permittee shall notify ADEQ within five (5) days of becoming aware. The Director may lengthen the monitoring period if one or more of the following events occur:

a. A deviation from an operational practice or design authorized in the permit;

b. An exceedance of any discharge limitation;

c. An exceedance of a new or adjusted AWQS;

d. A significant trend in the monitoring data; or

e. Any other significant issue that affects the representativeness of Baseline Monitoring.

F. Baseline Monitoring Report.

1. At the conclusion of Baseline Monitoring, or upon the compilation of a complete and representative data set pursuant to

subsection (E)(3) above, permittees shall develop a Baseline Monitoring Report within three months of receipt of the last sample result.

2. Permittees subject to both Groundwater and Discharge Baseline Monitoring may develop a combined, comprehensive Baseline Monitoring Report within three months of receipt of the last sample result.

3. The report shall characterize the discharge and/or groundwater quality at the permit-required monitoring locations pursuant to subsections (C) and (E) of this section.

4. The report shall include:

a. The sampling results of discharge and/or groundwater monitoring for a pollutant with a new or adjusted AWQS,

b. A demonstration of the baseline concentration of a new or adjusted AWQS at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205,

c. Laboratory data from the entire Baseline Monitoring period, and

d. An Alert Level, Discharge Limitation and/or AQL proposal in accordance with R18-9-A205, as applicable, for each pollutant with a new or adjusted AWQS.

5. A permittee may include additional information in a Baseline Monitoring Report.

6. The permittee shall submit the monitoring data in a manner prescribed by the Director.

7. After review by the Department, additional information may be required.

G. Report Review and Permit Amendment. After the conclusion of Baseline Monitoring, a permittee shall submit an administratively complete application to amend their permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in subsection (A). The Baseline Monitoring Report shall be a component of the amendment application. Upon receipt, the Department shall review, process and determine whether a new or adjusted Alert Level, Discharge Limitation and/or AQL is required for a new or adjusted AWQS in accordance with R18-9-A205. Thereafter, the Department may incorporate, through a permit amendment, a new or adjusted Alert Level, Discharge Limitation and/or AQL for a new or adjusted AWQS in accordance with R18-9-A205.

H. Unlikely to be Present in Discharge Demonstration. A pollutant with a new or adjusted AWQS shall be removed from the scope of Baseline Monitoring upon a demonstration that the pollutant is not likely to be present in a facility's discharge. The Department may require a permittee to begin Baseline Monitoring for a pollutant with a new or adjusted AWQS after review of the demonstration if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Demonstrations may include, but are not limited to:

1. A characterization of the facility's discharge in relation to the pollutant with a new or adjusted AWQS;

2. Past monitoring and sampling data at the facility and the facility's site; or

3. Process or other information demonstrating that the pollutant is not used or generated at the site or is otherwise not likely to be present in discharges at the site.

I. Permits Without Monitoring. The Department may require persons with issued individual permits as of the effective date of a new or adjusted AWQS without ongoing monitoring to reasonably characterize their discharge and/or groundwater quality in relation to a pollutant with a new or adjusted AWQS within a reasonable amount of time if the Department has a reasonable basis to believe a pollutant with a new or adjusted AWQS is, or is likely to be, present in the facility's discharge.

1. For the purposes of this subsection, "ongoing monitoring" means permit-required monitoring at groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205.

2. A requirement to reasonably characterize discharge and/or groundwater quality in relation to a pollutant with a new or adjusted AWQS does not apply upon the submission of a demonstration pursuant to subsection (H). The Department may require a permittee to reasonably characterize their discharge and/or groundwater quality in relation to a pollutant with a new or adjusted AWQS if, after review of a subsection (H) demonstration, the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

AWP NFRM Economic Impact Statement (EIS) - 18 AAC 9 - Implementation

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

This Economic, Small Business, and Consumer Impact Statement (EIS) has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this EIS has the scope of adding a new section at R18-9-A215 in Title 18, Chapter 9, Article 2 of the Arizona Administrative Code (A.A.C.) This rulemaking action is being taken by the Arizona Department of Environmental Quality (ADEQ) in order to establish a clear procedure for implementation of new or adjusted Aquifer Water Quality Standards (AWQS) to the issued and existing individual Aquifer Protection Permits (APP). Before this rulemaking, such implementation was unaddressed and unclear. New or adjusted Aquifer Water Quality Standards (AWQS) are added to an existing list when the Federal Environmental Protection Agency (EPA) establishes new or adjusts existing Safe Drinking Water Act Maximum Contaminant Levels (MCL). Pursuant to Arizona Revised Statutes (A.R.S.) § 49-223, upon this EPA action, ADEQ must, within one year, open a rule making docket pursuant to A.R.S. § 41-1021 for adoption of the MCL as an AWQS. However, neither A.R.S. § 49-223 nor the rules in the individual APP article at Title 18, Chapter 9, Article 2 of the A.A.C. address how to implement those new or adjusted AWQSs into the existing and issued permits. As is detailed in Section 7 of this Notice of Final Rulemaking (NFRM), ADEQ conducted the rulemaking in conformance with the statutory administrative procedure in A.R.S. Title 41, Chapter 6, and is hereby submitting this EIS, in conformance with the requirements of A.R.S. §§ 41-1055 and 41-1035. ADEQ has determined that this rulemaking will impact the regulated community, ADEQ customers, the environment, and may impact public health. This EIS was developed to evaluate the rulemaking's impacts and compare the benefits and detriments of adopting a rule on the implementation of new or adjusted AWQSs into applicable, existing and issued individual APPs. The AWQSs are designed to protect the State's aquifers, all of which have been designated for drinking water-protected use (*see* A.R.S. § 49-224(B)). The AWQSs are primarily used in ADEQ's Aquifer Protection Permit program (APP), and (to a lesser extent) in some remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), and elsewhere.

B. A summary of the EIS:

General Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include individual APP Permittees (hereinafter: "permittees"), such as Mines, Industrial Facilities and Wastewater Treatment Plants, and, to a lesser extent, regulated parties under certain remediation projects, such as WQARF and VRP. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from this "AWQS Implementation" rulemaking.

A general benefit includes the State of Arizona and its constituents, due to this rulemaking's functional part in protecting the state's aquifers, allowing them to remain a viable asset to community water portfolios and individual well users alike.

General costs to permittees as a result of this new or adjusted AWQS implementation rule are likely minimal, potentially significant and indeterminate at this time. According to the proposed rule, applicable permittees with permit-required discharge and/or groundwater monitoring at the effective date of a new or adjusted AWQS would be required to begin "Baseline Monitoring" for any and all new or adjusted AWQSs with three months unless an alternative Baseline Monitoring timeframe, duration and/or frequency is proposed or a demonstration that a pollutant with a new or adjusted AWQS is not likely to be in a facility's discharge pursuant to A.R.S. § 49-223(G). At the conclusion of Baseline Monitoring, a requirement to submit a Baseline Monitoring report to the Department as a component of an application to amend the individual permit comes into effect; where, after review, the Department determines whether new or adjusted Alert Levels, Discharge Limitations or Aquifer Quality Limits based on the AWQS are necessary pursuant to A.A.C. R18-9-A205.

Specific Impacts

Benefits to Stakeholders include significant clarity in administration and expectation for the Department and the applicable permittees, respectively, as to how new or adjusted AWQSs are to be implemented into existing and issued permits. Applicable permittees will be required to conduct Baseline Monitoring at discharge and groundwater monitoring locations, which could come as a considerable cost. However, permittees will have much of the infrastructure to conduct this monitoring already in place, as the rule requires the monitoring to occur at existing and established locations. With that said, the Department estimates that the analytical laboratory fees for applicable permittees will cost $4,500 for (eight) 8 monitoring events for all seven (7) of the new or adjusted AWQSs at one monitoring location. The seven (7) new or adjusted AWQSs are detailed in the other four (4) Notices of Final Rulemaking (NFRMs) associated with this NFRM. The Department estimates that monitoring equipment could cost around $1,500 which includes rental for a water quality meter and a depth to groundwater level sounder, plus purchase of consumable products such as deionized water, conductivity and pH calibration solutions, and nitrile sampling gloves. The Department estimates the employee labor costs at $35 per hour and each monitoring event would require 4 hours of sampling equipment preparation, 12 hours for sample collection and lab delivery, and 4 hours to review the laboratory analytical results. This was estimated to cost $5,600 for all (eight) 8 monitoring events. Then, the Department estimated the employee labor costs for preparing the Baseline Monitoring Report with a request to establish Alert Levels, Discharge Limitations and/or Aquifer Quality Limits

for all 7 parameters. This effort includes a draft report, internal review, final report edits, and submission by the permittee to the Department. The employee effort for the Baseline Monitoring Report was estimated at $3,400. Altogether the cost estimate includes: $4,500 lab + $1,500 equipment + $5,600 employee labor for sampling + $3,400 employee labor for baseline monitoring report, for an estimated total of $15,000.

Although many facilities will absorb the additional work load and infrastructure / incidentals needed into their existing labor force and equipment on site, certain permittees may need to acquire additional employees to help achieve the requirements.

Stakeholder Process

ADEQ has conducted a number of general and specific stakeholder meetings concerning this rulemaking, including tribal listening sessions and rule language sessions with major industry associations and their counsel, representing a majority of the individual APP regulated parties. The dates of those events are as follows: 9/29/22, 6/8/23, 9/11/23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25 and others. A repository of stakeholder materials is published on ADEQ's dedicated AWQS Rulemaking website here: https://www.azdeq.gov/rulemaking/awqs-update/resources.

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

Costs to Stakeholders

Permittees will be the primary bearers of costs associated with this rulemaking. Other potential costs to stakeholders addressed include the following:

- Rate payers in municipal systems, where rates could conceivably increase to cover increased costs for expanded treatment.
- Regulated parties under ADEQ remediation programs such as WQARF and VRP (minimal impact).
- ADEQ, although any additional staff efforts and other expenses associated with monitoring proposed expanded treatment requirements will generally be covered through permittees' fee increases.

Benefits to Stakeholders

Benefits to Stakeholders include significant clarity in administration and expectation for the Department and the applicable permittees, respectively, as to how new or adjusted AWQSs are to be implemented into existing and issued permits. Generally, the state and the constituents of the state benefit through the efficiency unto which protection of the aquifer resource is administered, safeguarding aquifers as an asset for drinking water use both now and in the future, pursuant to statutory mandate at A.R.S. § 49-224.

D. Benefit/Cost Analysis:

1. Part I – Benefit / Cost Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Note: all benefits and cost figures in this document are in annualized amounts.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
Permittees: Mines, Industrial Facilities, Wastewater Treatment Plants	Applicable permittees will be required to conduct Baseline discharge and/or groundwater monitoring for new or adjusted AWQSs, which entail sampling and analytical costs	Minimal to Moderate	
ADEQ	ADEQ believes some new costs will be incurred, despite the fact that some infrastructure for processing permits is already in place. ADEQ anticipates that hundreds of permits may need to be amended to update monitoring tables associated with new or adjusted AWQS. Any additional costs incurred would generally be covered by increased fees paid by permittees.	Minimal to Moderate	
Small businesses as a segmented category	Coming into compliance with new standards. Small businesses are generally cost-disadvantaged when compared to larger businesses because treatment costs generally decline as the scale (processing capacity) of a processing facility increases.	Minimal to Moderate	

2. Part II – Individual Stakeholder Summaries / Calculations:

The following subsection provides an explanatory discussion of expected stakeholder costs and benefits. The subsection outlines the key factors and analysis used to determine the impact findings reported in Part 1 of subsection D, above.

***Costs to Stakeholders*:**

Permittees

Permittees could see minimal to moderate costs due to this rulemaking. Applicable permittees will be required to conduct Baseline discharge and/or groundwater monitoring for new or adjusted AWQSs, which entail sampling and analytical costs. The Department estimates that monitoring equipment could cost around $1,500 which includes rental for a water quality meter and a depth to groundwater level sounder, plus purchase of consumable products such as deionized water, conductivity and pH calibration solutions, and nitrile sampling gloves. The Department estimates the employee labor costs at $35 per hour and each monitoring event would require 4 hours of sampling equipment preparation, 12 hours for sample collection and lab delivery, and 4 hours to review the laboratory analytical results. This was estimated to cost $5,600 for all 8 monitoring events. Then, the Department estimated the employee labor costs for preparing the Baseline Monitoring Report with a request to establish Alert Levels, Discharge Limitations and/or Aquifer Quality Limits for all 7 parameters. This effort includes a draft report, internal review, final report edits, and submission by the permittee to the Department as a component of a permit amendment application. The employee effort for the Baseline Monitoring Report was estimated at $3,400. Altogether the cost estimate includes: $4,500 lab + $1,500 equipment + $5,600 employee labor for sampling + $3,400 employee labor for baseline monitoring report, for an estimated total of $15,000. Additional costs include an internally or externally developed amendment application and Departmental hourly fees for application review, permit writing, etcetera – pursuant to A.A.C. R18-14-102(B).

Small businesses as a segmented category

Generally, the same as the Permittees section above; albeit, taking into account the fact that small businesses are generally cost-disadvantaged when compared to larger businesses because treatment costs generally decline as the scale (processing capacity) of a processing facility increases.

ADEQ

ADEQ could see minimal to moderate costs due to this rulemaking. ADEQ believes some new costs will be incurred, despite the fact that some infrastructure for processing permits is already in place. ADEQ anticipates that hundreds of permits may need to be amended to update monitoring tables associated with new or adjusted AWQS. Any additional costs incurred would generally be covered by increased fees paid by permittees.

In order to process the large number of individual APP permits that will need to be amended as a product of this rule and new or adjusted AWQS, ADEQ will incur costs for AWP-related staff expansion and performance of new AWQS-associated administrative responsibilities needed. ADEQ currently anticipates that it will need to hire new staff with the necessary technical expertise. These positions will include permit reviewers with engineering and hydrogeologic backgrounds, as well as, non-engineer staff for administrative tasks.

In order to support the implementation of this new rule, ADEQ plans on hiring 3 new full-time employees (FTE). Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees and annual fees.

***Benefits to Stakeholders*:**

Permittees, Small Businesses as a segmented category & ADEQ

Benefits to stakeholders include significant clarity in administration and expectation for the Department and the applicable permittees, respectively, as to how new or adjusted AWQSs are to be implemented into existing and issued permits. Generally, the state and the constituents of the state benefit through the efficiency unto which protection of the aquifer resource is administered, safeguarding aquifers as an asset for drinking water use both now and in the future, pursuant to statutory mandate at A.R.S. § 49-224.

E. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking:

ADEQ estimates that, for the most part, this rulemaking will not have much of an impact on public or private employment. As is noted above, some permittees may need to hire additional help to meet the requirements of Baseline Monitoring for new or adjusted AWQSs, but, in most cases, will be able to absorb the responsibility through existing employees, infrastructure and equipment. ADEQ believes some new costs will be incurred, despite the fact that some infrastructure for processing permit applications is already in place. ADEQ anticipates that potentially hundreds of permits may need to be amended to update monitoring tables associated with new or adjusted AWQS. Any additional costs incurred would generally be covered by increased fees paid by permittees.

However, and as mentioned above, all applicable permittees, whether public or private, stand to benefit through the state establishment of a streamlined new or adjusted AWQS implementation process. As explained in subsection A of this EIS above, neither A.R.S. § 49-223 nor the rules in the individual APP article at Title 18, Chapter 9, Article 2 of the A.A.C. address how to implement new or adjusted AWQSs into the existing and issued permits, which would lead to significant confusion and waste for ADEQ and the permittees.

F. A statement on the probable impact of the rules on small business:

Economic costs to comply with the new or adjusted AWQS implementation rule that are borne by small businesses may be minimal to moderate. Small businesses tend to be disadvantaged because treatment costs generally decline as the scale (processing capacity) of a processing facility increases. Many small businesses subject to this rule likely have personnel, infrastructure and equipment already in place for conducting Baseline Monitoring. It is possible that permittees may need to hire additional personnel or a contractor in complying with these rules. Also, samples must be analyzed at a laboratory at a cost to the permittee. Additionally, permittees may choose to hire a consultant in developing their Baseline

Monitoring Report, an alternative Baseline Monitoring timeframe, duration and/or frequency request or a demonstration that a pollutant with a new or adjusted AWQS is not likely to be in a facility's discharge pursuant to A.R.S. § 49-223(G).

1. An identification of the small businesses subject to the rules:

Small businesses constitute a distinct category for which the impacts of rulemaking need to be considered. For this EIS, impacted small businesses will be wastewater facility permittees meeting the following criteria:

- According to A.R.S. 41-1001 and as applied in this EIS, "'Small business' means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than $4 million in its last fiscal year."
- ADEQ estimates that small businesses make up just over 30% of permittees, or 135 entities in total. As noted previously in this EIS, not all of these facilities will necessarily need to incur costs to meet the proposed new or adjusted AWQS implementation rule.

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

Permittees small and large likely have personnel, infrastructure and equipment already in place for conducting Baseline Monitoring. It is possible that permittees may need to hire additional personnel or a contractor in complying with these rules. Also, samples must be analyzed at a laboratory at a cost to the permittee. Additionally, permittees may choose to hire a consultant in developing their Baseline Monitoring Report, an alternative Baseline Monitoring timeframe, duration and/or frequency request or a demonstration that a pollutant with a new or adjusted AWQS is not likely to be in a facility's discharge pursuant to A.R.S. § 49-223(G).

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

A.R.S. § 41-1035 Methods	ADEQ Decision to use or not use and reason
1. Establishing less stringent compliance or reporting requirements in the rule for small businesses	Used for all applicable permittees. Through stakeholder input, the Department removed from a previous draft a requirement for all applicable permittees to report throughout Baseline Monitoring in lieu of simply reporting all at once through the Baseline Monitoring Report at the end of the Baseline Monitoring period. The rule also allows permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS.
2. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses	Used for all applicable permittees. Through stakeholder input, the Department built more flexibility into the rule through the allowance of an alternative Baseline Monitoring timeframe, duration and/or frequency request, as well as an ability for a permittee to make a demonstration that a pollutant with a new or adjusted AWQS is not likely to be in a facility's discharge pursuant to A.R.S. § 49-223(G), which results in the pollutant not being subject to Baseline Monitoring.
3. Consolidating or simplifying the rule's compliance or reporting requirements for small businesses	Used for all applicable permittees. Through stakeholder input, the Department removed from a previous draft a requirement for all applicable permittees to report throughout Baseline Monitoring in lieu of simply reporting all at once through the Baseline Monitoring Report at the end of the Baseline Monitoring period. The rule also allows permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS.
4. Establishing performance standards for small businesses to replace design or operational standards in the rule	Not used. In administering the APP program, performance, design and operational standards are all built into a review of a facility's employment of the best available demonstrated control technologies, processes, operating methods or other alternatives. ADEQ believes these requirements are no more prescriptive than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243).
5. Exempting small businesses from any or all requirements of the law	Not used. In administering the APP program, all persons discharging a pollutant into the environment must obtain an APP permit under A.R.S. § 49-241, unless exempted through A.R.S. § 49-250. Eliminating small business from the scope of the APP program is not supported by statute and would undermine the purpose of the program, to protect the state's aquifers to a drinking water standard (*see* A.R.S. §§ 49-223, 224, 241, 243).

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

There should be little to no costs to private persons and consumers as this rule compels permittees to conduct Baseline Monitoring for all new or adjusted AWQSs. It is conceivable that a Wastewater Treatment Plant may increase the rates in their service area as a result of the requirement to conduct Baseline Monitoring, but that would be a relatively small amount due to the cost estimates projected for Baseline Monitoring outlined above.

G. A statement of the probable effect on state revenues:

This rulemaking will not result in a significant increase, nor decrease in state revenues. Increased and decreased costs to ADEQ are expected to be minimal, as explained above in the analysis of costs and benefits to ADEQ. Investments in sampling, analytical and report / request / demonstration work through employees or consultants could result in the generation of additional employment through indirect and induced (secondary) economic activity, and subsequent tax revenues.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

ADEQ worked closely with stakeholders in the development of this new or adjusted AWQS implementation rule, focusing on the goal of clarity in administration and expectation for the Department and the applicable permittees, respectively. Neither A.R.S. § 49-223 nor the rules in the individual APP article at Title 18, Chapter 9, Article 2 of the A.A.C. address how to implement those new or adjusted AWQSs into the existing and issued permits. For this reason, ADEQ received overwhelming support for this clarifying rule from the regulated parties. After years of drafting, editing and stakeholder feedback, ADEQ believes the structure of this rule properly balances the agency's mission of protecting public health and the environment with any requisite costs to stakeholders.

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

No data was used in the development of this rule. ADEQ closely examined the relevant and existing statutes and rules, as well as multiple rounds of stakeholder feedback.

AWP NFRM Public Comments - 18 AAC 9 - Implementation

Comment 1: Utility
Proposed R18-9-Preamble and R18-9-A215. New or Adjusted Aquifer Water Quality Standard
30 AAR 3403 - Paragraph 9 – Subsection C
"Preliminary estimates on the cost of baseline monitoring based on an eight quarter time period at one sampling location for all seven (7) of the new AWQSs that are being established in the associated NPRMs is around $15,000…".
We request ADEQ share the information used to determine the cost of the new or adjusted AWQSs baseline monitoring with stakeholders.
ADEQ Response 1:
ADEQ appreciates the comment. ADEQ estimated that the analytical laboratory fees would cost $4,500 for 8 monitoring events for all seven (7) of the new or adjusted AWQSs at one monitoring location. The monitoring equipment could cost around $1,500 which includes rental for a water quality meter and a depth to groundwater level sounder, plus purchase of consumable products such as deionized water, conductivity and pH calibration solutions, and nitrile sampling gloves. The employee labor costs were estimated at $35 per hour and each monitoring event would require 4 hours of sampling equipment preparation, 12 hours for sample collection and lab delivery, and 4 hours to review the laboratory analytical results. This was estimated to cost $5,600 for all 8 monitoring events. Then ADEQ estimated the employee labor costs for preparing the baseline monitoring report with a request to establish Alert Levels and Aquifer Quality Limits for all 7 parameters. This effort included a draft report, internal review, final report edits, and submission to ADEQ. The employee effort for the baseline monitoring report was estimated at $3,400. Altogether the cost estimate includes: $4,500 lab + $1,500 equipment + $5,600 employee labor for sampling + $3,400 employee labor for baseline monitoring report, for a total of $15,000.
Comment 2: Utility
R18-9-A215. New or Adjusted Aquifer Water Quality Standard
30 AAR 3407 - Paragraph C.1.A --"Baseline discharge and groundwater monitoring shall be reported to the Director throughout the monitoring period in a method specified by the director."
We request ADEQ clarify how the permittee is going to be notified of the method specified by the director to report baseline discharge and groundwater monitoring since it is not defined in the proposed rule or in the permittee's current permit.
ADEQ Response 2:
ADEQ appreciates the comment. Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A).
Comment 3: Utility
30 AAR 3407 - Paragraph C.2.A --"…permittees shall submit to the Department a Baseline Monitoring Report within three months of the date of the last sample collection."
Our individual APP permits have discharge and groundwater monitoring locations. Please clarify if two separate baseline monitoring reports will be required since the frequency for baseline discharge and groundwater monitoring are different.
We request ADEQ consider allowing flexibility for permittees with both discharge and groundwater monitoring locations to align the baseline monitoring schedules to eliminate preparing and submitting two separate baseline monitoring reports.
We request ADEQ revise the statement "within three months of the date of the last sample collection" to "within three months of receipt of the last sample result" since analytical results may take up to 30 days to be reported by the laboratory after sample collection.
ADEQ Response 3:
ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the relevant language. Final Rule, subsection (F)(2) states, "[p]ermittees subject to both Groundwater and Discharge Baseline Monitoring may develop a combined, comprehensive Baseline Monitoring Report within three months of receipt of the last sample result." Additionally, concerning flexibility, Final Rule subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."
Comment 4: Utility
Currently, an ADHS - approved method for wastewater does not exist for Chlorite, Bromate or Haloacetic acids. Until there is an approved wastewater method, these parameters should not be required to have baseline monitoring or permitted monitoring on effluent discharge. Is ADEQ collaborating with ADHS to make sure this will occur prior to when monitoring will be required?
ADEQ Response 4:

ADEQ appreciates the comment. ADEQ has notified ADHS of the proposed establishment of Bromate, Chlorite, Haloacetic acids and Uranium as Aquifer Water Quality Standards (AWQSs). ADEQ agrees that at the time of this rulemaking, there are no ADHS - approved wastewater methods for Bromate, Chlorite, nor Haloacetic acids. However, the final rule accounts for this situation with the following language, "[s]ampling shall be conducted using an [ADHS] approved method for each pollutant with a newly established or adjusted [Aquifer Water Quality Standard] AWQSs, if available. If an [ADHS] approved method for a pollutant with a newly established or adjusted AWQSs does not exist, sampling shall be conducted using an EPA approved method or a method specified by the Director." For example, EPA Method 300.1 is an appropriate method for chlorite and bromite baseline monitoring in drinking water and groundwater. Additionally, Standard Methods 6251 for Haloacetic acids (HAAs) is an appropriate method for determining the concentration of HAAs in water and wastewater. Please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 5: Utility

The rule allows for the submission of a demonstration showing a pollutant with a new or adjusted AWQS is not likely to be present in the discharge in order to waive monitoring; however, the demonstrations allowed require submitting data from monitoring... How can ADEQ require monitoring to prove, "not likely to be present"? Is there another example demonstration of not likely to be present that does not include monitoring?

ADEQ Response 5:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the "not likely" demonstration language. Final Rule R18-9-A215, subsection (H) reads, "[a] pollutant with a new or adjusted AWQS shall be removed from the scope of Baseline Monitoring upon a demonstration that the pollutant is not likely to be present in a facility's discharge. The Department may require a permittee to begin Baseline Monitoring for a pollutant with a new or adjusted AWQS after review of the demonstration if the Department has reason to believe the pollutant is, or is likely to be, present in the facility's discharge. Demonstrations may include, but are not limited to: (1) [a] characterization of the facility's discharge in relation to the pollutant with a new or adjusted AWQS; (2) [p]ast monitoring and sampling data at the facility and the facility's site; or (3) [p]rocess or other information demonstrating that the pollutant is not used or generated at the site or is otherwise not likely to be present in discharges at the site." This new language and non-exhaustive list on how demonstrations may be made serves to show some of the methods a permittee might use in making a demonstration.

Comment 6: Utility

Permittees are expected to initiate baseline monitoring within 3 months of the effective date of a new or adjusted AWQS unless a demonstration is approved by the Department. Three months is a very brief amount of time for a permittee to submit a demonstration and the agency to approve it. How does ADEQ realistically plan to process these waiver requests, or are they not anticipating many? May a permittee pause monitoring if a demonstration is submitted (while waiting for approval)?

ADEQ Response 6:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the relevant rule language. Final Rule subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee to conduct and submit a "not likely" demonstration pursuant to subsection (H). The submission of an Alternative Baseline Monitoring Timeframe, Duration and Frequency Request does not pause the Baseline Monitoring requirement until ADEQ approves or denies. However, scheduling a meeting with the Department to discuss any concerns with the Baseline Monitoring requirement is welcomed and encouraged. Additionally, the rule language (*see* Final Rule R18-9-A215, subsection (H)) for the "not likely" demonstration has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 7: Utility

We're thinking through our complicated permits and trying to understand where Baseline Monitoring would occur. Our facilities have impoundments so… we're thinking about the perceived differences between initial characterization and Baseline Monitoring.

ADEQ Response 7:

ADEQ appreciates the comment. The Department believes the revisions made to the proposed rule, represented in Final Rule R18-9-A215, subsections (C), (H) and (I), address your concern.

Comment 8: Utility

Proposed rule R18-9-A215(C)(1) says baseline monitoring will be reported throughout the monitoring period in a method specified by the Director. How will the permittee be expected to submit the monitoring throughout the monitoring period

and at what frequency?

ADEQ Response 8:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A).

Comment 9: Utility

Will there be notification to permittees of the effective date of the new/adjusted limits (now and in the future) for permittees to know when to start the baseline monitoring?

ADEQ Response 9:

ADEQ appreciates the comment. Yes, there will be notification to permittees of upcoming effective dates of new or adjusted AWQSs. Please be on the lookout for those communications in the future. Also, yes, ADEQ is aware that communicating the commencement dates is critical to the function of the rule and will be communicated for this AWQS rulemaking and all future AWQS rulemakings. At a minimum, these communications will specify the effective date for the AWQSs and when baseline monitoring should start according to the final rule.

Comment 10: Utility

Will a Self Monitoring Report Form (SMRF) template be available for permittees or will they be submitted through myDEQ?

ADEQ Response 10:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore, no Self Monitoring Report Form (SMRF) template is necessary. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A).

Comment 11: Utility

With respect to implementation - Is there any intention to require baseline monitoring for permits that don't currently require any discharge or groundwater compliance monitoring?

ADEQ Response 11:

ADEQ appreciates the comment. The answer is: Potentially. The final rule does not mandate, but gives the Department the discretion to require permittees without ongoing monitoring requirements in their permit to reasonably characterize their discharge and/or groundwater quality in relation to a pollutant with a new or adjusted AWQS within a reasonable amount of time if the Department has a reasonable basis to believe a pollutant with a new or adjusted AWQS is, or is likely to be, present in the facility's discharge (*See* Final Rule R18-9-A215(I)). This requirement applies to issued APP permits as of the AWQS effective date and that do not have permit-issued groundwater point of compliance, discharge, nor other monitoring locations specified in their permit which are, themselves, subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205. ADEQ plans to notify these permittees on a case-by-case basis. Also, the requirement to reasonably characterize does not apply upon the demonstration that a pollutant is not likely to be present in a facility's discharge; unless, upon demonstration review, the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge (*See* Final Rule R18-9-A215(H)).

Comment 12: Utility

How soon after the effective date of the new rule would ADEQ have the amendment schedule so permittees can budget for the APP amendment application?

ADEQ Response 12:

ADEQ appreciates the comment. ADEQ plans to notify permittees of the effective date of the new or adjusted limits, as well as the permit amendment schedule, as soon as possible after the establishment or effective date of a new or adjusted AWQS. Please be on the lookout for these communications. At a minimum, these communications will specify the effective date for the AWQSs, when baseline monitoring should begin according to Final Rule R18-9-A215 and will lay out the amendment schedule.

Comment 13: Utility

Proposed Rule R18-9-A215(C)(l)(c) - Please clarify what an "active" discharge is. Is use of the word "active" meant to exclude contingency monitoring locations?

ADEQ Response 13:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "active" with "permit-required". The new term's usage eliminates ambiguity and makes it patently clear that baseline monitoring requirements are meant to occur at the permit-required compliance monitoring locations.

Comment 14: Utility

Proposed Rule R18-9-A215(C)(l)(c) - Suggest deletion of "that are subject to limits based on AWQSs." Is it ADEQ's

intent that baseline monitoring is not required at locations where a permit limit is set at a level greater than the AWQS?

ADEQ Response 14:

ADEQ appreciates the comment. The Final Rule language at R18-9-A215(E)(1) states that, "[b]aseline Monitoring shall occur at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205." It is not the intention of the Department to not require Baseline Monitoring at locations where a permit limit is set at a level greater than the AWQS. The language "based on AWQSs" is intended to distinguish any monitoring that may be required outside of compliance monitoring for an AWQS. Furthermore, the language "pursuant to R18-9-A205" includes the scenario referenced by the commenter, where an AQL is set at a level greater than the AWQS. If a parameter with an adjusted AWQS, such as Arsenic or Total Trihalmethanes, has an AQL set higher than the corresponding AWQS, the parameter is required to be within the scope of Baseline Monitoring, barring an exception outlined in R18-9-A215.

Comment 15: Utility

Proposed Rule R18-9-A215(C)(l)(d) - Include an option to add the new or adjusted parameters at the sampling frequency in the current APP. For example, if semi-annual groundwater sampling is conducted under the current APP, the permittee could add parameters to the existing sampling schedule rather than sample quarterly.

ADEQ Response 15:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 16: Utility

Proposed Rule R18-9-A215(C)(l)(e) - Please clarify if use of the word "may" in this provision allows the permittee (not ADEQ) to decide whether or not up, cross or down gradient wells will be sampled.

ADEQ Response 16:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has eliminated the proposed subsection R18-9-A215(C)(l)(e) which read, "[b]aseline groundwater monitoring may additionally occur at up, cross or down gradient wells in relation to the facility, if available." The Final Rule, at subsection (E)(1), reads, "Baseline Monitoring Requirements: [1] Baseline monitoring shall occur at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs pursuant to R18-9-A205." However, the final rule also provides, in the Baseline Monitoring Report subsection, that a permittee may include additional information in the report for any reason, which may include data from up, cross or down gradient wells in relation to the facility.

Comment 17: Utility

Proposed Rule R18-9-A215(C)(1)(h)(i) - Please clarify if "a method specified by the Director" requires the permittee to request and receive approval from the Director of ADEQ prior to use of a method that is not ADHS-approved.

ADEQ Response 17:

ADEQ appreciates the comment. The final rule language specifies that sampling for Baseline Monitoring "...shall be conducted using an Arizona Department of Health Services (ADHS) approved method for each pollutant with a new or adjusted AWQS, if available. If an ADHS-approved method does not exist, sampling shall be conducted using an appropriate EPA-approved method or a method specified by the Director." Please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 18: Utility

Proposed Rule R18-9-A215(E) - According to the proposed rule, a pollutant may be removed from baseline discharge and groundwater monitoring "upon a successful demonstration …". Does "successful" mean the demonstration is "approved by ADEQ"? Suggest using the same language as proposed in R18-9-A215(B)(2): " .. .if a demonstration is submitted to and approved by the Department. .. " If the demonstration is not "successful," is the permittee required to begin baseline discharge and/or groundwater monitoring upon receipt of ADEQ's denial? Baseline monitoring is required to begin within three months of the effective date of a new or adjusted AWQS and it will likely take a permittee time to prepare the demonstration. Therefore, will ADEQ review a facility's demonstration and issue an approval or denial within three months of the effective date of a new or adjusted AWQS? If ADEQ's review extends beyond three months from the effective date of a new or adjusted AWQS, is the permittee required to conduct baseline discharge and/or groundwater monitoring while ADEQ is reviewing the demonstration? Is ADEQ's decision to approve or deny the demonstration subject to public notice (R18-9-108) and/or public participation (R18-9-109)?

ADEQ Response 18:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the relevant rule language. Final Rule subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the

requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. The submission of an Alternative Baseline Monitoring Timeframe, Duration and Frequency Request does not pause the Baseline Monitoring requirement until ADEQ approves or denies. However, scheduling a meeting with the Department to discuss any concerns with the Baseline Monitoring requirement is welcomed and encouraged. A Final Rule subsection (D) request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language (*see* Final Rule R18-9-A215, subsection (H)) for the "not likely" demonstration has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has reason to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 19: Utility

The proposed rule does not mention how new or adjusted AWQSs fit into the APP closure (R18-9-A209(B)) and post-closure (R18-9-A209(C)) process. Would a permittee be required to complete baseline monitoring before submitting a closure plan to ADEQ?

ADEQ Response 19:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (C) and (D). The answer to this question is "yes, generally". The final rule governing Baseline Monitoring requires persons with issued individual permits as of a new or adjusted AWQS effective date to begin Baseline Monitoring within three months unless: (1) [t]he permit has no ongoing monitoring requirements, (2) [t]he permittee has not begun ongoing monitoring, (3) [t]he permittee has received approval of a submitted request for an alternative timeframe, duration or frequency pursuant to subsection (D) below, or (4) [t]he permittee has submitted a demonstration pursuant to subsection (H). The subsection continues, stating that for the purposes of this subsection, "ongoing monitoring" means permit-required monitoring at groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205.

Despite a permittee's intention to close, if a permittee is applicable to Baseline Monitoring per Final Rule R18-9-A215, Baseline Monitoring is required. However, in the case of a permittee either planning on closing soon or currently in a permitted closure process, Final Rule R18-9-A215(D) allows for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and/or frequency, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include, for example, the adjustment of when to begin Baseline Monitoring, a proposal to combine Baseline Monitoring with a closure plan or another reasonable orientation that meets the applicable rule requirements, subject to review and approval by the Department. Additionally, the Department notes that the statute governing APP closure is A.R.S. § 49-252 and the rule governing APP closure is R18-9-A209.

Comment 20: Interest Group

We understand that if the required baseline monitoring envisioned under the NPRM (see proposed A.A.C. R18-9-A215(C)) confirms that a pollutant with a new or adjusted AWQS already exceeds the AWQS at the applicable POC, then no alert level will be set and the aquifer quality limit ("AQL") for that pollutant will be established at an appropriate level higher than the new or adjusted AWQS and the pollutant will be subject to the "no further degradation" standard in A.R.S. § 49-243(B)(3). We request that ADEQ confirm and clarify this intent in the rule and preamble when ADEQ publishes the final version of the rule.

ADEQ Response 20:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (G). Yes, after the conclusion of Baseline Monitoring, a permittee shall submit an administratively complete application to amend their permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A). The Baseline Monitoring Report shall be a component of the amendment application. Upon receipt, the Department shall review, process and determine whether a new or adjusted Alert Level, Discharge Limitation and/or AQL is required for a new or adjusted AWQS in accordance with R18-9-A205. Thereafter, the Department may incorporate, through a permit amendment, a new or adjusted Alert Level, Discharge Limitation and/or AQL for a new or adjusted AWQS in accordance with R18-9-A205. R18-9-A205(C) allows ADEQ to establish in individual permits an AQL that is higher than the corresponding AWQS in order to meet the criteria in A.R.S. § 49-243(B)(2) or (3).

Comment 21: Interest Group

Although we support what appears to be the Notice of Proposed Rulemaking's (NPRM's) statutorily-based approach of implementing new or adjusted AWQS into existing individual APPs consistent with the statutory language at A.R.S. § 49-243(B)(2) and (3) and the implementing regulatory language at A.A.C. R18-9-A205(C), we are concerned that some of the language in the NPRM appears to be inconsistent with this approach.

ADEQ Response 21:

ADEQ appreciates the comment. Due to this comment and others submitted on the propped rule language showing concern over whether the language is in accord with the governing statute at A.R.S. § 49-243(B)(2) and (3), ADEQ has revised the rule language to make clear that it is in accord. For example, consider Final Rule R18-9-A215, subsection (G), which requires a permittee, after the conclusion of Baseline Monitoring, to submit an administratively complete application to amend their permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A). The Baseline Monitoring Report shall be a component of the amendment application. Upon receipt, the Department shall review, process and determine whether a new or adjusted Alert Level, Discharge Limitation and/or AQL is required for a new or adjusted AWQS *in accordance with R18-9-A205*. Thereafter, the Department may incorporate, through a permit amendment, a new or adjusted Alert Level, Discharge Limitation and/or AQL for a new or adjusted AWQS *in accordance with R18-9-A205*. R18-9-A205(C) allows ADEQ to establish in individual permits an AQL that is higher than the corresponding AWQS in order to meet the criteria in A.R.S. § 49-243(B)(2) or (3). While difficult to address with specificity a broad concern like the one in this comment, ADEQ believes the edits to the rule incorporating R18-9-A205 (including R18-9-A205's reference to A.R.S. § 49-243(B)(2) and (3)) address this stakeholder concern.

Comment 22: Interest Group

We are also concerned, as applied particularly to the required monthly discharge monitoring, that the rule will create increased costs and regulatory burdens for permittees that may not be necessary in all situations. For instance, many facilities with discharges subject to limits based on AWQS have stable discharges with consistent quality. Consequently, we recommend that language be added to the discharge baseline monitoring requirements to clarify that the frequency and duration of monitoring for discharges can be negotiated with ADEQ on a case-by-case basis. This would, in part, address the increased cost concern.

ADEQ Response 22:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (D). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and/or frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 23: Interest Group

We support the recognition in the NPRM of the statutory language at A.R.S. § 49-223(G), which provides that monitoring or any other APP-related requirements cannot be imposed on pollutants with AWQS that are not likely to be present in a facility's discharge (see proposed R18-9-A215(E)). Although we support this aspect of the NPRM, some of the language in the proposal is not consistent with the statutory language in A.R.S. § 49-223(G).

ADEQ Response 23:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to more closely align with the governing statute, A.R.S. § 49-223(G).

Comment 24: Interest Group

The suggestion that ADEQ "may" waive monitoring in proposed R18-9-A215(B)(2) and (E), the requirement in proposed R18-9-A215(B)(2) and (C) that ADEQ "approve" submittals showing that a certain pollutant is not likely to be present in a facility's discharge, and the concept of a "successful" demonstration in proposed R18-9-A215(E) are not consistent with the statutory language in A.R.S. 49-223(G). The statutory language simply provides that ADEQ may impose APP monitoring requirements only for pollutants for which AWQS have been established that are likely to be present in a discharge. There is no requirement under the statute to obtain ADEQ's approval for such a demonstration or for the agency to decide whether or not to waive monitoring when presented with a demonstration or what demonstrations are "successful." Accordingly, we request that any suggestion or requirement that a demonstration under A.R.S. § 49-223(G) must be approved, determined to be "successful", or subject to administrative discretion be removed. Obviously, if ADEQ disagrees or has concerns with a particular demonstration it can raise its concerns with the submitter and request additional information.

ADEQ Response 24:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to more closely align with the governing statute, A.R.S. § 49-223(G). The final rule language allows the submission of a "not likely" demonstration itself to be sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 25: Interest Group

The use of the term "active discharge" is confusing and it is not clear how the term relates to the statutory definition of "discharge" in A.R.S. § 49-201(12). We believe that the intent of the rule is to apply the baseline monitoring requirements to existing groundwater point of compliance monitoring locations or discharge monitoring locations specified in an existing individual permit for which monitoring has commenced. Also, the baseline monitoring

requirements should not apply to facilities that have been permitted but not yet constructed. Consequently, in lieu of referring to "active discharge, groundwater points of compliance, and/or other monitoring locations," we recommend that the following phrase be used in R18-9-A215: "existing groundwater point of compliance monitoring locations, discharge monitoring locations, or other monitoring locations specified in the permit." We also recommend that the phrase "and that have commenced monitoring pursuant to the permit" be added to R18-9-A215(C).

ADEQ Response 25:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (C), (D) and (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "active" with "permit-required". The new term's usage eliminates ambiguity and makes it patently clear that baseline monitoring requirements are meant to occur at the permit-required compliance monitoring locations. Additionally, the final rule exempts from Baseline Monitoring permittees who have not begun permit-required, ongoing monitoring. This includes facilities that are permitted, but have yet to be constructed and other circumstances where ongoing monitoring is not occurring.

Comment 26: Interest Group

It is not clear what is meant by "limits based on AWQS" since different terms are used in A.A.C. R18-9-A205, namely alert levels, discharge limitations, and aquifer quality limits ("AQLs"). To eliminate this confusion, we request that the phrase "limits based on AWQS" be replaced with the phrase "alert levels, discharge limitations or AQLs based on AWQS pursuant to R18-9-A205." The NPRM inconsistently uses and intermingles the terms "baseline monitoring" and "baseline discharge and/or groundwater monitoring." We request that a single term (i.e., "baseline monitoring") be used to include both baseline groundwater and baseline discharge monitoring.

ADEQ Response 26:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "limits based on AWQS" with "alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205." Additionally, the inconsistency in usage of "Baseline Monitoring" has been addressed in the final rule. As is suggested by the commenter, the single term, "Baseline Monitoring" is used throughout.

Comment 27: Interest Group

Because it may be difficult in some instances (such as with complex individual APPs) to initiate baseline monitoring or to prepare a demonstration under R18-9-A215(E) within three months after the effective date of new or adjusted AWQSs, we request that language be added to the rule to give permittees and ADEQ flexibility to reach agreements to extend the three month period for initiating baseline monitoring or for submitting a demonstration under R18-9-A215(E).

ADEQ Response 27:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (C) and (D). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H).

Comment 28: Interest Group

To provide more clarity to permittees with respect to baseline monitoring, we believe that the general baseline monitoring subsections in R18-9-A215(C)(1) should be grouped upfront and then followed by the language that distinguishes between groundwater versus discharge monitoring. We recommend the following reorganization: move subsection (c) to (a); move subsection (f) to (c); move subsection (h) to (d); and then put subsections (d) and (g) at the end.

ADEQ Response 28:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E). Due to this comment and others submitted on the proposed rule language, ADEQ has reorganized the structure of the Baseline Monitoring Requirements as is recommended by the commenter above.

Comment 29: Interest Group

We request that the discharge monitoring section of the baseline monitoring section include the ability for permittees with discharges subject to limits based on AWQSs to negotiate a different frequency and duration of baseline monitoring on a permit-by-permit basis. This addition to the rule is critical to reduce unnecessary costs and burdens and to recognize that many discharges are stable and consistent in quality.

ADEQ Response 29:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (C) and (D). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the

requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H).

Comment 30: Interest Group

We request that the language in this subsection should be removed. The language creates an unnecessary regulatory burden to report data that will eventually be submitted to ADEQ as part of the required baseline monitoring report. Current existing individual permits do not require intermittent reporting of ambient monitoring data. Rather, such data is submitted at the end of the required monitoring period. In addition, early submittal of such data ignores the technical reality that sufficient numbers of sampling events spread across an appropriate timeframe is required to establish an accurate baseline of either groundwater or effluent discharge. Early submittal of data before completing full baseline monitoring is therefore improper and could be used by ADEQ or others to support incorrect assertions regarding the state of groundwater or discharges at monitoring locations specified in the permit for new or adjusted AWQSs.

ADEQ Response 30:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (E) and (F). Due to this comment and others submitted on the proposed rule language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A). Additionally, proposed rule language allowing the Director to both shorten or lengthen the monitoring period if one or more events on a subsequent list occur has been revised to only allow the Director to lengthen if such an occurrence happens. The reasoning for this language adjustment is to require a full set of data be collected before characterization determinations are made (i.e. - "shorten" has been removed) and to retain an ability for the Director to lengthen the baseline monitoring period should the data collected not be usable or reliable for any appropriate reason. However, the original usage of the word "shorten" in the proposed language reflects the concern that data may come to light of a significant AWQS exceedance well before the end of the monitoring period and no notice to the Department would be made despite the potential degradation to public health and the environment. To address this concern, language has been added to Final Rule, subsection (E)(6) as follows, "[i]f a permittee conducting Baseline Discharge Monitoring collects a sample that is at or above a new or adjusted AWQS, the permittee shall notify ADEQ within five (5) days of becoming aware." This language has been added to the final rule for Baseline Discharge Monitoring and not Baseline Groundwater Monitoring as discharge monitoring shows the immediate discharge of a facility; whereas, groundwater point of compliance monitoring's representative scope is larger, including natural background concentration and sources, as well as, off-property sources of a constituent.

Comment 31: Interest Group

ADEQ appears to have added language to the specific groundwater monitoring and discharge monitoring sections that was not in prior stakeholder drafts of the implementation rule. This language appears to give ADEQ broad discretion to set limits in permits even before the full baseline monitoring period has concluded for certain reasons, including an exceedance of a new or adjusted AWQS or an increasing trend in the monitoring data. Arbitrarily cutting short the baseline monitoring period is not only inconsistent with the statutory process in A.R.S. 49-243(B)(2) and (3) but also creates permit implementation concerns and other problems. This language must be removed as it appears to disregard the intended purpose of the rule as represented by ADEQ.

A potential alternative to this language is to provide that the baseline monitoring period may be shortened or lengthened if the permittee so requests and ADEQ approves the request.

ADEQ Response 31:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (E) and (F). Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that proposed rule language allowing the Director to both shorten or lengthen the monitoring period if one or more events on a subsequent list occur has been revised to only allow the Director to lengthen if such an occurrence happens. The reasoning for this language adjustment is to require a full set of data be collected before characterization determinations are made (i.e. - "shorten" has been removed) and to retain an ability for the Director to lengthen the baseline monitoring period should the data collected not be usable or reliable for any appropriate reason. However, the original usage of the word "shorten" in the proposed language reflects the concern that data may come to light of a significant AWQS exceedance well before the end of the monitoring period and no notice to the Department would be made despite the potential degradation to public health and the environment. To address this concern, language has been added to Final Rule, subsection (E)(6) as follows, "[i]f a permittee conducting Baseline Discharge Monitoring collects a sample that is at or above a new or adjusted AWQS, the permittee shall notify ADEQ within five (5) days of becoming aware." This language has been added to the final rule for Baseline Discharge Monitoring and not Baseline Groundwater Monitoring as discharge monitoring shows the immediate discharge of a facility; whereas, groundwater point of compliance monitoring's representative scope is larger, including natural background concentration and sources, as well as, off-property sources of a constituent.

Comment 32: Interest Group

Although this language makes collection of groundwater monitoring at up, cross, or down gradient wells discretionary, the language should be removed because it creates unexplained suggestions contrary to the statutory process for setting limits at applicable points of compliance in A.R.S. § 49-243(B)(3). For instance, although the rule explains where groundwater sampling should be conducted for purposes of baseline monitoring (i.e., at applicable point of compliance monitoring locations), this language in proposed (C)(1)(e) suggests that baseline monitoring can be conducted at other locations, which creates confusion.

ADEQ Response 32:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E). Due to comments submitted on this proposed rule language, ADEQ has eliminated the proposed subsection R18-9-A215(C)(l)(e) which read, "[b]aseline groundwater monitoring may additionally occur at up, cross or down gradient wells in relation to the facility, if available." The Final Rule, at subsection (E)(1), reads, "Baseline Monitoring Requirements [1] Baseline monitoring shall occur at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205." However, the final rule also provides, in the Baseline Monitoring Report subsection, that a permittee may include additional information in the report for any reason, which may include data from up, cross or down gradient wells in relation to the facility.

Comment 33: Interest Group

The requirement to provide "a demonstration of the background concentrations of the pollutant at the facility's site" to support a demonstration that a pollutant is not likely to be present in a facility's discharge is counterintuitive and should be removed. The requirement appears to require background monitoring of groundwater or effluent when the purpose of the demonstration is to exempt a permittee from background or baseline monitoring. This requirement should be removed from the text of the rule.

In its place, we recommend inserting the following: "Process or other information demonstrating that the pollutant is not used or generated at the site or is otherwise not likely to be present in discharges at the site."

ADEQ Response 33:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has endorsed the commenter's suggested language in the final rule.

Comment 34: Interest Group

Proposed rule R18-9-A215(F) appears to give ADEQ broad authority to require facilities without discharge or groundwater monitoring locations in their existing individual APPs to mandate installation of groundwater monitoring wells or discharge monitoring when prior determinations were made that such monitoring was not required. This language should be removed or at least some type of reasonable criteria should be added to ensure that ADEQ only exercises the authority envisioned under the language when appropriate based on the presence of other relevant and reliable information.

ADEQ Response 34:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (I). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the language in the final rule to include a central criterion for when the Department may require permittees ***without*** ongoing monitoring specified in their individual permit to reasonably characterize their discharge and/or groundwater quality in relation to a pollutant with a new or adjusted AWQS. That criterion is "...if the Department has a reasonable basis to believe a pollutant with a new or adjusted AWQS is, or is likely to be, present in the facility's discharge." In preparation for this rulemaking, ADEQ scrutinized the individual permits and found that around 30 permits (out of approximately 500) do not have ongoing monitoring requirements. In most cases, this was specified in the permits due to the fact that the facilities released process water into sealed and contained, double-lined impoundments which can be assumed with reasonable certainty that no release or discharge from them can occur to the surrounding soils, vadose zone or aquifers under the approved design, construction and operation. With that said, and despite the fact that it is unlikely ADEQ would exercise this right, the Department wishes to retain the ability to require the reasonable characterization of such a facility's discharge and/or groundwater quality in relation to a pollutant with a new or adjusted AWQS if the above criterion is present. This is because the determinations to not require discharge and/or groundwater monitoring during the original application review and permit issuance were made under a previous set of Aquifer Water Quality Standards. Given the new and adjusted AWQSs being added through this collective set of rulemakings to the previous set of AWQSs, the Department's determinations concerning ongoing monitoring and other aspects of the permit may need to be re-evaluated as the factors relied upon in making those determinations have changed.

Comment 35: Industry

We support ADEQ's apparent intent to incorporate new or adjusted AWQS into existing individual APPs consistent with the statutory language at A.R.S. § 49-243(B)(2) and (3) and the implementing regulatory language at A.A.C. R18-9-A205(C). For groundwater points of compliance ("POCs"), this approach calls for a determination of existing aquifer water quality at the POCs before aquifer quality limits are imposed in the permit. However, we request that this approach could be reflected more clearly in the proposed rule, and that some elements of the proposed rule are confusing and not fully consistent with the overall approach.

ADEQ Response 35:

ADEQ appreciates the comment. Due to this comment and others submitted on the propped rule language showing concern over whether the language is in accord with the governing statute at A.R.S. § 49-243(B)(2) and (3), ADEQ has

revised the rule language to make clear that it is in accord. For example, consider Final Rule R18-9-A215, subsection (G), which requires a permittee, after the conclusion of Baseline Monitoring, to submit an administratively complete application to amend their permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A). The Baseline Monitoring Report shall be a component of the amendment application. Upon receipt, the Department shall review, process and determine whether a new or adjusted Alert Level, Discharge Limitation and/or AQL is required for a new or adjusted AWQS in accordance with R18-9-A205. Thereafter, the Department may incorporate, through a permit amendment, a new or adjusted Alert Level, Discharge Limitation and/or AQL for a new or adjusted AWQS in accordance with R18-9-A205. R18-9-A205(C) allows ADEQ to establish in individual permits an AQL that is higher than the corresponding AWQS in order to meet the criteria in A.R.S. § 49-243(B)(2) or (3).

Comment 36: Industry

ADEQ should not have to "approve" a demonstration under A.R.S. § 49-223(G) that a particular pollutant with a new or adjusted AWQS is not likely to be present in a discharge.

ADEQ Response 36:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to more closely align with the governing statute, A.R.S. § 49-223(G). The final rule language allows the submission of a "not likely" demonstration itself to be sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 37: Industry

ADEQ should have the flexibility to allow for different schedules for commencement of baseline monitoring or submission of demonstrations under A.R.S. § 49-223(G).

ADEQ Response 37:

ADEQ appreciates the comment. Due to this comment and others, ADEQ has revised the relevant rule language. Final Rule subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H).

Additionally, the rule language (*see* Final Rule, subsection (H)) for the "not likely" demonstration has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 38: Industry

ADEQ should not have the ability to cut short the baseline monitoring period unless the permittee concurs with this decision.

ADEQ Response 38:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (E) and (F). Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A). Additionally, proposed rule language allowing the Director to both shorten or lengthen the monitoring period if one or more events on a subsequent list occur has been revised to only allow the Director to lengthen if such an occurrence happens. The reasoning for this language adjustment is to require a full set of data be collected before characterization determinations are made (i.e. - "shorten" has been removed) and to retain an ability for the Director to lengthen the baseline monitoring period should the data collected not be usable or reliable for any appropriate reason. However, the original usage of the word "shorten" in the proposed language reflects the concern that data may come to light of a significant AWQS exceedance well before the end of the monitoring period and no notice to the Department would be made despite the potential degradation to public health and the environment. To address this concern, language has been added to Final Rule, subsection (E)(6) as follows, "[i]f a permittee conducting Baseline Discharge Monitoring collects a sample that is at or above a new or adjusted AWQS, the permittee shall notify ADEQ within five (5) days of becoming aware." This language has been added to the final rule for Baseline Discharge Monitoring and not Baseline Groundwater Monitoring as discharge monitoring shows the immediate discharge of a facility; whereas, groundwater point of compliance monitoring's representative scope is larger, including natural

background concentration and sources, as well as, off-property sources of a constituent.

Comment 39: Industry

Permittees should not have to submit baseline monitoring data during the monitoring period, but instead only at the end of that period as part of the baseline monitoring report (note that periodic monitoring for some pollutants covered in the new proposals, such as arsenic, will be occurring under existing permits, and that data will be promptly reported to ADEQ under those permits).

ADEQ Response 39:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A).

Comment 40: Industry

A.A.C. R18-9-A215(C)(1) would benefit from reorganization to improve clarity.

ADEQ Response 40:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E). Due to this comment and others submitted on the proposed rule language, ADEQ has reorganized the structure of the Baseline Monitoring Requirements.

Comment 41: Industry

References to monitoring at up, down or cross gradient wells, even if such monitoring is not mandatory, create confusion and should be eliminated.

ADEQ Response 41:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has eliminated the proposed subsection R18-9-A215(C)(l)(e) which read, "[b]aseline groundwater monitoring may additionally occur at up, cross or down gradient wells in relation to the facility, if available." The Final Rule, at subsection (E)(1), reads, "Baseline Monitoring Requirements [1] Baseline monitoring shall occur at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205." However, the final rule also provides, in the Baseline Monitoring Report subsection, that a permittee may include additional information in the report for any reason, which may include data from up, cross or down gradient wells in relation to the facility.

Comment 42: Industry

The criteria for making a demonstration under A.R.S. § 49-223(G) should be modified.

ADEQ Response 42:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the "not likely" demonstration language. Final Rule R18-9-A215, subsection (H) reads, "[a] pollutant with a new or adjusted AWQS shall be removed from the scope of Baseline Monitoring upon a demonstration that the pollutant is not likely to be present in a facility's discharge. The Department may require a permittee to begin Baseline Monitoring for a pollutant with a new or adjusted AWQS after review of the demonstration if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Demonstrations may include, but are not limited to: (1) [a] characterization of the facility's discharge in relation to the pollutant with a new or adjusted AWQS; (2) [p]ast monitoring and sampling data at the facility and the facility's site; or (3) [p]rocess or other information demonstrating that the pollutant is not used or generated at the site or is otherwise not likely to be present in discharges at the site." This new language and non-exhaustive list on how demonstrations may be made serves to show some of the methods a permittee might use in making a demonstration. This new language and non-exhaustive list on how demonstrations may be made serves to show some of the methods a permittee might use in making a demonstration. It should be noted that the submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 43: Utility

While we support the agency's goal of ensuring environmental protection, we believe the proposed measures will lead to significant operational challenges and unintended consequences for regulated facilities, other stakeholders, and analytical laboratories.

ADEQ Response 43:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (D), (E) and (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule language for proposed R18-9-A215, specifically addressing stakeholder concerns pertaining to operational challenges, unintended consequences for regulated facilities and analytical laboratory considerations. Concerning operational challenges, the Department notes that subsections (D) and (H) address many of the concerns stakeholders have cited on this topic. For example, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline

Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H).

Final Rule, subsection (E)(4) addresses approved sampling methods for new or adjusted AWQS. ADEQ has notified the Arizona Department of Health Services (ADHS) of the proposed establishment of Bromate, Chlorite, Haloacetic acids and Uranium as new Aquifer Water Quality Standards (AWQSs). ADEQ agrees that at the time of this rulemaking, there are no ADHS - approved wastewater methods for Bromate, Chlorite nor Haloacetic acids. However, the final rule accounts for this situation with the following language, "[s]ampling shall be conducted using an [ADHS] approved method for each pollutant with a newly established or adjusted [Aquifer Water Quality Standard] AWQSs, if available. If an [ADHS] approved method for a pollutant with a newly established or adjusted AWQSs does not exist, sampling shall be conducted using an EPA approved method or a method specified by the Director." For example, EPA Method 300.1 is an appropriate method for chlorite and bromite baseline monitoring in drinking water and groundwater. Additionally, Standard Methods 6251 for Haloacetic acids (HAAs) is an appropriate method for determining the concentration of HAAs in water and wastewater. Please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 44: Utility

Monthly Discharge Sampling Frequency. The requirement for monthly discharge sampling is excessively burdensome, especially for facilities with consistent, stable discharge characteristics. In cases where there are no significant operational or process changes, the value of frequent sampling is minimal and does not justify the associated costs or effort. Less frequent sampling, such as semiannually, would provide sufficient data for regulatory oversight while reducing undue strain on facilities and laboratories and control the potential for undue costs to be passed on to utility customers. Recommendation: Adopt a tiered or site-specific sampling frequency that reflects discharge stability and operational changes rather than imposing a uniform monthly requirement.

ADEQ Response 44:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (D). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 45: Utility

Challenges with Empty Impoundments. Another area of concern involves the treatment of impoundments that are routinely kept in an empty state (e.g., stormwater ponds). Facilities often face significant challenges in addressing these structures due to the practical inability to collect samples when no water is present. This limitation could lead to delays in site characterization or, worse, unintentional noncompliance if the agency does not approve a facility's demonstration that specific pollutants are absent from its discharge. Providing clearer guidance and flexibility in demonstrating pollutant absence is essential to prevent unnecessary compliance risks and operational disruptions. Recommendation: Provide guidance for addressing empty impoundments that ensures compliance while recognizing the practical limitations of sampling under such conditions.

ADEQ Response 45:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (D) and (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Furthermore, a request for an alternative baseline monitoring timeframe, duration and frequency could leverage or include in a proposal a similar approach to that specified in the individual APP "Technical Requirements" rule, specifically R18-9-A202(A)(4), R18-9-A202(A)(8)(B)(vi), etcetera.

Comment 46: Utility
Substantial Increase in Costs, Personnel, and Backlog. The proposed rule changes will result in a substantial increase in costs at the site level and resource demands for analytical laboratories. The heightened sampling and analytical requirements will necessitate additional personnel, equipment, and infrastructure to manage the increased workload. Due to other routine job functions, on site personnel do not have the bandwidth to address the increased sampling and this task will require hiring additional contractors at an increased cost. Smaller facilities, in particular, may struggle to comply due to limited budgets and resources, leading to potential backlogs and delays in meeting regulatory deadlines.
ADEQ Response 46:
ADEQ appreciates the comment. While ADEQ acknowledges that the Final Rule at R18-9-A215 will result in a cost increase for applicable permittees and a resource demand for analytical laboratories, the Department believes this rule language and its structure represent the least burdensome orientation necessary to properly implement new or adjusted AWQSs into (potentially) 500 individual permits (*see* statutory mandate at A.R.S. § 49-223).
In preparation for this rulemaking, ADEQ estimated that the analytical laboratory fees would cost $4,500 for 8 monitoring events for all seven (7) of the new or adjusted AWQSs at one monitoring location. The monitoring equipment could cost around $1,500 which includes rental for a water quality meter and a depth to groundwater level sounder, plus purchase of consumable products such as deionized water, conductivity and pH calibration solutions, and nitrile sampling gloves. The employee labor costs were estimated at $35 per hour and each monitoring event would require 4 hours of sampling equipment preparation, 12 hours for sample collection and lab delivery, and 4 hours to review the laboratory analytical results. This was estimated to cost $5,600 for all 8 monitoring events. Then, ADEQ estimated the employee labor costs for preparing the baseline monitoring report with a request to establish Alert Levels and Aquifer Quality Limits for all 7 parameters. This effort included a draft report, internal review, final report edits, and submission to ADEQ. The employee effort for the baseline monitoring report was estimated at $3,400. Altogether the cost estimate includes: $4,500 lab + $1,500 equipment + $5,600 employee labor for sampling + $3,400 employee labor for baseline monitoring report for a total of $15,000.
Additionally, due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule for flexibility purposes, allowing for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency (*see* generally, Final Rule R18-9-A215, subsections (D) and (H)). Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.
Comment 47: Utility
Submittal of Baseline Discharge and Groundwater Monitoring Data Throughout Monitoring Period. Given the objective of characterizing discharges and associated impacts, submittal of incomplete/partial data throughout the monitoring period is unwarranted, burdensome, and does not contribute to regulatory compliance. The data set as a whole will be presented in the Baseline Monitoring Report where it can be properly evaluated, and conclusions supported.
ADEQ Response 47:
ADEQ appreciates the comment. Due to this comment and others submitted on the proposed subsection language, ADEQ has determined that reporting of Baseline Monitoring will not be required throughout the baseline monitoring period(s). Therefore this proposed rule language has been removed from the final rule. However, the development of a Baseline Monitoring Report within three months of receipt of the last sample result remains a requirement, along with subsequent submittal of an administratively complete application to amend the permit to reflect a new or adjusted AWQS in accordance with the amendment schedule described in Final Rule R18-9-A215, subsection (A).
Comment 48: Utility
Consider developing clear, streamlined procedures for facilities to demonstrate the absence of pollutants without requiring extensive sampling or lengthy approval processes.
ADEQ Response 48:
Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule for flexibility purposes, allowing for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency (*see* generally, Final Rule R18-9-A215, subsections (D) and (H)). Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS

automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge.

Comment 49: Utility

We appreciate the agency's commitment to stakeholder engagement and urge you to carefully weigh the potential impacts of these proposals on the regulated community. By incorporating greater flexibility and clarity into the rulemaking process, the agency can achieve its regulatory objectives without imposing undue burdens.

ADEQ Response 49:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to be more flexible and clear while still achieving regulatory objections in an orientation that the Department believes is the least burdensome necessary to properly implement new or adjusted AWQS into (potentially) 500 individual permits (*see* statutory mandate at A.R.S. § 49-223).

Comment 50: Local Government / Utility

Due to the number of APP permitted facilities operated by us and thereby the number of compliance monitoring locations, we are concerned that section R18-9-A215(C) will require us to begin baseline monitoring for routine discharge and groundwater within 3 months from the effective date of new or adjusted AWQS. This will also be a requirement each time that ADEQ releases new or adjusted AWQS in the future. Due to the extra burden this will place on our already tight budget, we request that ADEQ modify this timeline to allow for the baseline monitoring for a given permit to begin within 18 months from the effective date of new or adjusted AWQS. This would allow entities with many permits to begin baseline monitoring for one permit at a later date than another permit, and across several budget years.

This modification will not interfere with ADEQ's requirement to have all permit holders submit an administratively complete amendment application no later than four years after the effective date as proposed in R18-9-A215(B). Because the baseline monitoring will take 24 months of sampling, even a permit holder who begins baseline monitoring at the very end of our proposed 18 months would be able to complete the baseline monitoring at 42 months. In the given example, this permit holder would complete their monitoring with 6 months until the application deadline. Extending this time line is a justified request, and will allow entities with many permits to balance their baseline monitoring efforts across the four year implementation instead of starting baseline monitoring for all permits within the first 3 months.

ADEQ Response 50:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule for flexibility purposes, allowing for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency (*see* generally, Final Rule R18-9-A215, subsections (D) and (H)). Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. While ADEQ acknowledges that the Final Rule at R18-9-A215 (including the changes described above) will result in a cost increase at facilities, the Department believes this rule represents the least burdensome orientation necessary to properly implement new or adjusted AWQSs into (potentially) 500 individual permits (*see* statutory mandate at A.R.S. § 49-223).

Comment 51: Interest Group

Concerns About Timelines and Exemptions. ADEQ's proposed timelines for compliance - up to four years - are excessive, given that many federal standards have been in place for decades. Additionally, provisions allowing exemptions under R18-9-A215 undermine the effectiveness of these standards. We recommend that ADEQ:

- Reduce compliance timelines to no more than two years.
- Eliminate exemptions that weaken the protective intent of AWQS.
- Conduct immediate reviews of high-risk facilities, prioritizing those with documented violations.

ADEQ Response 51:

ADEQ appreciates the comment. ADEQ followed the lead of EPA in allowing individually permitted facilities a reasonable number of years to come into compliance with new water quality standards (*see* 89 *Federal Register* 32533).

In EPA's Final Rule for the new PFAS MCLs (effective 6/25/24) under the Safe Drinking Water Act (SDWA) regulating Public Water Systems (PWSs) the following timeline for compliance is laid out, including conducting monitoring within approximately 3 years of the effective date and installation of any necessary capital improvements in order to come into compliance within approximately 5 years of the effective date,

> *Consistent with the timelines set out under* [Safe Drinking Water Act] *SDWA,* [Public Water Systems] *PWSs are required to conduct their initial monitoring by April 26, 2027, and to conduct* [Public Notice] *PN and include PFAS information in the* [Consumer Confidence Reports] *CCR. After carefully considering public comment, the EPA is extending the compliance deadline for all systems nationwide to meet the MCL to allow additional time for capital improvements. As such, PWSs are required to make any necessary capital improvements and comply with the PFAS MCLs by April 26, 2029 [89 FR 32533].*

The only exemption present in the final rule at R18-9-A215 is for a "not likely" demonstration (*see* Final Rule, subsection (H)). This exemption is mandated by Arizona statute at A.R.S. § 49-223(G). The Department is considering a risk-based priority in the development of an amendment schedule pursuant to Final Rule subsection (A). ADEQ believes the structure of this rule properly balances the agency's mission of protecting public health and the environment with a reasonable time frame for compliance for the regulated community.

Comment 52: Interest Group

Environmental Justice Considerations. We are concerned that the draft rule does not adequately address environmental justice impacts. Communities near high-risk facilities, such as the Havasupai Tribe near the Pinyon Plain Mine, face disproportionate risks of groundwater contamination. ADEQ must incorporate environmental justice analyses and engage directly with impacted communities, particularly Tribal nations, to ensure equitable protections.

ADEQ Response 52:

ADEQ appreciates the comment. Concerning Environmental Justice (EJ), in the case of this rulemaking, A.R.S. § 49-223 mandates that ADEQ open a rulemaking docket for the adoption of federal drinking water maximum contaminant levels (MCLs) as state aquifer water quality standards (AWQSs) within one year of the Environmental Protection Agency's (EPA's) establishment of new or adjusted MCLs. Through the Aquifer Protection Program (APP), the AWQSs apply to facilities discharging regulated pollutants to the ground in all Arizona lands under state jurisdiction. No special application of the standards exists beyond the specifics of the individual APP permits themselves. Besides the ability of the Department to establish an alternative AWQS upon receipt of "substantial opposition" from stakeholders, the AWQS statutory mandate from the Department is clear and simple.

ADEQ carefully considered and took actions to ensure both fair treatment and meaningful involvement as part of the AWQS rulemaking. All stakeholders, including communities near high-risk facilities, tribes and other interested parties were welcome to participate in ADEQ's extensive public participation process for this rulemaking. As part of this process, ADEQ held a 30 day public comment period in accordance with A.R.S. 41-1023(B), as well as, held nine formal stakeholder events over the course of over 2 years (9/29/22, 6/8/23, 9/11/23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25). With respect to tribal outreach, ADEQ Leadership presented a rulemaking briefing on the AWQS rulemaking at the Intertribal Council of Arizona (ITCA) - Tribal Leaders' Water Policy Council Meeting on 8/23/23 (the Havasupai Tribe is a member of ITCA). Additionally, the Department held dedicated Tribal Listening Sessions throughout the development of the rule; specifically on 9/11/23, 12/12/23 and 11/20/24. ADEQ has for years aimed to meet the requirements in statute for tribal relation responsibilities pursuant to A.R.S. § 41-2051(C). ADEQ believes the terms in the current tribal consultation and collaboration policy were followed while conducting this rulemaking. The policy can be reviewed here: https://static.azdeq.gov/policy/ADEQ_Tribal_Policy.pdf.

Comment 53: Utility

We encourage ADEQ to consider the timing of the process by which a regulated entity subject to R18-9-A215 would make a demonstration pursuant to R18-9-A215(E). As written, APP permittees subject to the rule must initiate Baseline Monitoring within three months of the effective date of a new or adjusted AWQS unless a demonstration is made pursuant to R18-9-A215(E). It is unclear exactly what this demonstration must entail, and it is likely that permittees will seek a pre-demonstration meeting with ADEQ to better understand the requirements. Three months does not leave sufficient time to compile a demonstration and obtain approval from ADEQ – particularly if there are multiple entities seeking to make similar demonstrations.

ADEQ Response 53:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (D) and (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove

the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Also, the Department has plans to release an amendment schedule pursuant to Final Rule R18-9-A215(A), and other guidance on Baseline Monitoring and the "not likely" demonstration, pursuant to Final Rule R18-9-A215(H).

Comment 54: Utility

It is less clear how the Proposed Rule would be applied to complex permits. A Baseline Monitoring plan will likely need to be tailored to capture relevant information that ADEQ seeks. It may not be relevant or necessary to conduct Baseline Monitoring at all groundwater points of compliance, discharge monitoring locations, and/or other monitoring locations identified in a complex APP. ADEQ should provide a process for complex permits to develop a Baseline Monitoring plan in consultation with ADEQ.

ADEQ Response 54:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule for clarity. The Department believes the Final Rule at R18-9-A215 delineates the requirements of Baseline Monitoring at subsection (E), while also providing sufficient and functional rule language for Baseline Monitoring timing and applicability at subsection (C), an opportunity for submission of a request for an alternative Baseline Monitoring timeframe, duration and/or frequency at subsection (D) and the Baseline Monitoring report requirements at subsection (G). The Department notes that Final Rule R18-9-A215(E) specifies which monitoring locations are required for baseline monitoring, limiting the scope to "...permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205." The addition of Final Rule R18-9-A215, subsection (D), allows for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 55: Utility

Usage of the Terms "Active Discharge" and "Limits Based on AWQS". We recommend that ADEQ remove the term "active discharge" from the Proposed Rule. The term "active discharge" is undefined and differs from the definition of discharge in A.R.S. § 49-201(12), leading to confusion. Instead of referring to "active discharge, groundwater points of compliance and/or other monitoring locations" in R18-9-A215, we recommend that ADEQ refer to "groundwater points of compliance, discharge monitoring locations, or other monitoring locations specified in the permit."

ADEQ Response 55:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "active" with "permit-required". The new term's usage eliminates ambiguity and makes it patently clear that baseline monitoring requirements are meant to occur at the permit-required compliance monitoring locations.

Comment 56: Utility

It is not clear what is meant by "limits based on AWQS." We recommend that ADEQ utilize the terms from R18-9-A205 and replace the language "limits based on AWQS" with "alert levels, discharge limitations or AQLs based on AWQS pursuant to R18-9-A205."

ADEQ Response 56:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "limits based on AWQS" with "alert levels, discharge limitations or AQLs based on AWQSs pursuant to R18-9-A205".

Comment 57: Utility

Definition of "Baseline Monitoring". The Proposed Rule is inconsistent in its use of the terms Baseline Monitoring, Baseline Discharge and/or Groundwater Monitoring. We believe that Baseline Monitoring should be a defined term meant to encompass baseline groundwater monitoring and baseline discharge and/or other monitoring locations.

ADEQ Response 57:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215. Due to this comment and others submitted on the proposed rule language, ADEQ has made its usage of the term "Baseline Monitoring" more consistent in the final rule. ADEQ does not believe the term "Baseline Monitoring" needs to be defined for the purposes of final rule as the term inherently describes its function for the purpose of developing data to be used to appropriately implement new or adjusted AWQS into the applicable, issued individual permits.

Comment 58: Utility

Waivers and Demonstrations of Constituents Not Likely to be Present. A demonstration that a pollutant is not likely to be present in a facility's discharge, per proposed rule subsection (E), provides only examples where monitoring has already occurred and submitted as evidence. We suggest adding language to allow for operational or design practices to demonstrate that pollutants with new or adjusted AWQS are not likely to be present. For example, if a facility does not utilize disinfection products, a facility should not be required to have data establishing the absence of disinfection byproducts.

ADEQ Response 58:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (H). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the "not likely" demonstration rule language to more closely reflect A.R.S. § 49-223(G). Additionally, the revised rule makes more clear that the submission of a demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Also, the final rule language allows demonstrations to include, but to not be limited to, (1) a characterization of the facility's discharge in relation to the pollutant with a new or adjusted AWQS, (2) past monitoring and sampling data at the facility and the facility's site; or (3) process or other information demonstrating that the pollutant is not used or generated at the site or is otherwise not likely to be present in discharges at the site.

Comment 59: Utility

Monitoring Timeline. Proposed rule R18-9-A215(B)(2) requires monitoring to begin "within three months of the effective date of a new or adjusted AWQS unless a demonstration is approved by the Department." As noted above, three months is an insufficient amount of time for a facility to make, and for ADEQ to approve, a demonstration. In addition, regulated entities should not be required to conduct baseline sampling while waiting for ADEQ to review and make a decision regarding a demonstration. Consistent with its comments above, we suggest the following revision:

R18-9-A215(C) - *Persons holding Individual APPs that were issued as of the effective date of a new or adjusted AWQS with ~~active discharge,~~ groundwater point<u>s</u> of compliance<u>, discharge monitoring locations</u> and/or other monitoring locations specified in the permit that are subject to ~~limits~~ <u>alert levels, discharge limitations, or AQLs</u> based on AWQSs <u>pursuant to R18-9-A205</u> shall begin Baseline ~~Discharge and/or Groundwater~~ Monitoring for all new or adjusted <u>AWQS or submit a demonstration pursuant to subsection (E) to the Department</u> within three months of the effective date of a new or adjusted AWQS ~~unless a demonstration is approved by the Department~~.*

ADEQ Response 59:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (C) and (D). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule to allow for a submittal to be sent to the Department requesting an alternative baseline monitoring timeframe, duration and frequency. Final Rule, subsection (D) reads as follows, "...[p]ermittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein." While this language does not alter the requirement to begin Baseline Monitoring within three months of the effective date of a new or adjusted AWQS automatically, it does allow for an alternative timeframe request to be submitted to the Department within three months. Such a request could include the adjustment of when to begin Baseline Monitoring, which would, in turn, allow a permittee more time to conduct and submit a "not likely" demonstration pursuant to subsection (H). Additionally, the rule language for the "not likely" demonstration pursuant to Final Rule, subsection (H), has been updated to more closely reflect A.R.S. § 49-223(G). The submission of a "not likely" demonstration itself is sufficient for a permittee to remove the pollutant with a new or adjusted AWQS from the scope of Baseline Monitoring. However, upon review of the demonstration, the Department may require a permittee to commence Baseline Monitoring for the pollutant if the Department has a reasonable basis to believe the pollutant is, or is likely to be, present in the facility's discharge. Additionally, at Final Rule, R18-9-A215, subsection (E)(1), ADEQ has replaced "active" with "permit-required". The new term's usage eliminates ambiguity and makes it patently clear that baseline monitoring requirements are meant to occur at the permit-required compliance monitoring locations. Also, at Final Rule R18-9-A215, subsection (E)(1), ADEQ has replaced "limits based on AWQS" with "alert levels, discharge limitations or AQLs pursuant to R18-9-A205".

Comment 60: Utility

Clarification of Sample Collection Requirements. We request that ADEQ improve the clarity of the Baseline Monitoring sampling requirement by specifying whether samples should be discrete or "grab" samples, or composite samples.

ADEQ Response 60:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(2). Similarly to the applicability of Baseline Monitoring on individual APP permittees in subsection (C), the type of sampling (when it comes to discrete or grab or composite) expected when conducting Baseline Monitoring remains the same as the original permit's routine discharge or groundwater monitoring sampling requirements, pursuant to R18-9-A206.

Comment 61: Utility

Clarification is necessary on the Baseline Monitoring Report submittal as to when a permit that has both discharge and groundwater monitoring specified in the permit should submit the report. Provided that the baseline report is to be submitted within three months following the last sample collection and that the discharge and monitoring well points are on different monitoring schedules, clarification is necessary as to whether separate baseline reports are required or a baseline report including both.

ADEQ Response 61:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed rule language, ADEQ has revised the relevant language. Final Rule, subsection (F)(2) states, "[p]ermittees subject to both Groundwater and Discharge Baseline Monitoring may develop a combined, comprehensive Baseline Monitoring Report within three months of receipt of the last sample result." Additionally, Final Rule, subsection (G) requires, "[a]fter the conclusion of Baseline Monitoring, a permittee shall submit an administratively complete application to amend their permit to reflect a

new or adjusted AWQS in accordance with the amendment schedule described in subsection (A). The Baseline Monitoring Report shall be a component of the amendment application…" Also, concerning flexibility, Final Rule subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 62: Utility

Clarification is necessary if analytes can be excluded or not from Baseline Monitoring if the compound is already on the permit and significant historical data sets already exist. For example, Arsenic and *E. coli* are already listed in our permits for both discharge and groundwater monitoring, with significant historical data sets in existence.

ADEQ Response 62:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsections (D), (E) and (F). Due to this comment and others submitted on the proposed rule language, ADEQ has revised the final rule. Final Rule, subsection (E)(3) allows, "[p]ermittees that have collected relevant samples prior to the Baseline Monitoring period at permit-required groundwater point of compliance, discharge or other monitoring locations subject to alert levels, discharge limitations or AQLs pursuant to R18-9-A205, may use that data to develop the Baseline Monitoring Report. Previously collected data may be used to shorten or eliminate a Baseline Monitoring period if all data components are (a) [m]ethodologically sound, (b) [r]epresent a complete data set per the applicable requirements of Baseline Monitoring, and (c) [m]eets other applicable requirements of Baseline Monitoring." Additionally, Final Rule, subsection (F)(1) states, "[a]t the conclusion of Baseline Monitoring, or upon the compilation of a complete and representative data set pursuant to subsection (E)(3) above, permittees shall develop a Baseline Monitoring Report within three months of receipt of the last sample result." Also, concerning flexibility, Final Rule, subsection (D) states, "Alternative Baseline Monitoring Timeframe, Duration and Frequency. Permittees subject to Baseline Monitoring may submit a request to conduct Baseline Monitoring under an alternative timeframe, monitoring duration and sampling frequency within three months of a new or adjusted AWQS effective date with reasonable cause for the request included therein."

Comment 63: Utility

Proposed Rule R18-9-A215(F) - The term "active discharge" is used. Please refer to the comment above under R18-9-A215(C)(l)(c).

ADEQ Response 63:

ADEQ appreciates the comment. *See* generally, Final Rule R18-9-A215, subsection (E)(1). Due to this comment and others submitted on the proposed rule language, ADEQ has replaced "active" with "permit-required". The new term's usage eliminates ambiguity and makes it patently clear that baseline monitoring requirements are meant to occur at the permit-required compliance monitoring locations.

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2023 through December 31, 2023

Questions about these rules? Contact:
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The release of this Chapter in Supp. 23-4 replaces Supp. 23-2, 1-180 pages.
Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

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Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

Authority: A.R.S. §§ 49-203(A)(2), 49-203(A)(6), 49-203(A)(9), 49-104(C)(1)

Supp. 23-4

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Article 5, consisting of Section R18-9-501, made by final rulemaking at 7 A.A.R. 1768, effective April 5, 2001 (Supp. 01-2).

ARTICLE 6. UNDERGROUND INJECTION CONTROL

Article 6, consisting of Parts A through J, and Table 1, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

Article 6, consisting of Sections R18-9-601 through R18-9-603, repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

Article 6, consisting of Sections R18-9-601 through R18-9-603, adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1).

PART A. GENERAL PROVISIONS

Article 6, Part A, consisting of Sections R18-9-A601 through R18-9-A606, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART B. GENERAL PROGRAM REQUIREMENTS

Article 6, Part B, consisting of Sections R18-9-B607 through R18-9-B615, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

Article 6, Part C, consisting of Sections R18-9-C616 through R18-9-C634, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION

Article 6, Part D, consisting of Sections R18-9-D635 through R18-9-D639, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART E. CLASS I INJECTION WELL REQUIREMENTS

Article 6, Part E, consisting of Sections R18-9-E640 through R18-9-E642, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART F. CLASS II INJECTION WELL REQUIREMENTS

Article 6, Part F, consisting of Sections R18-9-F643 through R18-9-F645, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART G. CLASS III INJECTION WELL REQUIREMENTS

Article 6, Part F, consisting of Sections R18-9-G646 through R18-9-G648, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART H. CLASS IV INJECTION WELL REQUIREMENTS

Article 6, Part H, consisting of Section R18-9-H649, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART I. CLASS V INJECTION WELL REQUIREMENTS

Article 6, Part I, consisting of Sections R18-9-I650 through R18-9-I655, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART J. CLASS VI INJECTION WELL REQUIREMENTS

Article 6, Part J, consisting of Sections R18-9-J656 through R18-9-J670, made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

ARTICLE 7. USE OF RECYCLED WATER

Article 4, consisting of Sections R9-20-401 through R9-20-40,7 renumbered as Article 7, Sections R18-9-701 through R18-9-707 (Supp. 87-3).

Article 4, consisting of Sections R9-20-401 through R9-20-407, adopted effective May 24, 1985.

Former Article 4, consisting of Sections R9-20-401 through R9-20-408, repealed effective May 24, 1985.

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Article 8, consisting of Sections R18-9-801 through R18-9-819, repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

Article 3, consisting of Sections R9-8-311 through R9-8-361, renumbered as Article 8, Sections R18-9-801 through R18-9-819 (Supp. 87-3).

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 9, consisting of Sections R18-9-901 through R18-9-914 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

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ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

Article 10, consisting of Sections R18-9-1001 through R18-9-1014 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

R18-9-101. Definitions

In addition to the definitions established in A.R.S. § 49-201, the following terms apply to Articles 1, 2, 3, and 4 of this Chapter:

1. "Aggregate" means a clean graded hard rock, volcanic rock, or gravel of uniform size, between 3/4 inch and 2 1/2 inches in diameter, offering 30 percent or more void space, washed or prepared to be free of fine materials that will impair absorption surface performance, and has a hardness value of three or greater on the Moh's Scale of Hardness (can scratch a copper penny).
2. "Alert level" means a value or criterion established in an individual permit that serves as an early warning indicating a potential violation of a permit condition related to BADCT or the discharge of a pollutant to groundwater.
3. "AQL" means an aquifer quality limit and is a permit limitation set for aquifer water quality measured at the point of compliance that either represents an Aquifer Water Quality Standard or, if an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, represents the ambient water quality for that pollutant.
4. "Aquifer Protection Permit" means an individual permit or a general permit issued under A.R.S. §§ 49-203, 49-241 through 49-252, and Articles 1, 2, and 3 of this Chapter.
5. "Aquifer Water Quality Standard" means a standard established under A.R.S. §§ 49-221 and 49-223.
6. "AZPDES" means the Arizona Pollutant Discharge Elimination System, which is the state program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under A.R.S. Title 49, Chapter 2, Article 3.1 and 18 A.A.C. 9, Articles 9 and 10.
7. "BADCT" means the best available demonstrated control technology, process, operating method, or other alternative to achieve the greatest degree of discharge reduction determined for a facility by the Director under A.R.S. § 49-243.
8. "Bedroom" means, for the purpose of determining design flow for an on-site wastewater treatment facility for a dwelling, any room that has:
   a. A floor space of at least 70 square feet in area, excluding closets;
   b A ceiling height of at least 7 feet;
   c. Electrical service and ventilation;
   d. A closet or an area where a closet could be constructed;
   e. At least one window capable of being opened and used for emergency egress; and
   f. A method of entry and exit to the room that allows the room to be considered distinct from other rooms in the dwelling and to afford a level of privacy customarily expected for such a room.
9. "Book net worth" means the net difference between total assets and total liabilities.
10. "CCR" means coal combustion residuals which include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.
11. "CCR landfill" means an area of land or an excavation that receives CCR and which is not a municipal solid waste landfill, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. A CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of beneficial use of CCR.
12. "CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.
13. "CCR unit" means any CCR landfill which receives CCR, any CCR surface impoundment designed to hold an accumulation of CCR and liquids, and the unit treats, stores or disposes of CCR. CCR unit includes a lateral expansion of a CCR unit, or a combination of more than one of these units that receives CCR.
14. "Cesspool" means a pit, collection structure, or subsurface fluid distribution system, which may or may not be partially lined, that receives discharged sewage. A cesspool is not an on-site wastewater treatment facility, such as a septic tank, vault, or other structure permitted under Article 3 of this Chapter.
15. "Chamber technology" means a method for dispersing treated wastewater into soil from an on-site wastewater treatment facility by one or more manufactured leaching chambers with an open bottom and louvered, load-bearing sidewalls that substitute for an aggregate-filled trench described in R18-9-E302.
16. "CMOM Plan" means a Capacity, Management, Operations, and Maintenance Plan, which is a written plan that describes the activities a permittee will engage in and actions a permittee will take to ensure that the capacity of the sewage collection system, when unobstructed, is sufficient to convey the peak wet weather flow through each reach of sewer, and provides for the management, operation, and maintenance of the permittee's sewage collection system.
17. "Design capacity" means the volume of a containment feature at a discharging facility that accommodates all permitted flows and meets all Aquifer Protection Permit conditions, including allowances for appropriate peaking and safety factors to ensure sustained, reliable operation.
18. "Design flow" means the daily flow rate a facility is designed to accommodate on a sustained basis while satisfying all Aquifer Protection Permit discharge limitations and treatment and operational requirements. The design flow either incorporates or is used with appropriate peaking and safety factors to ensure sustained, reliable operation.
19. "Direct reuse site" means an area where reclaimed water is applied or impounded.
20. "Disposal works" means the system for disposing treated wastewater generated by the treatment works of a sewage treatment facility or on-site wastewater treatment facility, by surface or subsurface methods. Disposal works do not include systems for activities regulated under 18 A.A.C. 9, Article 7.
21. "*Drywell*" *means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the*

Federal Underground Injection Control Program (P.L. 93-523, part C), as amended. A.R.S. § 49-331(3)

22. "Dwelling" means any building, structure, or improvement intended for residential use or related activity, including a house, an apartment unit, a condominium unit, a townhouse, or a mobile or manufactured home that has been constructed or will be constructed on real property.
23. "Final permit determination" means a written notification to the applicant of the Director's final decision whether to issue or deny an Individual Aquifer Protection Permit.
24. *"Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet.* A.R.S. § 49-201(20).
25. "Groundwater Quality Protection Permit" means a permit issued by the Arizona Department of Health Services or the Department before September 27, 1989 that regulates the discharge of pollutants that may affect groundwater.
26. "Homeowner's association" means a nonprofit corporation or unincorporated association of owners created pursuant to a declaration to own and operate portions of a planned community and which has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.
27. "Injection well" means a well that receives a discharge through pressure injection or gravity flow.
28. "Intermediate stockpile" means in-process material not intended for long-term storage that is in transit from one process to another at a mining site. Intermediate stockpile does not include metallic ore concentrate stockpiles or feedstocks not originating at the mining site.
29. "Land treatment facility" means an operation designed to treat and improve the quality of waste, wastewater, or both, by placement wholly or in part on the land surface to perform part or all of the treatment. A land treatment facility includes a facility that performs biosolids drying, processing, or composting, but not land application performed in compliance with 18 A.A.C. 9, Article 10.
30. "Mining site" means a site assigned one or more of the following primary Standard Industrial Classification Codes: 10, 12, 14, 32, and 33, and includes noncontiguous properties owned or operated by the same person and connected by a right-of-way controlled by that person to which the public is not allowed access.
31. "Nitrogen Management Area" means an area designated by the Director for which the Director prescribes measures on an area-wide basis to control sources of nitrogen, including cumulative discharges from on-site wastewater treatment facilities, that threaten to cause or have caused an exceedance of the Aquifer Water Quality Standard for nitrate.
32. "Notice of Disposal" means a document submitted to the Arizona Department of Health Services or the Department before September 27, 1989, giving notification of a pollutant discharge that may affect groundwater.
33. *"On-site wastewater treatment facility" means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.* A.R.S. § 49-201(29). An on-site wastewater treatment facility does not include a pre-fabricated, manufactured treatment works that typically uses an activated sludge unit process and has a design flow of 3000 gallons per day or more.
34. "Operational life" means the designed or planned period during which a facility remains operational while being subject to permit conditions, including closure requirements. Operational life does not include post-closure activities.
35. "*Person*" *means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.* A.R.S. § 49-201(33). For the purposes of permitting a sewage treatment facility under Article 2 of this Chapter, person does not include a homeowner's association.
36. "Pilot project" means a short-term, limited-scale test designed to gain information regarding site conditions, project feasibility, or application of a new technology.
37. "Process solution" means a pregnant leach solution, barren solution, raffinate, or other solution uniquely associated with the mining or metals recovery process.
38. "Residential soil remediation level" means the applicable predetermined standard established in 18 A.A.C. 7, Article 2, Appendix A.
39. "Seasonal high water table" means the free surface representing the highest point of groundwater rise within an aquifer due to seasonal water table changes over the course of a year.
40. "Setback" means a minimum horizontal distance maintained between a feature of a discharging facility and a potential point of impact.
41. "Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, other plumbing fixtures, and waste pumped from septic tanks in places of human habitation, employment, or recreation. Sewage does not include gray water as defined in A.R.S. § 49-201(20), if the gray water is reused according to 18 A.A.C. 9, Article 7.
42. "Sewage collection system" means a system of pipelines, conduits, manholes, pumping stations, force mains, and all other structures, devices, and appurtenances that collect, contain, and convey sewage from its sources to the entry of a sewage treatment facility or on-site wastewater treatment facility serving sources other than a single-family dwelling.
43. "Sewage treatment facility" means a plant or system for sewage treatment and disposal, except for an on-site wastewater treatment facility, that consists of treatment works, disposal works and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices. A sewage treatment facility does not include components of the sewage collection system or the reclaimed water distribution system.
44. "Surface impoundment" means a pit, pond, or lagoon with a surface dimension equal to or greater than its depth, and used for the storage, holding, settling, treatment, or discharge of liquid pollutants or pollutants containing free liquids.
45. "Tracer" means a substance, such as a dye or other chemical, used to change the characteristic of water or some other fluid to detect movement.

46. "Tracer study" means a test conducted using a tracer to measure the flow velocity, hydraulic conductivity, flow direction, hydrodynamic dispersion, partitioning coefficient, or other property of a hydrologic system.
47. "Treatment works" means a plant, device, unit process, or other works, regardless of ownership, used for treating, stabilizing, or holding municipal or domestic sewage in a sewage treatment facility or on-site wastewater treatment facility.
48. "Typical sewage" means sewage conveyed to an on-site wastewater treatment facility in which the total suspended solids (TSS) content does not exceed 430 mg/l, the five-day biochemical oxygen demand (BOD_5) does not exceed 380 mg/l, the total nitrogen does not exceed 53 mg/l, and the content of oil and grease does not exceed 75 mg/l.
49. "*Underground storage facility*" *means a constructed underground storage facility or a managed underground storage facility.* A.R.S. § 45-802.01(21).
50. "Waters of the United States" means:
    a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
    b. All interstate waters, including interstate wetlands;
    c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any waters:
        i. That are or could be used by interstate or foreign travelers for recreational or other purposes;
        ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
        iii. That are used or could be used for industrial purposes by industries in interstate commerce;
    d. All impoundments of waters defined as waters of the United States under this definition;
    e. Tributaries of waters identified in subsections (a) through (d);
    f. The territorial sea; and
    g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subsections (a) through (f).

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final expedited rulemaking at 25 A.A.R. 3060, effective immediately September 23, 2019, pursuant to A.R.S. § 41-1027(H) (Supp. 19-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply
Articles 1, 2, and 3 do not apply to:

1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-103. Class Exemptions
Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10;
5. CCR Units regulated by 40 CFR 257, Subpart D or by a permit in effect under a Department program approved by the United States Environmental Protection Agency in accordance with 42 U.S.C. § 6945(d)(1);
6. Underground Injection Control Class V injection wells regulated under an area or individual permit per 18 A.A.C. 9, Article 6, Part I.

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Subsection 4 citation corrected to reflect recodification at 7 A.A.R. 2522 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final expedited rulemaking at 25 A.A.R. 3060, effective immediately September 23, 2019, pursuant to A.R.S. § 41-1027(H) (Supp. 19-3). Amended by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-104. Transition from Notices of Disposal and Groundwater Quality Protection Permitted Facilities
A person who owns, operates, or operated a facility on or after January 1, 1986 for which a Notice of Disposal was filed or a Groundwater Quality Protection Permit was issued shall, within 90 days from the date on the Director's notification, submit an application for an Aquifer Protection Permit or a closure plan as specified under A.R.S. § 49-252. The person shall obtain a permit for continued operation, closure of the facility, or clean closure approval.

Failure to submit an application or closure plan as required terminates continuance of the Notice of Disposal or Groundwater Quality Protection Permit.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-105. Permit Continuance

A. Continuance.
1. Groundwater Quality Protection Permits.
   a. Subject to R18-9-104 and other provisions of this Section, a Groundwater Quality Protection Permit issued before September 27, 1989 is valid according to the terms of the permit until replaced by an Aquifer Protection Permit issued by the Department.
   b. A person who owns or operates a facility to which a Groundwater Quality Protection Permit was issued is in compliance with Articles 1, 2, and 3 of this Chapter and A.R.S. Title 49, Chapter 2, Article 3, if the facility:
      i. Meets the conditions of the Groundwater Quality Protection Permit; and
      ii. Is not causing or contributing to the violation of any Aquifer Water Quality Standard at a point of compliance, determined by the criteria in A.R.S. § 49-244.
2. Notice of Disposal. A person who owns or operates a facility for which a Notice of Disposal was filed before September 27, 1989 complies with Articles 1, 2, and 3 of this Chapter and A.R.S. Title 49, Chapter 2, Article 3 if the facility is not causing or contributing to the violation of an Aquifer Water Quality Standard at a point of compliance, determined by the criteria in A.R.S. § 49-244.
3. Aquifer Protection Permit application submittal. A person who did not file a Notice of Disposal and does not possess a Groundwater Quality Protection Permit or an Aquifer Protection Permit for an existing facility, but submitted the information required in applicable rules before December 27, 1989, is in compliance with Articles 1, 2, and 3 of this Chapter only if the person submitted an Aquifer Protection Permit application to the Department before January 1, 2001.

B. Applicability. Subsection (A) applies until the Director:
1. Issues an Aquifer Protection Permit for the facility,
2. Denies an Aquifer Protection Permit for the facility,
3. Issues a letter of clean closure approval for the facility under A.R.S. § 49-252, or
4. Determines that the person failed to submit an application under R18-9-104.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended effective November 12, 1996 (Supp. 96-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-106. Determination of Applicability

A. A person who engages or who intends to engage in an operation or an activity that may result in a discharge regulated under Articles 1, 2, and 3 of this Chapter may submit a request, on a form provided by the Department, that the Department determine the applicability of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter to the operation or activity.

B. A person requesting a determination of applicability shall provide the following information and the applicable fee under 18 A.A.C. 14:
1. The name and location of the operation or activity;
2. The name of any person who is engaging or who proposes to engage in the operation or activity;
3. A description of the operation or activity;
4. A description of the volume, chemical composition, and characteristics of materials stored, handled, used, or disposed of in the operation or activity; and
5. Any other information required by the Director to make the determination of applicability.

C. Within 45 days after receipt of a request for a determination of applicability, the Director shall notify in writing the person making the request that the operation or activity:
1. Is not subject to the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter because the operation or facility does not discharge as described under A.R.S. § 49-241;
2. Is not subject to the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter because the operation or activity is exempted by A.R.S. § 49-250 or R18-9-103;
3. Is eligible for a general permit under A.R.S. §§ 49-245.01, 49-245.02 or 49-247 or Article 3 of this Chapter, specifying the particular general permit that would apply if the person meets the conditions of the permit; or
4. Is subject to the permit requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter.

D. If, after issuing a determination of applicability under this Section, the Director concludes that the determination or the information relied upon for a determination is inaccurate, the Director may modify or withdraw its determination upon written notice to the person who requested the determination of applicability.

E. If the Director determines that an operation or activity is subject to the requirements of A.R.S. §§ 49-241 through 49-252, the person who owns or operates the discharging facility shall, within 90 days from receiving the Director's written notification, submit an application for an Aquifer Protection Permit or a closure plan.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-107. Consolidation of Aquifer Protection Permits

A. The Director may consolidate any number of individual permits or the coverage for any facility authorized to discharge under a general permit into a single individual permit, if:
1. The facilities are part of the same project or operation and are located in a contiguous geographic area, or
2. The facilities are part of an area under the jurisdiction of a single political subdivision.

B. All applicable individual permit requirements established in Articles 1 and 2 of this Chapter apply to the consolidation of Aquifer Protection Permits.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-108. Public Notice

A. Individual permits.

1. The Department shall provide the entities specified in subsection (A)(2), with monthly written notification, by regular mail or electronically, of the following:
   a. Individual permit applications,
   b. Temporary permit applications,
   c. Preliminary and final decisions by the Director whether to issue or deny an individual or temporary permit,
   d. Closure plans received under R18-9-A209(B),
   e. Significant permit amendments and "other" permit amendments,
   f. Permit revocations, and
   g. Clean closure approvals.
2. Entities.
   a. Each county department of health, environmental services department, or comparable department;
   b. A federal, state, local agency, or council of government, that may be affected by the permit action; and
   c. A person who requested, in writing, notification of the activities described in subsection (A).
3. The Department may post the information referenced in subsections (A)(1) and (2) on the Department web site: www.azdeq.gov.

B. General permits. Public notice requirements do not apply.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-109. Public Participation

A. Notice of Preliminary Decision.

1. The Department shall publish a Notice of Preliminary Decision regarding the issuance or denial of a significant permit amendment or a final permit determination in one or more newspapers of general circulation where the facility is located.
2. The Department shall accept written comments from the public before a significant permit amendment or a final permit determination is made.
3. The written public comment period begins on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.

B. Public hearing.

1. The Department shall provide notice and conduct a public hearing to address a Notice of Preliminary Decision regarding a significant permit amendment or final permit determination if:
   a. Significant public interest in a public hearing exists, or
   b. Significant issues or information has been brought to the attention of the Department that has not been considered previously in the permitting process.
2. If, after publication of the Notice of Preliminary Decision, the Department determines that a public hearing is necessary, the Department shall schedule a public hearing and publish the Notice of Preliminary Decision at least once, in one or more newspapers of general circulation where the facility is located.
3. The Department shall accept written public comment until the close of the hearing record as specified by the person presiding at the public hearing.

C. The Department shall respond in writing to all comments submitted during the formal public comment period.

D. At the same time the Department notifies a permittee of a significant permit amendment or an applicant of the final permit determination, the Department shall send, through regular mail or electronically, a notice of the amendment or determination and the summary of response to comments to any person who submitted comments or attended a public hearing on the significant permit amendment or final permit determination.

E. General permits. Public participation requirements do not apply.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-110. Inspections, Violations, and Enforcement

A. The Department shall conduct an inspection of a permitted facility as specified under A.R.S. § 41-1009.

B. A person who owns or operates a facility contrary to a provision of Articles 1, 2, and 3 of this Chapter, violates a condition of an Aquifer Protection Permit, or violates a condition of a Groundwater Quality Protection Permit continued under R189105(A)(1) is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-111. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-112. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-113. Repealed

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-114. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-115. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-116. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-117. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-118. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-119. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-120. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective July 14, 1998 (Supp. 98-3).

R18-9-121. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-122. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-123. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective November 15, 1996 (Supp. 96-4).

R18-9-124. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-125. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-126. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-127. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-128. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective November 12, 1996 (Supp. 96-4).

R18-9-129. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-130. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

Appendix I. Repealed

Historical Note
Appendix I repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

R18-9-A201. Individual Permit Application

A. An individual permit application covers one or more of the following categories:
1. Drywell,
2. Industrial,
3. Mining,
4. Wastewater,
5. Solid waste disposal, or
6. Land treatment facility.

B. An applicant for an individual permit shall provide the Department with:
1. The following information on an application form:
   a. The name and mailing address of the applicant;
   b. The name and mailing address of the owner of the facility;
   c. The name and mailing address of the operator of the facility;
   d. The legal description, including latitude and longitude, of the location of the facility;
   e. The expected operational life of the facility; and

f. The permit number for any other federal or state environmental permit issued to the applicant for that facility or site.

2. A copy of the certificate of disclosure required by A.R.S. § 49-109;
3. Evidence that the facility complies with applicable municipal or county zoning ordinances, codes, and regulations;
4. Two copies of the technical information required in R18-9-A202(A);
5. Cost estimates for facility construction, operation, maintenance, closure, and post-closure as follows.
   a. The applicant shall ensure that the cost estimates are derived by an engineer, controller, or accountant using competitive bids, construction plan take-off's, specifications, operating history for similar facilities, or other appropriate sources, as applicable.
   b. The following cost estimates that are representative of regional fair market costs:
      i. The cost of closure estimate under R18-9-A209(B)(2), consistent with the closure plan or strategy submitted under R18-9-A202(A)(10);
      ii. The estimated cost of post-closure monitoring and maintenance under R18-9-A209(C), consistent with the post-closure plan or strategy submitted under R18-9-A202(A)(10); and
      iii. For a sewage treatment facility or utility subject to Title 40 of the Arizona Revised Statutes, the operation and maintenance costs of those elements of the facility used to make the demonstration under A.R.S. § 49-243(B);
6. For a sewage treatment facility:
   a. Documentation that the sewage treatment facility or expansion conforms with the Certified Areawide Water Quality Management Plan and the Facility Plan, and
   b. The additional information required in R18-9-B202 and R18-9-B203;
7. Certification in writing that the information submitted in the application is true and accurate to the best of the applicant's knowledge; and
8. The applicable fee established in 18 A.A.C. 14.

C. Special provision for an underground storage facility as defined in A.R.S. § 45-802.01(21). A person applying for an individual permit for an underground storage facility shall submit the information described in R18-9-A201 through R18-9-A203, except for the BADCT information specified in R18-9-A202(A)(5).
1. Upon receipt of the application, the Department shall process the application in coordination with the underground storage facility permit process administered by the Department of Water Resources.
2. The Department shall advise the Department of Water Resources of each permit application received.

D. Pre-application conference. Upon request of the applicant, the Department shall schedule and hold a pre-application conference with the applicant to discuss any requirements in Articles 1 and 2 of this Chapter.

E. Draft permit. The Department shall provide the applicant with a draft of the individual permit before publication of the Notice of Preliminary Decision specified in R18-9-109.

F. Permit duration. Except for a temporary permit, an individual permit is valid for the operational life of the facility and any period during which the facility is subject to a post-closure plan under R18-9-A209(C).

G. Permit issuance or denial.
1. The Director shall issue an individual permit, based upon the information obtained by or made available to the Department, if the Director determines that the applicant will comply with A.R.S. §§ 49-241 through 49-252 and Articles 1 and 2 of this Chapter.
2. The Director shall provide the applicant with written notification of the final decision to issue or deny the permit within the overall licensing time-frame requirements under 18 A.A.C. 1, Article 5, Table 10 and the following:
   a. The applicant's right to appeal the final permit determination, including the number of days the applicant has to file a protest and the name and telephone number of the Department contact person who can answer questions regarding the appeals process;
   b. If the permit is denied under R18-9-A213(B), the reason for the denial with reference to the statute or rule on which the denial is based; and
   c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A202. Technical Requirements

A. Except as specified in R18-9-A201(C)(1), an applicant shall, as required under R18-9-A201(B)(4), submit the following technical information as attachments to the individual permit application:
1. A topographic map, or other appropriate map approved by the Department, of the facility location and contiguous land area showing the known use of adjacent properties, all known water well locations found within one-half mile of the facility, and a description of well construction details and well uses, if available;
2. A facility site plan showing all known property lines, structures, water wells, injection wells, drywells and their uses, topography, and the location of points of discharge. The facility site plan shall include all known borings. If the Department determines that borings are numerous, the applicant shall satisfy this requirement with a narrative description of the number and location of the borings;
3. The facility design documents indicating proposed or as-built design details and proposed or as-built configuration of basins, ponds, waste storage areas, drainage diversion features, or other engineered elements of the facility affecting discharge. When formal as-built plan submittals are not available, the applicant shall provide documentation sufficient to allow evaluation of those elements of the facility affecting discharge, following the demonstration requirements of A.R.S. § 49-243(B). An applicant seeking an Aquifer Protection Permit for a sewage treatment facility satisfies the requirements of this subsection by submitting the documents required in R18-9-B202 and R18-9-B203;
4. A summary of the known past facility discharge activities and the proposed facility discharge activities indicating all of the following:

a. The chemical, biological, and physical characteristics of the discharge;
b. The rate, volume, and frequency of the discharge for each facility; and
c. The location of the discharge and a map outlining the pollutant management area described in A.R.S. § 49-244(1);

5. A description of the BADCT employed in the facility, including:
   a. A statement of the technology, processes, operating methods, or other alternatives proposed to meet the requirements of A.R.S. § 49-243(B), (G), or (P), as applicable. The statement shall describe:
      i. The alternative discharge control measures considered,
      ii. The technical and economic advantages and disadvantages of each alternative, and
      iii. The justification for selection or rejection of each alternative;
   b. An evaluation of each alternative discharge control technology relative to the amount of discharge reduction achievable, site-specific hydrologic and geologic characteristics, other environmental impacts, and water conservation or augmentation;
   c. For a new facility, an industry-wide evaluation of the economic impact of implementation of each alternative discharge control technology;
   d. For an existing facility, a statement reflecting the consideration of factors listed in A.R.S. § 49-243(B)(1)(a) through (h);
   e. A sewage treatment facility meeting the BADCT requirements under Article 2, Part B of this Chapter satisfies the requirements under subsections (A)(5)(a) through (d).
6. Proposed points of compliance for the facility based on A.R.S. § 49-244. An applicant shall demonstrate that:
   a. The facility will not cause or contribute to a violation of an Aquifer Water Quality Standard at the proposed point of compliance; or
   b. If an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, no additional degradation of the aquifer relative to that pollutant and determined at the proposed point of compliance will occur as a result of the discharge from the proposed facility. In this case, the applicant shall submit an Ambient Groundwater Monitoring Report that includes:
      i. Data from eight or more rounds of ambient groundwater samples collected to represent groundwater quality at the proposed points of compliance, and
      ii. An AQL proposal for each pollutant that exceeds an Aquifer Water Quality Standard;
7. A contingency plan that meets the requirements of R18-9-A204;
8. A hydrogeologic study that defines the discharge impact area for the expected duration of the facility. The Department may allow the applicant to submit an abbreviated hydrogeologic study or, if warranted, no hydrogeologic study, based upon the quantity and characteristics of the pollutants discharged, the methods of disposal, and the site conditions. The applicant may include information from a previous study of the affected area to meet a requirement of the hydrogeologic study, if the previous study accurately represents current hydrogeologic conditions.
   a. The hydrogeologic study shall demonstrate:
      i. That the facility will not cause or contribute to a violation of an Aquifer Water Quality Standard at the applicable point of compliance; or
      ii. If an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, that no additional degradation of the aquifer relative to that pollutant and determined at the applicable point of compliance will occur as a result of the discharge from the proposed facility;
   b. Based on the quantity and characteristics of pollutants discharged, methods of disposal, and site conditions, the Department may require the applicant to provide:
      i. A description of the surface and subsurface geology, including a description of all borings;
      ii. The location of any perennial, intermittent, or ephemeral surface water bodies;
      iii. The characteristics of the aquifer and geologic units with limited permeability, including depth, hydraulic conductivity, and transmissivity;
      iv. The rate, volume, and direction of surface water and groundwater flow, including hydrographs, if available, and equipotential maps;
      v. The precise location or estimate of the location of the 100-year flood plain and an assessment of the 100-year flood surface flow and potential impacts on the facility;
      vi. Documentation of the existing quality of the water in the aquifers underlying the site, including, where available, the method of analysis, quality assurance, and quality control procedures associated with the documentation;
      vii. Documentation of the extent and degree of any known soil contamination at the site;
      viii. An assessment of the potential of the discharge to cause the leaching of pollutants from surface soils or vadose materials;
      ix. For an underground water storage facility, an assessment of the potential of the discharge to cause the leaching of pollutants from surface soils or vadose materials or cause the migration of contaminated groundwater;
      x. Any changes in the water quality expected because of the discharge;
      xi. A description of any expected changes in the elevation or flow directions of the groundwater expected to be caused by the facility;
      xii. A map of the facility's discharge impact area; or
      xiii. The criteria and methodologies used to determine the discharge impact area.
9. A detailed proposal indicating the alert levels, discharge limitations, monitoring requirements, compliance schedules, and temporary cessation or plans that the applicant will use to satisfy the requirements of A.R.S. Title 49, Chapter 2, Article 3, and Articles 1 and 2 of this Chapter;
10. Closure and post-closure strategies or plans; and
11. Any other relevant information required by the Department to determine whether to issue a permit.

B. An applicant shall demonstrate the ability to maintain the technical capability necessary to carry out the terms of the individual permit, including a demonstration that a certified operator will operate the facility if a certified operator is required under 18 A.A.C. 5. The applicant shall make the demonstration by submitting the following information for each person principally responsible for designing, constructing, or operating the facility:
1. Pertinent licenses or certifications held by the person;
2. Professional training relevant to the design, construction, or operation of the facility; and
3. Work experience relevant to the design, construction, or operation of the facility.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A203. Financial Requirements

A. Definitions.
1. "Book net worth" means the net difference between total assets and total liabilities.
2. "Face amount" means the total amount the insurer is obligated to pay under the policy.
3. "Net working capital" means current assets minus current liabilities.
4. "Substantial business relationship" means a pattern of recent or ongoing business transactions to the extent that a guaranty contract issued incident to that relationship is valid and enforceable.
5. "Tangible net worth" means an owner or operator's book net worth, plus subordinated debts, less goodwill, patent rights, royalties, and assets and receivables due from affiliates or shareholders.

B. Financial demonstration. A person applying for an individual permit shall demonstrate financial capability to construct, operate, close, and ensure proper post-closure care of the facility in compliance with A.R.S. Title 49, Chapter 2, Article 3; Articles 1 and 2 of this Chapter; and the conditions of the individual permit. The applicant shall:
1. Submit a letter signed by the chief financial officer stating that the applicant is financially capable of meeting the costs described in R18-9-A201(B)(5);
2. For a state or federal agency, county, city, town, or other local governmental entity, submit a statement specifying the details of the financial arrangements used to meet the estimated closure and post-closure costs submitted under R18-9-A201(B)(5), including any other details that demonstrate how the applicant is financially capable of meeting the costs described in R18-9-A201(B)(5);
3. For other than a state or federal agency, county, city, town, or other local governmental entity, submit the information required for at least one of the financial assurance mechanisms listed in subsection (C) that covers the closure and post-closure costs submitted under R18-9-A201(B)(5), including:
   a. The selected financial mechanism or mechanisms;
   b. The amount covered by each financial mechanism;
   c. The institution or company that is responsible for each financial mechanism used in the demonstration; and
   d. Any other details that demonstrate how the applicant is financially capable of meeting the costs described in R18-9-A201(B)(5); and
4. For a facility subject to R18-9-A201(B)(5)(b)(iii) and not owned by a state or federal agency, county, city, town, or other local governmental entity, submit evidence of financial arrangements to cover the operation and maintenance costs described in R18-9-A201(B)(5).

C. Financial assurance mechanisms. The applicant may use any of the following mechanisms to cover the financial assurance obligation under R18-9-A201(B)(5):
1. Financial test for self-assurance. If an applicant uses a financial test for self-assurance, the applicant shall not consolidate the financial statement with a parent or sibling company. The applicant shall make the demonstration in either subsection (C)(1)(a) or (b) and submit the information required in subsection (C)(1)(c):
   a. The applicant may demonstrate:
      i. One of the following:
         (1) A ratio of total liabilities to net worth less than 2.0 and a ratio of current assets to current liabilities greater than 1.5;
         (2) A ratio of total liabilities to net worth less than 2.0 and a ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or
         (3) A ratio of the sum of net annual income plus depreciation, depletion, and amortization to total liabilities greater than 0.1 and a ratio of current assets to current liabilities greater than 1.5;
      ii. The net working capital and tangible net worth of the applicant each are at least six times the closure cost estimate; and
      iii. The applicant has assets in the U.S. of at least 90 percent of total assets or six times the closure and post-closure cost estimate; or
   b. The applicant may demonstrate:
      i. The applicant's senior unsecured debt has a current investment-grade rating as issued by Moody's Investor Service, Inc.; Standard and Poor's Corporation; or Fitch Ratings;
      ii. The tangible net worth of the applicant is at least six times the closure cost estimate; and
      iii. The applicant has assets in the U.S. of at least 90 percent of total assets or six times the closure and post-closure cost estimate; and
   c. The applicant shall submit:
      i. A letter signed by the applicant's chief financial officer that identifies the criterion specified in subsection (C)(1)(a) or (b) and used by the applicant to satisfy the financial assurance requirements of this Section, an explanation of how the applicant meets the criterion, and certification of the letter's accuracy, and
      ii. A statement from an independent certified public accountant verifying that the demonstration submitted under subsection (C)(1)(c)(i) is accurate based on a review of the applicant's financial statements for the latest completed fiscal year or more recent financial data and no adjustment to the financial statement is necessary.

2. Performance surety bond. The applicant may use a performance surety bond if the following conditions are met:
   a. The company providing the performance bond is listed as an acceptable surety on federal bonds in Circular 570 of the U.S. Department of the Treasury;
   b. The bond provides for performance of all the covered items listed in R18-9-A201(B)(5) by the surety, or by payment into a standby trust fund of an amount equal to the penal amount if the permittee fails to perform the required activities;
   c. The penal amount of the bond is at least equal to the amount of the cost estimate developed in R18-9-A201(B)(5) if the bond is the only method used to satisfy the requirements of this Section or a pro-rata amount if used with another financial assurance mechanism;
   d. The surety bond names the Arizona Department of Environmental Quality as beneficiary;
   e. The original surety bond is submitted to the Director;
   f. Under the terms of the bond, the surety is liable on the bond obligation when the permittee fails to perform as guaranteed by the bond; and
   g. The surety payments under the terms of the bond are deposited directly into the Standby Trust Fund.
3. Certificate of deposit. The applicant may use a certificate of deposit if the following conditions are met:
   a. The applicant submits to the Director one or more certificates of deposit made payable to or assigned to the Department to cover the applicant's financial assurance obligation or a pro-rata amount if used with another financial assurance mechanism;
   b. The certificate of deposit is insured by the Federal Deposit Insurance Corporation and is automatically renewable;
   c. The bank assigns the certificate of deposit to the Arizona Department of Environmental Quality;
   d. Only the Department has access to the certificate of deposit; and
   e. Interest accrues to the permittee during the period the applicant gives the certificate as financial assurance, unless the interest is required to satisfy the requirements in R18-9-A201(B)(5).
4. Trust fund. The applicant may use a trust fund if the following conditions are met:
   a. The trust fund names the Arizona Department of Environmental Quality as beneficiary, and
   b. The trust is initially funded in an amount at least equal to:
      i. The cost estimate of the closure plan or strategy submitted under R18-9-A201(B)(5),
      ii. The amount specified in a compliance schedule approved in the permit, or
      iii. A pro-rata amount if used with another financial assurance mechanism.
5. Letter of credit. The applicant may use a letter of credit if the following conditions are met:
   a. The financial institution issuing the letter is regulated and examined by a federal or state agency;
   b. The letter of credit is irrevocable and issued for at least one year in an amount equal to the cost estimate submitted under R18-9-A201(B)(5) or a pro-rata amount if used with another financial assurance mechanism. The letter of credit provides that the expiration date is automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the permittee and to the Director 90 days in advance of cancellation or expiration. The permittee shall provide alternate financial assurance within 60 days of receiving the notice of expiration or cancellation;
   c. The financial institution names the Arizona Department of Environmental Quality as beneficiary for the letter of credit; and
   d. The letter is prepared by the financial institution and identifies the letter of credit issue date, expiration date, dollar sum of the credit, the name and address of the Department as the beneficiary, and the name and address of the applicant as the permittee.
6. Insurance policy. The applicant may use an insurance policy if the following conditions are met:
   a. The insurance is effective before signature of the permit or substitution of insurance for other extant financial assurance instruments posted with the Director;
   b. The insurer is authorized to transact the business of insurance in the state and has an AM BEST Rating of at least a B+ or the equivalent;
   c. The permittee submits a copy of the insurance policy to the Department;
   d. The insurance policy guarantees that funds are available to pay costs as submitted under R18-9-A201(B)(5) without a deductible. The policy also guarantees that once cleanup steps begin that the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;
   e. The policy guarantees that while closure and post-closure activities are conducted the insurer will pay out funds to the Director or other entity designated by the Director up to an amount equal to the face amount of the policy;
   f. The insurance policy is issued for a face amount at least equal to the current cost estimate submitted to the Director for performance of all items listed in R18-9-A201(B)(5) or a pro-rata amount if used with another financial assurance mechanism. Actual payments by the insurer will not change the face amount, although the insurer's future liability is reduced by the amount of the payments, during the policy period;
   g. The insurance policy names the Arizona Department of Environmental Quality as additional insured;
   h. The policy contains a provision allowing assignment of the policy to a successor permittee. The transfer of the policy is conditional upon consent of the insurer and the Department; and
   i. The insurance policy provides that the insurer does not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy, at a minimum, provides the insured with a renewal option at the face amount of the expiring policy. If the permittee fails to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the permittee and to the Director 90 days in advance of the cancellation. If the insurer cancels the policy, the

permittee shall provide alternate financial assurance within 60 days of receiving the notice of cancellation.

7. Cash deposit. The applicant may use a cash deposit if the cash is deposited with the Department to cover the financial assurance obligation under R18-9-A201(B)(5).
8. Guarantees.
   a. The applicant may use guarantees to cover the financial assurance obligation under R18-9-A201(B)(5) if the following conditions are met:
      i. The applicant submits to the Department an affidavit certifying that the guarantee arrangement is valid under all applicable federal and state laws. If the applicant is a corporation, the applicant shall include a certified copy of the corporate resolution authorizing the corporation to enter into an agreement to guarantee the permittee's financial assurance obligation;
      ii. The applicant submits to the Department documentation that explains the substantial business relationship between the guarantor and the permittee;
      iii. The applicant demonstrates that the guarantor meets conditions of the financial mechanism listed in subsection (C)(1). For purposes of applying the criteria in subsection (C)(1) to a guarantor, substitute "guarantor" for the term "applicant" as used in subsection (C)(1);
      iv. The guarantee is governed by and complies with state law;
      v. The guarantee continues in full force until released by the Director or replaced by another financial assurance mechanism listed under subsection (C);
      vi. The guarantee provides that, if the permittee fails to perform closure or post-closure care of a facility covered by the guarantee, the guarantor shall perform or pay a third party to perform closure or post-closure care, as required by the permit, or establish a fully funded trust fund as specified under subsection (C)(4) in the name of the owner or operator; and
      vii. The guarantor names the Arizona Department of Environmental Quality as beneficiary of the guarantee.
   b. Guarantee reporting. The guarantor shall notify or submit a report to the Department within 30 days of:
      i. An increase in financial responsibility during the fiscal year that affects the guarantor's ability to meet the financial demonstration;
      ii. Receiving an adverse auditor's notice, opinion, or qualification; or
      iii. Receiving a Department notification requesting an update of the guarantor's financial condition.
9. An applicant may use a financial assurance mechanism not listed in subsection (C)(1) through (8) if approved by the Director.

D. Loss of coverage. If the Director believes that a permittee will lose financial capability under subsection (C), the permittee shall, within 30 days from the date of receipt of the Director's request, submit evidence that the financial demonstration under subsection (B) is being met or provide an alternative financial assurance mechanism.

E. Financial assurance mechanism substitution. A permittee may substitute one financial assurance mechanism for another if the substitution is approved by the Director through an amendment under subsection (F).

F. Permit amendment. The permittee shall apply for an amendment to the individual permit if the permittee changes a financial assurance mechanism or if the permittee's revision of the closure strategy results in an increase in the estimated cost under R18-9-A201(B)(5). If a permittee seeks to amend a permit under R18-9-A211(B), the permittee shall submit a financial capability demonstration for all facilities covered by the amended individual permit with the permit amendment request.

G. Previous financial demonstration. If an applicant shows that the financial assurance demonstration required under this Section is covered within a financial demonstration already made to a governmental agency and the Department has access to that information, the applicant is not required to resubmit the information. The applicant shall certify that the current financial condition is equal to or better than the condition reflected in the financial demonstration provided to the other governmental agency. This provision does not apply to a demonstration required under subsection (F).

H. Recordkeeping. A permittee shall maintain the financial capability for the duration of the permit and report as specified in the permit.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A204. Contingency Plan

A. An individual permit shall specify a contingency plan that defines the actions to be taken if a discharge results in any of the following:
1. A violation of an Aquifer Water Quality Standard or an AQL,
2. A violation of a discharge limitation,
3. A violation of any other permit condition,
4. An alert level is exceeded, or
5. An imminent and substantial endangerment to the public health or the environment.

B. The contingency plan may include one or more of the following actions if a discharge results in any of the conditions described in subsection (A):
1. Verification sampling;
2. Notification to downstream or downgradient users who may be directly affected by the discharge;
3. Further monitoring that may include increased frequency, additional constituents, or additional monitoring locations;
4. Inspection, testing, operation, or maintenance of discharge control features at the facility;
5. Evaluation of the effectiveness of discharge control technology at the facility that may include technology upgrades;
6. Evaluation of pretreatment for sewage treatment facilities;
7. Preparation of a hydrogeologic study to assess the extent of soil, surface water, or aquifer impact;
8. Corrective action that includes any of the following measures:
   a. Control of the source of an unauthorized discharge,

b. Soil cleanup,
c. Cleanup of affected surface waters,
d. Cleanup of affected parts of the aquifer, or
e. Mitigation measures to limit the impact of pollutants on existing uses of the aquifer.

C. A permittee shall not take a corrective action proposed under subsection (B)(8) unless the action is approved by the Department.
1. Emergency response provisions and corrective actions specifically identified in the contingency plan submitted with a permit application are subject to approval by the Department during the application review process.
2. The permittee may propose to the Department a corrective action other than those already identified in the contingency plan if a discharge results in any of the conditions identified in subsection (A).
3. The Department shall approve the proposed corrective action if the corrective action provides a plan and expedient time-frame to return the facility to compliance with the facility's permit conditions, A.R.S. Title 49, Chapter 2, and Articles 1 and 2 of this Chapter.
4. The Director may incorporate corrective actions into an Aquifer Protection Permit.

D. A contingency plan shall contain emergency response provisions to address an imminent and substantial endangerment to public health or the environment including:
1. Twenty-four hour emergency response measures;
2. The name of an emergency response coordinator responsible for implementing the contingency plan;
3. Immediate notification to the Department regarding any emergency response measure taken;
4. A list of people to contact, including names, addresses, and telephone numbers if an imminent and substantial endangerment to public health or the environment arises; and
5. A general description of the procedures, personnel, and equipment proposed to mitigate unauthorized discharges.

E. A permittee may amend a contingency plan required by the Federal Water Pollution Control Act (P.L. 92-500; 86 Stat. 816; 33 U.S.C. 1251, et seq., as amended), or the Resource Conservation and Recovery Act of 1976 (P.L. 94-580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), to meet the requirements of this Section and submit it to the Department for approval instead of a separate aquifer protection contingency plan.

F. A permittee shall maintain at least one copy of the contingency plan required by the individual permit at the location where day-to-day decisions regarding the operation of the facility are made. A permittee shall advise all employees responsible for the operation of the facility of the location of the contingency plan.

G. A permittee shall promptly revise the contingency plan upon any change to the information contained in the plan.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A205. Alert Levels, Discharge Limitations, and AQLs

A. Alert levels.
1. If the Department prescribes an alert level in an individual permit, the Department shall base the alert level on the site-specific conditions described by the applicant in the application submitted under R18-9-A201(A)(2) or other information available to the Department.
2. The Department may specify an alert level based on a pollutant that indicates the potential appearance of another pollutant.
3. The Department may specify the measurement of an alert level at a location appropriate for the discharge activity, considering the physical, chemical, and biological characteristics of the discharge, the particular treatment process, and the site-specific conditions.

B. Discharge limitations. If the Department prescribes discharge limitations in an individual permit, the Department shall base the discharge limitations on the considerations described in A.R.S. § 49-243.

C. AQLs. The Department may prescribe an AQL in an individual permit to ensure that the facility continues to meet the criteria under A.R.S. § 49-243(B)(2) or (3).
1. If the concentration of a pollutant in the aquifer does not exceed the Aquifer Water Quality Standard, the Department shall set the AQL at the Aquifer Water Quality Standard.
2. If the concentration of a pollutant in the aquifer exceeds the Aquifer Water Quality Standard, the Department shall set the AQL higher than the Aquifer Water Quality Standard.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A206. Monitoring Requirements

A. Monitoring.
1. The Department shall determine whether monitoring is required to assure compliance with Aquifer Protection Permit conditions and with the applicable Aquifer Water Quality Standards established under A.R.S. §§ 49-221, 49-223, 49-241 through 49-244, and 49-250 through 49-252.
2. If monitoring is required, the Director shall specify to the permittee:
   a. The type and method of monitoring;
   b. The frequency of monitoring;
   c. Any requirements for the installation, use, or maintenance of monitoring equipment; and
   d. The intervals at which the permittee reports the monitoring results to the Department.

B. Recordkeeping.
1. A permittee shall make a monitoring record for each sample taken as required by the individual permit consisting of all of the following:
   a. The date, time, and exact place of a sampling and the name of each individual who performed the sampling;
   b. The procedures used to collect the sample;
   c. The date sample analysis was completed;
   d. The name of each individual or laboratory performing the analysis;
   e. The analytical techniques or methods used to perform the sampling and analysis;
   f. The chain of custody records; and
   g. Any field notes relating to the information described in subsections (B)(1)(a) through (f).

2. A permittee shall make a monitoring record for each measurement made, as required by the individual permit, consisting of all of the following:
   a. The date, time, and exact place of the measurement and the name of each individual who performed the measurement;
   b. The procedures used to make the measurement; and
   c. Any field notes relating to the information described in subsections (B)(2)(a) and (b).
3. A permittee shall maintain monitoring records for at least 10 years after the date of the sample or measurement, unless the Department specifies a shorter time period in the permit.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A207. Reporting Requirements

A. A permittee shall notify the Department within five days after becoming aware of a violation of a permit condition or that an alert level was exceeded. The permittee shall inform the Department whether the contingency plan described in R18-9-A204 was implemented.

B. In addition to the requirements in subsection (A), a permittee shall submit a written report to the Department within 30 days after the permittee becomes aware of a violation of a permit condition. The report shall contain:
1. A description of the violation and its cause;
2. The period of violation, including exact date and time, if known, and the anticipated time period the violation is expected to continue;
3. Any action taken or planned to mitigate the effects of the violation or to eliminate or prevent recurrence of the violation;
4. Any monitoring activity or other information that indicates that a pollutant is expected to cause a violation of an Aquifer Water Quality Standard; and
5. Any malfunction or failure of a pollution control device or other equipment or process.

C. A permittee shall notify the Department within five days after the occurrence of any of the following:
1. The permittee's filing of bankruptcy, or
2. The entry of any order or judgment not issued by the Director against the permittee for the enforcement of any federal or state environmental protection statute or rule.

D. The Director shall specify the format for submitting results from monitoring conducted under R18-9-A206.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A208. Compliance Schedule

A. A permittee shall follow the compliance schedule established in the individual permit.
1. If a compliance schedule provides that an action is required more than one year after the date of permit issuance, the schedule shall establish interim requirements and dates for their achievement.
2. If the time necessary for completion of an interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall contain interim dates for submission of reports on progress toward completion of the interim requirements and shall indicate a projected completion date.
3. Unless otherwise specified in the permit, within 30 days after the applicable date specified in a compliance schedule, a permittee shall submit to the Department a report documenting that the required action was taken within the time specified.
4. After reviewing the compliance schedule activity the Director may amend the Aquifer Protection Permit, based on changed circumstances relating to the required action.

B. The Department shall consider all of the following factors when setting the compliance schedule requirements:
1. The character and impact of the discharge,
2. The nature of construction or activity required by the permit,
3. The number of persons affected or potentially affected by the discharge,
4. The current state of treatment technology, and
5. The age of the facility.

C. For a new facility, the Department shall not defer to a compliance schedule any requirement necessary to satisfy the criteria under A.R.S. § 49-243(B).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A209. Temporary Cessation, Closure, Post-closure

A. Temporary cessation.
1. A permittee shall notify the Department before a cessation of operations at the facility of at least 60 days duration.
2. The permittee shall implement any condition specified in the individual permit for the temporary cessation.
3. If the permit does not specify any temporary cessation condition, the permittee shall, prior to implementation, submit the proposed temporary cessation plan for Department approval.

B. Closure.
1. Before providing notice under subsection (B)(2), a person may request that the Director review a site investigation plan for a facility under subsection (B)(3)(a) or the results of a site investigation at a facility to determine compliance with this subsection and A.R.S. § 49-252.
2. A person shall notify the Department of the person's intent to cease operations without resuming an activity for which the facility was designed or operated.
3. The person shall submit a closure plan for Director approval within 90 days following the notification of intent to cease operations with the applicable fee established in 18 A.A.C. 14. A complete closure plan shall include:
   a. A site investigation plan that includes a summary of relevant site studies already conducted and a proposed scope of work for any additional site investigation necessary to identify:
      i. The lateral and vertical extent of contamination in soils and groundwater, using applicable standards;
      ii. The approximate quantity and chemical, biological, and physical characteristics of each

waste, contaminated water, or contaminated soil proposed for removal from the facility;

iii. The approximate quantity and chemical, biological, and physical characteristics of each waste, contaminated water, or contaminated soil that will remain at the facility; and

iv. Information regarding site conditions related to pollutant fate and transport that may influence the scope of sampling necessary to characterize the site for closure;

b. A summary describing the results of a site investigation and any other information used to identify:

i. The lateral and vertical extent of soil and groundwater contamination, using applicable standards, and the analytical results that support the determination;

ii. The approximate quantity and chemical, biological, and physical characteristics of each material scheduled for removal;

iii. The destination of the materials and documentation that the destination is approved to accept the materials;

iv. The approximate quantity and chemical, biological, and physical characteristics of each material that remains at the facility; and

v. Any other relevant information the Department determines is necessary;

c. A closure design that identifies:

i. The method used, if any, to treat any material remaining at the facility;

ii. The method used to control the discharge of pollutants from the facility;

iii. Any limitation on future land or water uses created as a result of the facility's operations or closure activities and a Declaration of Environmental Use Restriction according to A.R.S. § 49-152, if necessary; and

iv. The methods used to secure the facility;

d. An estimate of the cost of closure;

e. A schedule for implementation of the closure plan and submission of a post-closure plan if clean closure is not achieved; and

f. For an implemented closure plan, a summary report of the results of site investigation performed during closure activities, including confirmation and verification sampling.

4. Within 60 days of receipt of a complete closure plan, the Department shall determine whether the closure plan achieves clean closure.

a. If the implemented complete closure plan achieves clean closure, the Director shall:

i. If the facility is not covered by an Aquifer Protection Permit, send the person a letter of approval; or

ii. If the facility is covered by an Aquifer Protection Permit, send the person a Permit Release Notice issued under subsection (C)(2)(c).

b. If the implemented complete closure plan did not achieve clean closure, the person shall submit a post-closure plan under subsection (C) and the following documents within 90 days from the date on the Department's notice or as specified under A.R.S. § 49-252(E):

i. An application for an individual permit, or

ii. A request to amend a current individual permit to address closure activities and post-closure monitoring and maintenance at the facility.

C. Post-closure. A person shall describe post-closure monitoring and maintenance activities in an application for a permit or an amendment to an individual permit and submit it to the Department for approval.

1. The application shall include:

a. The duration of post-closure care;

b. The monitoring procedures proposed by the permittee, including monitoring frequency, type, and location;

c. A description of the operating and maintenance procedures proposed for maintaining aquifer quality protection devices, such as liners, treatment systems, pump-back systems, surface water and stormwater management systems, and monitoring wells;

d. A schedule and description of physical inspections proposed at the facility following closure;

e. An estimate of the cost of post-closure maintenance and monitoring;

f. A description of limitations on future land or water uses, or both, at the facility site as a result of facility operations; and

g. The applicable fee established in 18 A.A.C. 14.

2. The Director shall include the post-closure plan submitted under subsection (C)(1) in the individual permit or permit amendment.

a. The permittee shall provide the Department written notice that a closure plan or a post-closure plan was fully implemented within 30 calendar days of implementation of the plan. The notice shall include a summary report confirming the closure design and describing the results of sampling performed during closure activities and post-closure activities, if any, to demonstrate the level of cleanup achieved.

b. The Director may, upon receipt of the notice, inspect the facility to ensure that the closure plan has been fully implemented.

c. The Director shall issue a Permit Release Notice if the permittee satisfies all closure and post-closure requirements.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A210. Temporary Individual Permit

A. A person may apply for a temporary individual permit for either of the following:

1. A pilot project to develop data for an Aquifer Protection Permit application for the full-scale project, or

2. A facility with a discharge lasting no more than six months.

B. The applicant shall submit a preliminary application containing the information required in R18-9-A201(B)(1).

C. The Department shall, based on the preliminary application and in consultation with the applicant, determine and provide the applicant notice of any additional information in R18-9-A201(B) that is necessary to complete the application.

D. Public participation.

1. If the Director issues a temporary individual permit, the Director shall postpone the public participation requirements under R18-9-109.
2. The Director shall not postpone notification of the opportunity for public participation for more than 30 days from the date on the temporary individual permit.
3. The Director may amend or revoke the temporary individual permit after consideration of public comments.
4. The Director shall not issue a public notice or hold a public hearing if a temporary individual permit is renewed without change.
5. The Director shall follow the public participation requirements under R18-9-109 when making a significant amendment to a temporary individual permit.

E. A temporary individual permit expires after one year unless it is renewed. The Director may renew a temporary individual permit no more than one time.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A211. Permit Amendments

A. The Director may amend an individual permit based upon a request or upon the Director's initiative.
1. A permittee shall submit a request for permit amendment in writing on a form provided by the Department with the applicable fee established in 18 A.A.C. 14, explaining the facts and reasons justifying the request.
2. The Department shall process amendment requests following the licensing time-frames established under 18 A.A.C. 1, Article 5, Table 10.
3. An amended permit supersedes the previous permit upon the effective date of the amendment.

B. Significant permit amendment. The Director shall make a significant amendment to an individual permit if:
1. Part or all of an existing facility becomes a new facility under A.R.S. § 49-201;
2. A physical change in a permitted facility or a change in its method of operation results in:
   a. An increase of 10 percent or more in the permitted volume of pollutants discharged, except a sewage treatment facility;
   b. An increase in design flow of a sewage treatment facility as follows:

Permitted Design Flow	Increase in Design Flow
500,000 gallons per day or less	10%
Greater than 500,000 gallons per day but less than or equal to five million gallons per day	6%
Greater than five million gallons per day but less than or equal to 50 million gallons per day	4%
Greater than 50 million gallons per day	2%

   c. Discharge of an additional pollutant not allowed by a facility's original individual permit. The Director may consider the addition of a pollutant with a chemical composition substantially similar to a pollutant the permit currently allows by making an "other" amendment to the individual permit as prescribed in subsection (D);
   d. For any pollutant not addressed in a facility's individual permit, any increase that brings the level of the pollutant to within 80 percent or more of a numeric Aquifer Water Quality Standard at the point of compliance; or
   e. An increase in the concentration in the discharge of a pollutant listed under A.R.S. § 49-243(I);
3. Based upon available information, the facility can no longer demonstrate that its discharge will comply with A.R.S. § 49-243(B)(2) or (3);
4. The permittee requests and the Department agrees to less stringent monitoring that reduces the frequency in monitoring or reporting or reduces the number of pollutants monitored, and the permittee demonstrates that the changes will not affect the permittee's ability to remain in compliance with Articles 1 and 2 of this Chapter;
5. It is necessary to change the designation of a point of compliance;
6. It is necessary to update BADCT for a facility that was issued an individual permit and was not constructed within five years of permit issuance;
7. The permittee requests and the Department agrees to less stringent discharge limitations when the permittee demonstrates that the changes will not affect the permittee's ability to remain in compliance with Articles 1 and 2 of this Chapter;
8. It is necessary to make an addition to or a substantial change in closure requirements or to provide for post-closure maintenance and monitoring; or
9. Material and substantial alterations or additions to a permitted facility, including a change in disposal method, justify a change in permit conditions.

C. Minor permit amendment. The Director shall make a minor amendment to an individual permit to:
1. Correct a typographical error;
2. Change nontechnical administrative information, excluding a permit transfer;
3. Correct minor technical errors, such as errors in calculation, locational information, citations of law, and citations of construction specifications;
4. Increase the frequency of monitoring or reporting, or to revise a laboratory method;
5. Make a discharge limitation more stringent;
6. Make a change in a recordkeeping retention requirement; or
7. Insert calculated alert levels, AQLs, or other permit limits into a permit based on monitoring subsequent to permit issuance, if a requirement to establish the levels or limits and the method for calculation of the levels or limits was established in the original permit.

D. "Other" permit amendment.
1. The Director may make an "other" amendment to an individual permit if the amendment is not a significant or minor permit amendment prescribed in this Section, based on an evaluation of the information relevant to the amendment.
2. Examples of an "other" amendment to an individual permit include:
   a. A change in a construction requirement, treatment method, or operational practice, if the alteration complies with the requirements of Articles 1 and 2

of this Chapter and provides equal or better performance;

b. A change in an interim or final compliance date in a compliance schedule, if the Director determines just cause exists for changing the date;

c. A change in the permittee's financial assurance mechanism under R18-9-A203(C);

d. A permit transfer under R18-9-A212;

e. The replacement of monitoring equipment, including a well, if the replacement results in equal or greater monitoring effectiveness;

f. Any increase in the volume of pollutants discharged that is less than that described in subsection (B)(2)(a) or (b);

g. An adjustment of the permit to conform to rule or statutory provisions;

h. A calculation of an alert level, AQL, or other permit limit based on monitoring subsequent to permit issuance;

i. An addition of a point of compliance monitor well;

j. A combination of two or more permits at the same site as specified under R18-9-107;

k. An adjustment or incorporation of monitoring requirements to ensure Reclaimed Water Quality Standards developed under 18 A.A.C. 11, Article 3 are met; or

l. A change in a contingency plan resulting in equal or more efficient responsiveness.

E. The public notice and public participation requirements of R18-9-108 and R18-9-109 apply to a significant amendment. The public notice requirements apply to an "other" amendment. A minor amendment does not require a public notice or public participation.

F. The Director shall not amend or reissue a permit to allow use of a discharge control technology that provides a lesser degree of pollutant discharge reduction than the BADCT established in the individual Aquifer Protection Permit previously issued for a facility, unless:

1. The industrial classification of the facility has changed so that a new assessment of BADCT is appropriate,
2. The pollutant load has decreased or the pollutant composition has changed significantly to warrant a new assessment of the BADCT,
3. The Director approves a corrective or contingency action that necessitates a change in the treatment technology, or
4. The approved discharge control technology is not operating properly due to circumstances beyond the control of the owner or operator.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A212. Permit Transfer

A. The person subject to the continuance requirements under R18-9-105(A)(1), (2), or (3) shall notify the Department by certified mail within 15 days following a change of ownership. The notice shall include:

1. The name of the person transferring the facility;
2. The name of the new owner or operator;
3. The name and location of the facility;
4. The written agreement between the person transferring the facility and the new owner or operator indicating a specific date for transfer of all permit responsibility, coverage, and liability;
5. A signed declaration by the new owner or operator that the new owner or operator has reviewed the permit and agrees to the terms of the permit, including fee obligations under A.R.S. § 49-242; and
6. The applicable fee established in 18 A.A.C. 14.

B. A permittee may request that the Department transfer an individual permit to a new owner or operator.

1. The new owner or operator shall:
   a. Notify the Department by certified mail within 15 days after the change of ownership and include a written agreement between the previous and new owner indicating a specific date for transfer of all permit responsibility, coverage, and liability;
   b. Submit the applicable fee established in 18 A.A.C. 14;
   c. Demonstrate the technical and financial capability necessary to fully carry out the terms of the permit according to R18-9-A202 and R18-9-A203;
   d. Submit a signed statement that the new owner or operator has reviewed the permit and agrees to the terms of the permit; and
   e. Provide the Department with a copy of the Certificate of Disclosure if required by A.R.S. § 49-109.
2. If the Director amends the individual permit for the transfer, the new permittee is responsible for all conditions of the permit.

C. A permittee shall comply with all permit conditions until the Director transfers the permit, regardless of whether the permittee has sold or disposed of the facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A213. Permit Suspension, Revocation, Denial, or Termination

A. The Director may, after notice and opportunity for hearing, suspend or revoke an individual permit or a continuance under R18-9-105(A)(1), (2), or (3) for any of the following:

1. A permittee failed to comply with any applicable provision of A.R.S. Title 49, Chapter 2, Article 3; Articles 1 and 2 of this Chapter; or any permit condition;
2. A permittee misrepresented or omitted a fact, information, or data related to an Aquifer Protection Permit application or permit condition;
3. The Director determines that a permitted activity is causing or will cause a violation of an Aquifer Water Quality Standard at a point of compliance;
4. A permitted discharge is causing or will cause imminent and substantial endangerment to public health or the environment;
5. A permittee failed to maintain the financial capability under R18-9-A203(B); or
6. A permittee failed to construct a facility within five years of permit issuance and:
   a. It is necessary to update BADCT for the facility, and
   b. The Department has not issued an amended permit under R18-9-A211(B)(6).

B. The Director may deny an individual permit if the Director determines upon completion of the application process that the applicant has:

1. Failed or refused to correct a deficiency in the permit application;
2. Failed to demonstrate that the facility and the operation will comply with the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1 and 2 of this Chapter. The Director shall base this determination on:
   a. The information submitted in the Aquifer Protection Permit application,
   b. Any information submitted to the Department following a public hearing, or
   c. Any relevant information that is developed or acquired by the Department; or
3. Provided false or misleading information.

C. The Director shall terminate an individual permit if each facility covered under the individual permit:
1. Has closed and the Director issued a Permit Release Notice under R18-9-A209(C)(2)(c) or R18-9-A209(B)(3)(a)(ii) for the closed facility, or
2. Is covered under another Aquifer Protection Permit.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A214. Requested Coverage Under a General Permit

A. If a person who applied for or was issued an individual permit qualifies to operate a facility under a general permit established in Article 3 of this Chapter, the person may request that the individual permit be terminated and replaced by the general permit. The person shall submit the Notice of Intent to Discharge under R18-9-A301(B) with the appropriate fee established in 18 A.A.C. 14.

B. The individual permit is valid and enforceable with respect to a discharge from each facility until the Director determines that the discharge from each facility is covered under a general permit.

C. The owner or operator operating under a general permit shall comply with all applicable general permit requirements in Article 3 of this Chapter.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

R18-9-B201. General Considerations and Prohibitions

A. Applicability. The requirements in this Article apply to all sewage treatment facilities, including expansions of existing sewage treatment facilities, that treat wastewater containing sewage, unless the discharge is authorized by a general permit under Article 3 of this Chapter.

B. The Director may specify alert levels, discharge limitations, design specifications, and operation and maintenance requirements in the permit that are based upon information provided by the applicant and that meet the requirements under A.R.S. § 49-243(B)(1).

C. The permittee shall ensure that a sewage treatment facility is operated by a person certified under 18 A.A.C. 5, Article 1, for the grade of the facility.

D. Operation and maintenance.
1. The owner or operator shall maintain, at the sewage treatment facility, an operation and maintenance manual for the facility and shall update the manual as needed.
2. The owner or operator shall use the operation and maintenance manual to guide facility operations to ensure compliance with the terms of the Aquifer Protection Permit and to prevent any environmental nuisance described under A.R.S. § 49-141(A).
3. The Director may specify adherence to any operation or maintenance requirement as an Aquifer Protection Permit condition to ensure that the terms of the Aquifer Protection Permit are met.
4. The owner or operator shall make the operation and maintenance manual available to the Department upon request.

E. A person shall not create or maintain a connection between any part of a sewage treatment facility and a potable water supply so that sewage or wastewater contaminates a potable or public water supply.

F. A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from a sewage treatment facility.

G. Reclaimed water dispensed to a direct reuse site from a sewage treatment facility is regulated under Reclaimed Water Quality Standards in 18 A.A.C. 11, Article 3.

H. The preparation, transport, or land application of any biosolids generated by a sewage treatment facility is regulated under 18 A.A.C. 9, Article 10.

I. The owner or operator of a sewage treatment facility that is a new facility or undergoing a major modification shall provide setbacks established in the following table. Setbacks are measured from the treatment and disposal components within the sewage treatment facility to the nearest property line of an adjacent dwelling, workplace, or private property. If an owner or operator cannot meet a setback for a facility undergoing a major modification that incorporates full noise, odor, and aesthetic controls, the owner or operator shall not further encroach into setback distances existing before the major modification except as allowed in subsection (I)(2).

Sewage Treatment Facility Design Flow (gallons per day)	No Noise, Odor, or Aesthetic Controls (feet)	Full Noise, Odor, and Aesthetic Controls (feet)
3000 to less than 24,000	250	25
24,000 to less than 100,000	350	50
100,000 to less than 500,000	500	100
500,000 to less than 1,000,000	750	250
1,000,000 or greater	1000	350

1. Full noise, odor, and aesthetic controls means that:
   a. Noise due to the sewage treatment facility does not exceed 50 decibels at the facility property boundary on the A network of a sound level meter or a level established in a local noise ordinance,
   b. All odor-producing components of the sewage treatment facility are fully enclosed,
   c. Odor scrubbers or other odor-control devices are installed on all vents, and
   d. Fencing aesthetically matched to the area surrounding the facility.
2. The owner or operator of a sewage treatment facility undergoing a major modification may decrease setbacks if:
   a. Allowed by local ordinance; or
   b. Setback waivers are obtained from affected property owners in which the property owner acknowledges awareness of the established setbacks, basic design

of the sewage treatment facility, and the potential for noise and odor.

J. The owner or operator of a sewage treatment facility shall not operate the facility so that it emits an offensive odor on a persistent basis beyond the setback distances specified in subsection (I).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B202. Design Report

A. A person applying for an individual permit shall submit a design report signed, dated, and sealed by an Arizona-registered professional engineer. The design report shall include the following information:

1. Wastewater characterization, including quantity, quality, seasonality, and impact of increased flows as the facility reaches design flow;
2. The proposed method of disposal, including solids management;
3. A description of the treatment unit processes and containment structures, including diagrams and calculations that demonstrate that the design meets BADCT requirements and will achieve treatment levels specified in R18-9-B204 through R18-9-B206, as applicable, for all flow conditions indicated in subsection (A)(9). If soil aquifer treatment or other aspects of site conditions are used to meet BADCT requirements, the applicant shall document performance of the site in the design report or the hydrogeologic report;
4. A description of planned normal operation;
5. A description of key maintenance activities and a description of contingency and emergency operation for the facility;
6. A description of construction management controls;
7. A description of the facility startup plan, including preoperational testing, expected treated wastewater characteristics and monitoring requirements during startup, expected time-frame for meeting performance requirements specified in R18-9-B204, and any other special startup condition that may merit consideration in the individual permit;
8. A site diagram depicting compliance with the setback requirements established in R18-9-B201(I) for the facility at design flow, and for each phase if the applicant proposes expansion of the facility in phases;
9. The following flow information in gallons per day for the proposed sewage treatment facility. If the application proposes expansion of the facility in phases, the following flow information for each phase:
   a. The design flow of the sewage treatment facility. The design flow is the average daily flow over a calendar year calculated as the sum of all influent flows to the facility based on Table 1, Unit Design Flows, unless a different basis for determining influent flows is approved by the Department;
   b. The maximum day. The maximum day is the greatest daily total flow that occurs over a 24-hour period within an annual cycle of flow variations;
   c. The maximum month. The maximum month is the average daily flow of the month with the greatest total flow within the annual cycle of flow variations;
   d. The peak hour. The peak hour is the greatest total flow during one hour, expressed in gallons per day, within the annual cycle of flow variations;
   e. The minimum day. The minimum day is the least daily total flow that occurs over a 24-hour period within the annual cycle of flow variations;
   f. The minimum month. The minimum month is the average daily flow of the month with the least total flow within the annual cycle of flow variations; and
   g. The minimum hour. The minimum hour is the least total flow during one hour, expressed in gallons per day, within the annual cycle of flow variations; and
10. Specifications for pipe, standby power source, and water and sewer line separation.

B. The Department may inspect an applicant's facility without notice to ensure that construction conforms to the design report.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B203. Engineering Plans and Specifications

A. A person applying for an individual permit for a sewage treatment facility with a design flow under one million gallons per day, shall submit engineering plans and specifications to the Department. The Director may waive this requirement if the Director previously approved engineering plans and specifications submitted by the same owner or operator for a sewage treatment facility with a design flow of more than one million gallons per day.

B. A person applying for an individual permit for a sewage treatment facility with a design flow of one million gallons per day or greater shall submit engineering plans and specifications if, upon review of the design report required in R18-9-B202, the Department finds that:

1. The design report fails to provide sufficient detail to determine adequacy of the proposed sewage treatment facility design;
2. The described design is innovative and does not reflect treatment technologies generally accepted within the industry;
3. The Department's calculations of removal efficiencies based on the design report show that the treatment facility cannot achieve treatment performance requirements;
4. The design report does not demonstrate:
   a. Protection from physical damage due to a 100-year flood,
   b. Ability to continuously operate during a 25-year flood, or
   c. Provision for a standby power source;
5. The design report shows inconsistency in sizing or compatibility between two or more unit process components of the sewage treatment facility;
6. The designer of the facility has:
   a. Designed a sewage treatment facility of at least a similar size on less than three previous occasions,
   b. Designed a sewage treatment facility that has been the subject of a Director enforcement action due to the facility design, or
   c. Been found by the Board of Technical Registration to have violated a provision in A.R.S. Title 32, Chapter 1;

7. The permittee seeks to expand its sewage treatment facility and the Department believes that the facility will require upgrades to the design not described and evaluated in the design report to meet the treatment performance requirements; or
8. The construction does not conform to the design report if the sewage treatment facility has already been constructed.

C. The Department shall review engineering plans and specifications upon request by an applicant seeking a permit for a sewage treatment facility, regardless of its flow.

D. The Department may inspect an applicant's facility without notice to ensure that construction generally conforms to engineering plans and specifications, as applicable.

E. Before discharging under a permit, the permittee shall submit an Engineer's Certificate of Completion signed, dated, and sealed by an Arizona-registered professional engineer in a format approved by the Department, that confirms that the facility is constructed according to the Department-approved design report or plans and specifications, as applicable.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B204. Treatment Performance Requirements for a New Facility

A. Definition. "Week" means a seven-day period starting on Sunday and ending on the following Saturday.

B. An owner or operator of a new sewage treatment facility shall ensure that the facility meets the following performance requirements upon release of the treated wastewater at the outfall:

1. Secondary treatment levels.
   a. Five-day biochemical oxygen demand (BOD_5) less than 30 mg/l (30-day average) and 45 mg/l (seven-day average), or carbonaceous biochemical oxygen demand ($CBOD_5$) less than 25 mg/l (30-day average) or 40 mg/l (seven-day average);
   b. Total suspended solids (TSS) less than 30 mg/l (30-day average) and 45 mg/l (seven-day average);
   c. pH maintained between 6.0 and 9.0 standard units; and
   d. A removal efficiency of 85 percent for BOD_5, $CBOD_5$, and TSS;
2. Secondary treatment by waste stabilization ponds is not considered BADCT unless an applicant demonstrates to the Department that site-specific hydrologic and geologic characteristics and other environmental factors are sufficient to justify secondary treatment by waste stabilization ponds;
3. Total nitrogen in the treated wastewater is less than 10 mg/l (five-month rolling geometric mean). If an applicant demonstrates, using appropriate monitoring that soil aquifer treatment will produce a total nitrogen concentration less than 10 mg/l in wastewater that percolates to groundwater, the Department may approve soil aquifer treatment for removal of total nitrogen as an alternative to meeting the performance requirement of 10 mg/l at the outfall;
4. Pathogen removal.
   a. For a sewage treatment facility with a design flow of less than 250,000 gallons per day at a site where the depth to the seasonally high groundwater table is greater than 20 feet and there is no karstic or fractured bedrock at the surface:
      i. The concentration of fecal coliform organisms in four of the wastewater samples collected during the week is less than 200 cfu/100 ml or the concentration of *E. coli* bacteria in four of the wastewater samples collected during the week is less than 126 cfu/100 ml, based on a sampling frequency of seven daily samples per week;
      ii. The single sample maximum concentration of fecal coliform organisms in a wastewater sample is not greater than 800 cfu/100 ml or the single sample maximum concentration of *E. coli* bacteria in a wastewater sample is not greater than 504 cfu/100 ml; and
      iii. An owner or operator of a facility may request a reduction in the monitoring frequency required in subsection (B)(4)(a)(i) if equipment is installed to continuously monitor an alternative indicator parameter and the owner or operator demonstrates that the continuous monitoring will ensure reliable production of wastewater that meets the numeric concentration levels in subsections (B)(4)(a)(i) and (ii) at the discharge point;
   b. For any other sewage treatment facility:
      i. No fecal coliform organisms or no *E. coli* bacteria are detected in four of the wastewater samples collected during the week, based on a sampling frequency of seven daily samples per week;
      ii. The single sample maximum concentration of fecal coliform organisms in a wastewater sample is not greater than 23 cfu/100 ml or the single sample maximum concentration of *E. coli* is not greater than 15 cfu/100 ml;
      iii. An owner or operator may request a reduction in the monitoring frequency required in subsection (B)(4)(b)(i) if equipment is installed to continuously monitor an alternative indicator parameter and the owner or operator demonstrates that the continuous monitoring will ensure reliable production of wastewater that meets the numeric concentration levels in subsections (B)(4)(b)(i) or (ii) at the discharge point;
   c. An owner or operator may use unit treatment processes, such as chlorination-dechlorination, ultraviolet, and ozone to achieve the pathogen removal performance requirements specified in subsections (B)(4)(a) and (b);
   d. The Department may approve soil aquifer treatment for the removal of fecal coliform or *E. coli* bacteria as an alternative to meeting the performance requirement in subsection (B)(4)(a) or (b), if the soil aquifer treatment process will produce a fecal coliform or *E. coli* bacteria concentration less than that required under subsection (B)(4)(a) or (b), in wastewater that percolates to groundwater;
5. Unless governed by A.R.S. § 49-243(I), the performance requirement for each constituent regulated under R18-11-

406(B) through (E) is the numeric Aquifer Water Quality Standard;

6. The performance requirement for a constituent regulated under A.R.S. § 49-243(I) is removal to the greatest extent practical regardless of cost.
   a. An operator shall minimize trihalomethane compounds generated as disinfection byproducts using chlorination, dechlorination, ultraviolet, or ozone as the disinfection system or using a technology demonstrated to have equivalent or better performance for removing or preventing trihalomethane compounds.
   b. For other pollutants regulated by A.R.S. § 49-243(I), an operator shall use one of the following methods to achieve industrial pretreatment:
      i. Regulate industrial sources of influent to the sewage treatment facility by setting limits on pollutant concentrations, monitoring for pollutants, and enforcing the limits to reduce, eliminate, or alter the nature of a pollutant before release into a sewage collection system;
      ii. Meet the pretreatment requirements of A.R.S. § 49-255.02; or
      iii. For sewage treatment facilities without significant industrial input, conduct periodic monitoring to detect industrial discharge; and
   7. A maximum seepage rate less than 550 gallons per day per acre for all containment structures within the treatment works. A sewage treatment facility that consists solely of containment structures with no other form of discharge complies with Article 2 Part B by operating below the maximum 550 gallon per day per acre seepage rate.

C. The Director shall incorporate treated wastewater discharge limitations and associated monitoring specified in this Section into the individual permit to ensure compliance with the BADCT requirements.

D. An applicant shall formally request in writing and justify an alternative that allows less stringent performance than that established in this Section, based on the criteria specified in A.R.S. § 49-243(B)(1).

E. If the request specified in subsection (D) involves treatment or disposal works that are a demonstration, experimental, or pilot project, the Director may issue an individual permit that places greater reliance on monitoring to ensure operational capability.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B205. Treatment Performance Requirements for an Existing Facility

For a sewage treatment facility that is an existing facility defined in A.R.S. § 49-201(16), the BADCT shall conform with the following:

1. The designer shall identify one or more design improvements that brings the facility closer to or within the treatment performance requirements specified in R18-9-B204, considering the factors listed in A.R.S. § 49-243(B)(1)(a) and (B)(1)(c) through (h);
2. The designer may eliminate from consideration alternatives identified in subsection (1) that are more expensive than the number of gallons of design flow times $1.00 per gallon; and
3. The designer shall select a design that incorporates one or more of the considered alternatives by giving preference to measures that will provide the greatest improvement toward meeting the treatment performance requirements specified in R18-9-B204.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B206. Treatment Performance Requirements for Expansion of a Facility

For an expansion of a sewage treatment facility, the BADCT shall conform with the following:

1. New facility BADCT requirements in R18-9-B204 apply to the following expansions:
   a. An increase in design flow by an amount equal to or greater than the increases specified in R18-9-A211(B)(2)(b); or
   b. An addition of a physically separate process or major piece of production equipment, building, or structure that causes a separate discharge to the extent that the treatment performance requirements for the pollutants addressed in R18-9-B204 can practicably be achieved by the addition.
2. BADCT requirements for existing facilities established in R18-9-B205 apply to an expansion not covered under subsection (1).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (1) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART A. GENERAL PROVISIONS

R18-9-A301. Discharging Under a General Permit

A. Discharging requirements.

1. Type 1 General Permit. A person may discharge under a Type 1 General Permit without submitting a Notice of Intent to Discharge if the discharge is authorized by and meets:
   a. The applicable requirements of Article 3, Part A of this Chapter; and
   b. The specific terms of the Type 1 General Permit established in Article 3, Part B of this Chapter.
2. Type 2 General Permit. A person may discharge under a Type 2 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 2 General Permit established in Article 3, Part C of this Chapter;
   b. The person files a Notice of Intent to Discharge under subsection (B); and
   c. The person submits the applicable fee established in 18 A.A.C. 14.
3. Type 3 General Permit. A person may discharge under a Type 3 General Permit if:

a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 3 General Permit established in Article 3, Part D of this Chapter;
b. The person files a Notice of Intent to Discharge under subsection (B);
c. The person satisfies any deficiency requests from the Department regarding the administrative completeness review and substantive review and receives a written Discharge Authorization from the Director; and
d. The person submits the applicable fee established in 18 A.A.C. 14.

4. Type 4 General Permit. A person may discharge under a Type 4 General Permit if:
a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 4 General Permit established in Article 3, Part E of this Chapter;
b. The person files a Notice of Intent to Discharge under subsection (B);
c. The person satisfies any deficiency requests from the Department regarding the administrative completeness review and substantive review, including any deficiency relating to the construction of the facility;
d. The person receives a written Discharge Authorization from the Director before the facility discharges; and
e. The person submits the applicable fee established in 18 A.A.C. 14 or according to A.R.S. §§ 49-107 and 49-112.

B. Notice of Intent to Discharge.
1. A person seeking a Discharge Authorization under a general permit under subsections (A)(2), (3), or (4) shall submit, by certified mail, in person, or by another method approved by the Department, a Notice of Intent to Discharge on a form provided by the Department.
2. The Notice of Intent to Discharge shall include:
a. The name, address, and telephone number of the applicant;
b. The name, address, and telephone number of a contact person familiar with the operation of the facility;
c. The name, position, address, and telephone number of the owner or operator of the facility who has overall responsibility for compliance with the permit;
d. The legal description of the discharge areas, including the latitude and longitude coordinates;
e. A narrative description of the facility or project, including expected dates of operation, rate, and volume of discharge;
f. The additional requirements, if any, specified in the general permit for which the authorization is being sought;
g. A listing of any other federal or state environmental permits issued for or needed by the facility, including any individual permit, Groundwater Quality Protection Permit, or Notice of Disposal that may have previously authorized the discharge; and
h. A signature on the Notice of Intent to Discharge certifying that the applicant agrees to comply with all applicable requirements of this Article, including specific terms of the general permit.
3. Receipt of a completed Notice of Intent to Discharge by the Department begins the administrative completeness review for a Type 3 or Type 4 General Permit.

C. Type 3 General Permit authorization review.
1. Inspection. The Department may inspect the facility to determine that the applicable terms of the general permit have been met.
2. Discharge Authorization issuance.
a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of the general permit and the applicable requirements of this Article, the Director shall issue a Discharge Authorization.
b. The Discharge Authorization authorizes the person to discharge under terms of the general permit and applicable requirements of this Article.
3. Discharge Authorization denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of the general permit or other applicable requirements of this Article, the Director shall notify the person of the decision not to issue the Discharge Authorization and the person shall not discharge under the general permit. The notification shall inform the person of:
a. The reason for the denial with reference to the statute or rule on which the denial is based;
b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

D. Type 4 General Permit review.
1. Pre-construction phase and facility construction. A person shall not begin facility construction until the Director issues a Construction Authorization.
a. Inspection. The Department may inspect the facility site before construction to determine that the applicable terms of the general permit will be met.
b. Review. If the Department determines, based on an inspection or its review of design plans, specifications, or other required documents that the facility does not conform to the requirements of the general permit or other applicable requirements of this Article, the Department shall make a written request for additional information to determine whether the facility will meet the requirements of the general permit.
c. Construction Authorization. If the Department determines, based on the review described in subsection (D)(1)(b) and any additional information submitted in response to a written request, that the facility design conforms with the requirements of the general permit and other applicable requirements of this Article, the Director shall issue a Construction Authorization to the person seeking to discharge. A Construction Authorization for an on-site wastewater treatment facility shall contain:
i. The design flow of the facility,

ii. The characteristics of the wastewater sources contributing to the facility,
iii. The general permits that apply, and
iv. A list of the documents that are the basis for the authorization.

d. Construction Authorization denial. If the Department determines, based on the review described in subsection (D)(1)(b) and any additional information submitted in response to a written request, that the facility design does not conform to the requirements of the general permit or other applicable requirements of this Article, the Director shall notify the person of the decision not to issue a Construction Authorization. The notification shall include the information listed in subsections (D)(2)(d).

e. Construction.
i. A person shall complete construction within two years of receiving a Construction Authorization.
ii. Construction shall conform with the plans and documents approved by the Department in the Construction Authorization. A change in location, configuration, dimension, depth, material, or installation procedure does not require approval by the Department if the change continues to conform with the specific standard in this Article used as the basis for the original design.
iii. The person shall record all changes made during construction, including any changes approved under R18-9-A312(G) on the site plan as specified in R18-9-A309(C)(1) or on documents as specified in R18-9-A309(C)(2) or R18-9-E301(E), as applicable.

f. Completion of construction.
i. After completing construction of the facility, the person seeking to discharge shall submit any applicable documents specified in R18-9-A309(C) with the Request for Discharge Authorization form for an on-site wastewater treatment facility and the Engineer's Certificate of Completion specified in R18-9-E301(E) for a sewage collection system. Receipt of the documents by the Department initiates the post-construction review phase.
ii. If the Department does not receive the documentation specified in subsection (D)(1)(f)(i) by the end of the two-year construction period, the Notice of Intent to Discharge expires, and the person shall not continue construction or discharge.
iii. If the Notice of Intent to Discharge expires, the person shall submit a new Notice of Intent to Discharge under subsection (B) and the applicable fee under subsection (A)(4)(e) to begin or continue construction.

2. Post-construction phase.
a. Inspection. The Department may inspect the facility before issuing a Discharge Authorization to determine whether:
i. The construction conforms with the design authorized by the Department under subsection (D)(1)(c) and any changes recorded on the site plan as specified in R18-9-A309(C)(1) or other documents as specified in R18-9-A309(C)(2), or R18-9-E301(E), as applicable; and
ii. Terms of the general permit and applicable terms of this Article are met.

b. Deficiencies. If the Department identifies deficiencies based on an inspection of the constructed facility or during the review of documents submitted with the request for the Discharge Authorization, the Director shall provide a written explanation of the deficiencies to the person.

c. Discharge Authorization issuance.
i. Upon satisfactory completion of construction and documents required under R18-9-A309(C)(1) R18-9-A309(C)(2), or R18-9-E301(E), as applicable, the Director shall issue a Discharge Authorization.
ii. The Discharge Authorization allows a person to discharge under terms of the general permit and applicable requirements of this Article and the stated terms of the Construction Authorization.

d. Discharge Authorization denial. If, after receiving evidence of correction submitted by the person seeking to discharge, the Department determines that the deficiencies are not satisfactorily corrected, the Director shall notify the person seeking to discharge of the Director's decision not to issue the Discharge Authorization and the person shall not discharge under the general permit. The notification shall inform the person of:
i. The reason for the denial with reference to the statute or rule on which the denial is based;
ii. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
iii. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A302. Point of Compliance

The point of compliance is the point at which compliance with Aquifer Water Quality Standards is determined.

1. Except as provided in this Section or as stated in a specific general permit, the applicable point of compliance at a facility operating under a general permit is a vertical plane downgradient of the facility that extends through the uppermost aquifers underlying that facility.
2. The point of compliance is the limit of the pollutant management area.
a. The pollutant management area is the horizontal plane of the area on which pollutants are or will be placed.
b. If a facility operating under a general permit is located within a larger pollutant management area established under an individual permit issued to the same person, the point of compliance is the applica-

ble point of compliance established in the individual permit.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-A303. Renewal of a Discharge Authorization

A. Unless a Discharge Authorization under a general permit is transferred, revoked, or expired, a person may discharge under the general permit for the authorization period as specified by the permit type, including any closure activities required by a specific general permit.

B. An authorization to discharge under a Type 1 or Type 4 General Permit is valid for the operational life of the facility.

C. A permittee authorized under a Type 2 or Type 3 General Permit shall submit an application for renewal on a form provided by the Department with the applicable fee established in 18 A.A.C. 14 at least 30 days before the end of the renewal period.
1. The following are the renewal periods for Type 2 and Type 3 General Permit Discharge Authorizations:
   a. 2.01 General Permit, five years;
   b. 2.02 General Permit, seven years;
   c. 2.03 General Permit, two years;
   d. 2.04 General Permit, five years;
   e. 2.05 General Permit, five years;
   f. 2.06 General Permit, five years; and
   g. Type 3 General Permits, five years.
2. The renewal period for coverage under a Type 2 General Permit begins on the date the Department receives the Notice of Intent to Discharge.
3. The renewal period for coverage under a Type 3 General Permit begins on the date the Director issues the written Discharge Authorization.

D. If the Discharge Authorization is not renewed within the renewal period specified in subsection (C)(1), the Discharge Authorization expires.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A304. Notice of Transfer

A. Transfer of authorization under a Type 1 General Permit.
1. A permittee transferring ownership of a facility covered by a Type 1.01 through 1.08, or 1.10 through 1.12 General Permit is not required to notify the Department of the transfer.
2. A permittee transferring ownership of an on-site wastewater treatment facility operating under a Type 1.09 General Permit shall follow the requirements under R18-9-A316.
3. A permittee transferring ownership of a sewage treatment facility operating under a Type 1.09 General Permit shall submit a Notice of Transfer to the Department by certified mail within 15 days after the date that ownership changes.

B. Transfer of authorization under a Type 2, 3, or 4.01 General Permit.
1. If a change of ownership occurs for a facility covered by a Type 2, 3, or 4.01 General Permit facility, the permittee shall provide a Notice of Transfer to the Department or to the health or environmental agency delegated by the Director to administer Type 4.01 General Permits, by certified mail within 15 days after the date that ownership changes. The Notice of Transfer, on a form approved by the Department, shall include:
   a. Any information that has changed from the original Notice of Intent to Discharge,
   b. Any other transfer requirements specified for the general permit, and
   c. The applicable fee established in 18 A.A.C. 14.
2. The Department may require a permittee covered by a Type 2, 3, or Type 4.01 General Permit to submit a new Notice of Intent to Discharge and to obtain a new authorization under R18-9-A301(A)(2), (3) and (4), as applicable, if the volume or characteristics of the discharge have changed from the original application.

C. Transfer of a Type 4.02 through 4.23 General Permit. A permittee transferring ownership of an on-site wastewater treatment facility operating under one or more Type 4.02 through 4.23 General Permits shall follow the requirements under R18-9-A316.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A305. Facility Expansion

A. A permittee may expand a facility covered by a Type 2 General Permit if, before the expansion, the permittee provides the Department with the following information by certified mail:
1. An updated Notice of Intent to Discharge,
2. A certification signed by the facility owner stating that the expansion continues to meet all the conditions of the applicable general permit, and
3. The applicable fee established under 18 A.A.C. 14.

B. A permittee may expand a facility covered by a Type 3 or Type 4 General Permit if the permittee submits a new Notice of Intent to Discharge and the Department issues a new Discharge Authorization.
1. The person submitting the Notice of Intent to Discharge for the expansion may reference the previous Notice of Intent to Discharge if the previous information is identical, but shall provide full and detailed information for any changed items.
2. The Notice of Intent to Discharge shall include:
   a. Any applicable fee established under 18 A.A.C. 14, and
   b. A certification signed by the facility owner stating that the expansion continues to meet all of the requirements relating to the applicable general permit.
3. Upon receiving the Notice of Intent to Discharge, the Department shall follow the applicable review and authorization procedures described in R18-9-A301(A)(3) or (4).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A306. Closure

A. To satisfy the requirements under A.R.S. § 49-252, a permittee shall close a facility authorized to discharge under a general permit as follows:
1. If the discharge is authorized under a Type 1.01 through 1.08, 1.10, 1.11, 2.05, 2.06, or 4.01 General Permit, closure notification is unnecessary and clean closure is met when:
   a. The permittee removes material that may contribute to a continued discharge; and
   b. The permittee eliminates, to the greatest degree practical, any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance;
2. For a discharge authorized under a Type 2.02, 3.02, 3.05 through 3.07, or 4.23 General Permit, the facility meets clean closure requirements if the permittee provides notice and submits sufficient information for the Department to determine that:
   a. Any material that may contribute to a continued discharge is removed;
   b. The permittee has eliminated to the greatest degree practicable any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance; and
   c. Closure requirements, if any, established in the general permit are met;
3. If the discharge is authorized under a Type 1.12, 2.01, 2.03, 2.04, 3.01, 3.03, or 3.04 General Permit, the permittee shall comply with the closure requirements in the general permit;
4. If the discharge is from an on-site wastewater treatment facility authorized under a Type 1.09 or 4.02 through 4.22 General Permit, the permittee shall comply with the closure requirements in R18-9-A309(D); and
5. If the discharge is from a sewage treatment facility authorized under a Type 1.09 General Permit, the permittee shall comply with the closure requirements under subsection (A)(1).

B. For a facility operating under a general permit and located at a site where an individual area-wide permit has been issued, a permittee may defer some or all closure activities required by this subsection if the Director approves the deferral in writing. The permittee shall complete closure activities no later than the date that closure activities identified in the individual area-wide permit are performed.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A307. Revocation of Coverage Under a General Permit

A. After notice and opportunity for a hearing, the Director may revoke coverage under a general permit and require the permittee to obtain an individual permit for any of the following:
1. The permittee fails to comply with the terms of the general permit as described in this Article, or
2. The discharge activity conducted under the terms of the general permit causes or contributes to the violation of an Aquifer Water Quality Standard at the applicable point of compliance.

B. The Director may revoke coverage under a general permit for any or all facilities within a specific geographic area, if, due to geologic or hydrologic conditions, the cumulative discharge of the facilities has violated or will violate an Aquifer Water Quality Standard established under A.R.S. §§ 49-221 and 49-223. Unless the public health or safety is jeopardized, the Director may allow continuation of a discharge until the Department:
1. Issues a single individual permit,
2. Authorizes a discharge under another general permit, or
3. Consolidates the discharges authorized under the general permits by following R18-9-107.

C. If an individual permit is issued to replace general permit coverage, the coverage under the general permit allowing the discharge is automatically revoked upon issuance of the individual permit and notification under subsection (E) is not required.

D. If the Director revokes coverage under a general permit, the facility shall not discharge unless allowed under subsection (B) or under an individual permit.

E. If coverage under the general permit is revoked under subsections (A) or (B), the Director shall notify the permittee by certified mail of the decision. The notification shall include:
1. A brief statement of the reason for the decision;
2. The effective revocation date of the general permit coverage;
3. A statement of whether the discharge shall cease or whether the discharge may continue under the terms of revocation in subsection (B);
4. Whether the Director requires a person to obtain an individual permit, and if so:
   a. An individual permit application form, and
   b. Identification of a deadline between 90 and 180 days after receipt of the notification for filing the application;
5. The applicant's right to appeal the revocation, the number of days the applicant has to file an appeal, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
6. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A308. Repealed

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Repealed by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A309. General Provisions for On-site Wastewater Treatment Facilities

A. General requirements and prohibitions.
1. No person shall discharge sewage or wastewater that contains sewage from an on-site wastewater treatment facility except under an Aquifer Protection Permit issued by the Director.

2. A person shall not install, allow to be installed, or maintain a connection between any part of an on-site wastewater treatment facility and a drinking water system or supply so that sewage or wastewater contaminates the drinking water.
3. A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from an on-site wastewater treatment facility.
4. A person shall not use a cesspool for sewage disposal.
5. A person constructing a new on-site wastewater treatment facility or replacing the treatment works or disposal works of an existing on-site wastewater treatment facility shall connect to a sewage collection system if either (a) or (b) apply:
   a. One of the following applies:
      i. A provision of a Nitrogen Management Area designation under R18-9-A317(C) requires connection;
      ii. A county, municipal, or sanitary district ordinance requires connection; or
      iii. The on-site wastewater treatment facility is located within an area identified for connection to a sewage collection system by a Certified Area-wide Water Quality Management Plan adopted under 18 A.A.C. 5 or a master plan adopted by a majority of the elected officials of a board or council for a county, municipality, or sanitary district; or
   b. A sewer service line extension is available at the property boundary and both of the following apply:
      i. The service connection fee is not more than $6000 for a dwelling or $10 times the daily design flow in gallons for a source other than a dwelling, and
      ii. The cost of constructing the building sewer from the wastewater source to the service connection is not more than $3000 for a dwelling or $5 times the daily design flow in gallons for a source other than a dwelling.
6. The Department shall prohibit installation of an on-site wastewater treatment facility if the installation will create an unsanitary condition or environmental nuisance or cause or contribute to a violation of an Aquifer Water Quality Standard.
7. A person shall design and operate the permitted on-site wastewater treatment facility so that:
   a. Flows to the facility consist of typical sewage and do not include any motor oil, gasoline, paint, varnish, solvent, pesticide, fertilizer, or other material not generally associated with toilet flushing, food preparation, laundry, or personal hygiene;
   b. Flows to the facility from commercial operations do not contain hazardous wastes as defined under A.R.S. § 49921(5) or hazardous substances;
   c. If the sewage contains a component of nonresidential flow such as food preparation, laundry service, or other source, the sewage is adequately pretreated by an interceptor that complies with R18-9-A315 or another device authorized by a general permit or approved by the Department under R18-9-A312(G);
   d. Except as provided in subsection (A)(7)(c), a sewage flow that does not meet the numerical levels for typical sewage is adequately pretreated to meet the numerical levels before entry into an on-site wastewater treatment facility authorized by this Article;
   e. Flow to the facility does not exceed the design flow specified in the Discharge Authorization;
   f. The facility does not create an unsanitary condition or environmental nuisance, or cause or contribute to a violation of either a Aquifer Water Quality Standard or a Surface Water Quality Standard; and
   g. Activities at the site do not adversely affect the operation of the facility.
8. A person shall control the discharge of total nitrogen from an on-site wastewater treatment facility as follows:
   a. For an on-site wastewater treatment facility operating under the 1.09 General Permit or proposed for construction in a Notice of Intent to Discharge under a Type 4 General Permit and the facility is located within a Nitrogen Management Area, the provisions of R18-9-A317(D) apply;
   b. For an on-site wastewater treatment facility proposed for construction in a Notice of Intent to Discharge under R18-9-E323, the provisions of R18-9-E323(A)(4) apply;
   c. For a subdivision proposed under 18 A.A.C. 5, Article 4, for which on-site wastewater treatment facilities are used for sewage disposal, the permittee shall demonstrate in the geological report required in R18-5-408(E)(1) that total nitrogen loading from the on-site wastewater treatment facilities to groundwater is controlled by providing one of the following:
      i. For a subdivision platted for a single family dwelling on each lot, calculations that demonstrate that the number of lots within the subdivision does not exceed the number of acres contained within the boundaries of the subdivision;
      ii. For a subdivision platted for dwellings that do not meet the criteria specified in subsection (A)(8)(c)(i), calculations that demonstrate that the nitrogen loading over the total area of the subdivision is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the active treatment of the disposal fields, based on a total nitrogen contribution to raw sewage of 0.0333 pounds (15.0 grams) of total nitrogen per day per person; or
      iii. An analysis by another means of demonstration showing that the nitrogen loading to the aquifer due to on-site wastewater treatment facilities within the subdivision does not cause or contribute to a violation of the Aquifer Water Quality Standard for nitrate at the applicable point of compliance.
9. Repairs and Routine Work.
   a. A Notice of Intent to Discharge is not required for repair or routine work that maintains a facility.
   b. A Notice of Intent to Discharge is required for the following non-routine work or repairs:
      i. Converting a facility from operation under gravity to one requiring a pump or other mechanical device for treatment or disposal;
      ii. Modifying or replacing a treatment works or disposal works, as defined in R18-9-101; or

iii. Modifying a facility in any manner that is inconsistent with the originally approved design and installation of the facility.

c. A permittee shall comply with any local ordinance that provides independent permitting requirements for repair or routine work.

d. A person, as defined in R18-9-101, shall not modify the facility so as to create an unsanitary condition or environmental nuisance or cause or contribute to an exceedance of a water quality standard.

10. Cumulative flows. When there is more than one on-site wastewater treatment facility on a property or on a site under common ownership or subject to a larger plan of sale or development, the Director shall determine whether an individual permit is required or whether the applicant qualifies for coverage to discharge under a general permit based on the sum of the design flows from the proposed installation and existing on-site wastewater treatment facilities on the property or site.
    a. If the sum of the design flows is less than 3000 gallons per day, the Department will process the application under R18-9-E302 through R18-9-E322, as applicable.
    b. If the sum of the design flows is equal to or more than 3000 gallons per day but less than 24,000 gallons per day, the Department will process the application under R18-9-E323.
    c. If the sum of the design flows is equal to or more than 24,000 gallons per day, the project does not qualify for coverage under a Type 4 General Permit and the applicant shall submit an application for an individual permit under Article 2 of this Chapter.
11. The use of a gray water system does not change the design, capacity, or reserve area requirements for an on-site wastewater treatment facility regulated under R18-9-E302 through R18-9-E323. The design of an on-site facility shall ensure the on-site facility can treat and dispose of the combined black water and gray water flows generated at the site. Black water includes wastewater flows from a kitchen sink. Kitchen sink wastewater flows are not gray water. Kitchen sink wastewater flows are not gray water even if a holding tank receiving kitchen sink wastewater, such as a recreational vehicle holding tank, is labeled as holding gray water. Gray water, as defined in R18-9-101, may be utilized in accordance with Article 7 of this Chapter.
12. To obtain coverage under a Type 4 General Permit, an applicant must, in the following order:
    a. Submit a Notice of Intent to Discharge according to requirements in R18-9-A301(B), R18-9-A309(B), and according to permit-specific requirements in Part E of Article 3,
    b. Receive a Construction Authorization from the Director pursuant to R18-9-A301(D)(1)),
    c. Submit a Request for Discharge Authorization according to requirements in R18-9-A301(D)(1)(f), R18-9-A309(C), and according to permit-specific requirements in Part E of Article 3, and
    d. Receive a Discharge Authorization from the Director pursuant to R18-9-A301(D)(2) and R18-9-A309(C).

B. Notice of Intent to Discharge under a Type 4 General Permit. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information in a format approved by the Department:

1. A site investigation report that summarizes the results of the site investigation conducted under R18-9-A310(B), including:
    a. Results from any soil evaluation, percolation test, or seepage pit performance test;
    b. Any surface limiting condition identified in R18-9-A310(C)(2); and
    c. Any subsurface limiting condition identified in R18-9-A310(D)(2);
2. A site plan that includes:
    a. The parcel and lot number, if applicable, the property address or other appropriate legal description, the property size in acres, and the boundaries of the property;
    b. A plan of the site drawn to scale, dimensioned, and with a north arrow that shows:
        i. Proposed and existing on-site wastewater treatment facilities; dwellings and other buildings; driveways, swimming pools, tennis courts, wells, ponds, and any other paved, concrete, or water feature; down slopes and cut banks with a slope greater than 15 percent; retaining walls; and any other constructed feature that affects proper location, design, construction, or operation of the facility;
        ii. Any feature less than 200 feet from the on-site wastewater treatment facility excavation and reserve area that constrains the location of the on-site wastewater treatment facility because of setback limitations specified in R18-9-A312(C);
        iii. Topography, delineated with an appropriate contour interval, showing original and post-installation grades;
        iv. Drainage patterns, and as applicable, drainage controls and erosion protection for the facility;
        v. Location and identification of the treatment and disposal works and wastewater pipelines, the reserve disposal area, and location and identification of all sites of percolation testing and soil evaluation performed under R18-9-A310; and
        vi. Location of any public sewer if 400 feet or less from the property line;
3. The design flow of the on-site wastewater treatment facility, consisting of gray water and black water flows, expressed in gallons per day based on Table 1, Unit Design Flows, the expected strength of the wastewater if the strength exceeds the levels for typical sewage, and:
    a. For a single family dwelling, a list of the number of bedrooms and plumbing fixtures and corresponding unit flows used to calculate the design flow of the facility; and
    b. For a dwelling other than for a single family, a list of each wastewater source and corresponding unit flows used to calculate the design flow of the facility;
4. A list of materials, components, and equipment for constructing the on-site wastewater treatment facility;
5. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department;

6. If pretreatment is necessary for a facility to comply with the requirements of this Chapter, including R18-9-A309(A)(7), then a design report approved by the on-site wastewater treatment facility manufacturer or manufacturers that specifies component capacities, control settings, and supplemental installation and operation practices necessary to produce typical sewage numerical levels before entry into an on-site wastewater treatment facility; and
7. For a facility that includes treatment or disposal works permitted under R18-9-E303 through R18-9-E323:
   a. Construction quality drawings that show the following:
      i. Systems, subsystems, and key components, including manufacturer's name, model number, and associated construction notes and inspection milestones, as applicable;
      ii. A title block, including facility owner, revision date, space for addition of the Department's application number, and page numbers;
      iii. A plan and profile with the elevations of wastewater pipelines, and treatment and disposal components, including calculations justifying the absorption area, to allow Department verification of hydraulic and performance characteristics;
      iv. Cross sections showing wastewater pipelines, construction details and elevations of treatment and disposal components, original and finished grades of the land surface, seasonal high water table if less than 10 feet below the bottom of a disposal works or 60 feet below the bottom of a seepage pit, and a soil elevation evaluation to allow Department verification of installation design and performance; and
   b. A draft operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;

C. Additional requirements for a Request for Discharge Authorization and for the issuance of a Discharge Authorization under a Type 4 General Permit.
1. If the entire on-site wastewater treatment facility, including treatment works and disposal works, will be permitted under R18-9-E302, the Director shall issue the Discharge Authorization if, as a part of the Request for Discharge Authorization:
   a. The site plan accurately reflects the final location and configuration of the components of the treatment and disposal works, and
   b. The applicant or the applicant's agent certifies on the Request for Discharge Authorization form that the septic tank passed the watertightness test required by R18-9-A314(5)(d).
2. If the on-site wastewater treatment facility is proposed under R18-9-E303 through R18-9-E323, either separately or in any combination with each other or with R18-9-E302, the Director shall issue the Discharge Authorization if the following documents are submitted to the Department as part of the Request for Discharge Authorization:
   a. As-built plans showing changes from construction quality drawings submitted under subsection (B)(6)(a);
   b. A final list of equipment and materials showing changes from the list submitted under subsection (B)(4);
   c. A final operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;
   d. A certification that a service contract for ensuring that the facility is operated and maintained to meet the performance and other requirements of the applicable general permits exists for at least one year following the beginning of the operation of the on-site wastewater treatment facility, including the name of the service provider, if the on-site wastewater treatment facility is permitted under:
      i. R18-9-E304;
      ii. R18-9-E308 through R18-9-E315;
      iii. R18-9-E316, if the facility includes a pump; or
      iv. R18-9-E318 through R18-9-E322;
   e. Other documents, if required by the separate general permits in 18 A.A.C. 9, Article 3, Part E;
   f. A Certificate of Completion signed by the current engineer or designer of record assuring that installation of the facility conforms to the design approved under the Construction Authorization under R18-9-A301(D)(1)(c); and a regulatory representative, such as an inspector, may not act as an applicant's agent, nor authorize backfill before the current engineer or designer of record has verified proper installation of the system;
   g. The name of the installation contractor and the Registrar of Contractor's license number issued to the installation contractor; and
   h. A certification that any septic tank installed as a component of the on-site wastewater treatment facility passed the watertightness test required by R18-9-A314(5)(d).
3. The Director shall specify in the Discharge Authorization:
   a. The permitted design flow of the facility,
   b. The characteristics of the wastewater sources contributing to the facility, and
   c. A list of the documents submitted to and reviewed by the Department satisfying subsection (C)(2).

D. Closure requirements. A person who permanently discontinues use of an on-site wastewater treatment facility or a cesspool, or is ordered by the Director to close an abandoned facility shall:
1. Remove all sewage from the facility and dispose of the sewage in a lawful manner;
2. Disconnect and remove electrical and mechanical components;
3. Remove or collapse the top of any tank or containment structure.
   a. Punch a hole in the bottom of the tank or containment structure if the bottom is below the seasonal high groundwater table;
   b. Fill the tank or containment structure or any cavity resulting from its removal with earth, sand, gravel, concrete, or other approved material; and
   c. Regrade the surface to provide drainage away from the closed area;
4. Cut and plug both ends of the abandoned sewer drain pipe between the building and the on-site wastewater treat-

ment facility not more than 5 feet outside the building foundation if practical, or cut and plug as close to each end as possible; and

5. Notify the Department within 30 days of closure.

E. Proprietary and other reviewed products.

1. The Department shall maintain a list of proprietary and other reviewed products that may be used for on-site wastewater treatment facilities to comply with the requirements of this Article. The list shall include appropriate information on the applicability and limitations of each product.
2. The list of proprietary and other reviewed products may include manufactured systems, subsystems, or components within the treatment works and disposal works if the products significantly contribute to the treatment performance of the system or provide the means to overcome site limitations. The Department will not list septic tanks, effluent filters or components that do not significantly affect treatment performance or provide the means to overcome site limitations.
3. A person may request that the Department add a product to the list of proprietary and other reviewed products. The request may include a proposed reference design for review. The Department shall ensure that performance values in the list reflect the treatment performance for defined wastewater characteristics. The Department shall assess fees under 18 A.A.C. 14 for product review.

F. Recordkeeping. A permittee authorized to discharge under one or more Type 4 General Permits shall maintain the Discharge Authorization and associated documents for the life of the facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A310. Site Investigation for Type 4 On-site Wastewater Treatment Facilities

A. Definition. For purposes of this Section, "clean water" means water free of colloidal material or additives that could affect chemical or physical properties if the water is used for percolation or seepage pit performance testing.

B. Site investigation. An applicant shall ensure that an investigator qualified under subsection (H) conducts a site investigation consisting of a surface characterization under subsection (C) and a subsurface characterization under subsection (D). The applicant shall submit the results in a format prescribed by the Department. The site investigation shall provide sufficient data to:

1. Select appropriate primary and reserve disposal areas for an on-site wastewater treatment facility considering all surface and subsurface limiting conditions in subsections (C)(2) and (D)(2); and;
2. Effectively design and install the selected facility to serve the anticipated development at the site, whether or not limiting conditions exist.

C. Surface characterization.

1. Surface characterization method. The investigator shall characterize the surface of the site where an on-site wastewater treatment facility is proposed for installation using one of the following methods:
   a. The "Standard Practice for Surface Site Characterization for On-site Septic Systems, D5879-95 (2003)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or
   b. Another method of surface characterization that can, with accuracy and reliability, identify and delineate the surface limiting conditions specified in subsection (C)(2).
2. Surface limiting conditions. The investigator shall determine whether, and if so, where any of the following surface limiting conditions exist:
   a. The surface slope is greater than 15 percent at the intended location of the on-site wastewater treatment facility;
   b. Minimum setback distances are not within the limits specified in R18-9-A312(C);
   c. Surface drainage characteristics at the intended location of the on-site wastewater treatment facility will adversely affect the ability of the facility to function properly;
   d. A 100-year flood hazard zone, as indicated on the applicable flood insurance rate map, is located within the property on which the on-site wastewater treatment facility will be installed, and the flood hazard zone may adversely affect the ability of the facility to function properly;
   e. An outcropping of rock that cannot be excavated exists in the intended location of the on-site wastewater treatment facility or will impair the function of soil receiving the discharge; and
   f. Fill material deposits exist in the intended location of the on-site wastewater treatment facility.

D. Subsurface characterization.

1. Subsurface characterization method. The investigator shall characterize the subsurface of the site where an on-site wastewater treatment facility is proposed for installation using one or more of the following methods:
   a. The following ASTM standard practice, which is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959: "Standard Practice for Subsurface Site Characterization of Test Pits for On-site Septic Systems, D5921-96(2003)e1 (2003)," published by the American Society for Testing and Materials;
   b. Percolation testing as specified in subsection (F);
   c. Seepage pit performance testing as specified in subsection (G); or
   d. Another method of subsurface characterization, approved by the Department, that ensures compli-

ance with water quality standards through proper system location, selection, design, installation, and operation.

2. Subsurface limiting conditions. The investigator shall determine whether any of the following limiting conditions exist in the primary and reserve areas of the on-site wastewater treatment facility within a minimum of 12 feet of the land surface or to an impervious soil or rock layer if encountered at a shallower depth:
   a. The soil absorption rate determined under R18-9-A312(D)(2) is:
      i. More than 1.20 gallons per day per square foot, or
      ii. Less than 0.20 gallons per day per square foot;
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation specified in R18-9-A312(E)(1);
   c. Seasonal saturation occurs within surface soils that could affect the performance of the on-site wastewater treatment facility;
   d. One of the following subsurface conditions that may cause or contribute to the surfacing of wastewater:
      i. An impervious soil or rock layer,
      ii. A zone of saturation that substantially limits downward percolation from the disposal works,
      iii. Soil with more than 50 percent rock fragments;
   e. One of the following subsurface conditions that promotes accelerated downward movement of insufficiently treated wastewater:
      i. Fractures or joints in rock that are open, continuous, or interconnected;
      ii. Karst voids or channels; or
      iii. Highly permeable materials such as deposits of cobbles or boulders; or
   f. A subsurface condition that may convey wastewater to a water of the state and cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4.
3. Applicability of subsurface characterization methods. The investigator shall:
   a. For a seepage pit constructed under R18-9-E302, test seepage pit performance using the procedure specified in subsection (G);
   b. For an on-site wastewater treatment facility other than a seepage pit, characterize soil by using the ASTM method specified in subsection (D)(1)(a) if any of the following site conditions exists:
      i. The natural surface slope at the intended location of the on-site wastewater treatment facility is greater than 15 percent;
      ii. Bedrock or similar consolidated rock formation that cannot be excavated with a shovel outcrops on the property or occurs less than 12 feet below the land surface;
      iii. The native soil at the surface or encountered in a boring, trench, or hole consists of more than 35 percent rock fragments;
      iv. The seasonal high water table occurs within 12 feet of the natural land surface as encountered in trenches or borings, or evidenced by well records or hydrologic reports;
      v. Seasonal saturation at the natural land surface occurs as indicated by soil mottling, vegetation adapted to near-surface saturated soils, or springs, seeps, or surface water near enough to the intended location of the on-site wastewater treatment facility to have a connection with potential seasonal saturation at the land surface; or
      vi. A percolation test yields results outside the limits specified in subsection (D)(2)(a) and (b).
   c. Percolation testing. The investigator may perform percolation testing as specified in subsection (F):
      i. To augment another method of subsurface characterization if useful to locate or design an on-site wastewater treatment facility, or
      ii. As the sole method of subsurface characterization if a subsurface characterization by an ASTM method is not required under subsection (D)(3)(b).

E. If an ASTM method is used for subsurface characterization, the investigator shall conduct subsurface characterization tests at the site to provide adequate, credible, and representative information to ensure proper location, selection, design, and installation of the on-site wastewater treatment facility. The investigator shall:
1. Select at least two test locations in the primary area and one test location in the reserve area to conduct the tests;
2. Perform the characterization at each test location at appropriate depths to:
   a. Establish the wastewater absorption capacity of the soil under R18-9-A312(D), and
   b. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment; and
3. Submit with the site investigation report:
   a. A log of soil formations for each test location with information on soil type, texture, and classification; percentage of rock; structure; consistence; and mottles;
   b. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and
   c. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(b), sufficient to allow location and design of the on-site wastewater treatment facility.

F. Percolation testing method for subsurface characterization.
1. Planning and preparation. The investigator shall:
   a. Select at least two locations in the primary area and at least one location in the reserve area for percolation testing, to provide adequate and credible information to ensure proper location, selection, design, and installation of a properly working on-site wastewater treatment facility;
   b. Perform percolation testing at each location at intervals in the soil profile sufficient to:
      i. Establish the wastewater absorption capability of the soil under R18-9-A312(D), and
      ii. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment. The investigator shall perform percolation tests at multiple depths if there is an indication of an obvious change in soil characteristics that affect the location, selection,

design, installation, or disposal performance of the on-site wastewater treatment facility;

c. Excavate percolation test holes in undisturbed soil at least 12 inches deep with dimensions of 12 inches by 12 inches, if square, or a diameter of 15 inches, if round. The investigator shall not alter the structure of the soil during the excavation;

d. Place percolation test holes away from site or soil features that yield unrepresentative or misleading data pertaining to the location, selection, design, installation, or performance of the on-site wastewater treatment facility;

e. Scarify smeared soil surfaces within the percolation test holes and remove any loosened materials from the bottom of the hole; and

f. Use buckets with holes in the sides to support the sidewalls of the percolation test hole, if necessary. The investigator shall fill any voids between the walls of the hole and the bucket with pea gravel to reduce the impact of the enlarged hole.

2. Presoaking procedure. The investigator shall:

a. Fill the percolation test hole with clean water to a depth of 12 inches above the bottom of the hole;

b. Observe the decline of the water level in the hole and record time in minutes for the water to completely drain away;

c. Repeat the steps specified in subsection (F)(2)(a) and (b) if the water drains away in less than 60 minutes.

i. If the water drains away the second time in less than 60 minutes, the investigator shall repeat the steps specified in subsections (F)(2)(a) and (b).

ii. If the water drains away a third time in less than 60 minutes, the investigator shall perform the percolation test by following subsection (F)(3); and

d. Add clean water to the hole after 60 minutes and maintain the water at a minimum depth of 9 inches for at least four more hours if it takes 60 minutes or longer for the water to drain away. The investigator shall protect the hole from precipitation and runoff, and perform the percolation test specified in subsection (F)(3) between 16 and 24 hours after presoaking.

3. Conducting the test. The investigator shall:

a. Conduct the percolation test before soil hydraulic conditions established by the presoaking procedure substantially change. The investigator shall remove loose materials in the percolation test hole to ensure that the specified dimensions of the hole are maintained and the infiltration surfaces are undisturbed native soil;

b. Fill the test hole to a depth of six inches above the bottom with clean water;

c. Observe the decline of the water level in the test hole and record the time in minutes for the water level to fall exactly 1 inch from a fixed reference point. The investigator shall:

i. Immediately refill the hole with clean water to a depth of 6 inches above the bottom, and determine and record the time in minutes for the water level to fall exactly 1 inch,

ii. Refill the hole again with clean water to a depth of 6 inches above the bottom and determine and record the time in minutes for the water to fall exactly 1 inch, and

iii. Ensure that the method for measuring water level depth is accurate and does not significantly affect the percolation rate of the test hole;

d. If the percolation rate stabilizes for three consecutive measurements by varying no more than 10 percent, use the highest percolation rate value of the three measurements. If three consecutive measurements indicate that the percolation rate results are not stabilizing or the percolation rate is between 60 and 120 minutes per inch, the investigator shall use an alternate method based on a graphical solution of the test data to approximate the stabilized percolation rate;

e. Record the percolation rate results in minutes per inch; and

f. Submit the following information with the site investigation report:

i. A log of the soil formations encountered for all percolation tests including information on texture, structure, consistence, percentage of rock fragments, and mottles, if present;

ii. Whether and which test hole was reinforced with a bucket;

iii. The locations, depths, and bottom elevations of the percolation test holes on the site investigation map;

iv. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and

v. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(a), sufficient to allow location and design of the on-site wastewater treatment facility.

G. Seepage pit performance testing method for subsurface characterization. The investigator shall test seepage pits described in R18-9-E302 as follows:

1. Planning and Preparation. The investigator shall:

a. Identify the disposal areas at the site and drill a test hole at least 18 inches in diameter to the depth of the proposed seepage pit, at least 30 feet deep, and

b. Scarify soil surfaces within the test hole and remove loosened materials from the bottom of the hole.

2. Presoaking procedure. The investigator shall:

a. Fill the bottom 6 inches of the test hole with gravel, if necessary, to prevent scouring;

b. Fill the test hole with clean water up to 3 feet below the land surface;

c. Observe the decline of the water level in the hole and determine the time in hours and minutes for the water to completely drain away;

d. Repeat the procedure if the water drains away in less than four hours; If the water drains away the second time in less than four hours, the investigator shall conduct the seepage pit performance test by following subsection (G)(3);

e. Add water to the hole and maintain the water at a depth that leaves at least the top 3 feet of hole

exposed to air for at least four more hours if the water drains away in four or more hours; and

f. Not remove the water from the hole before the seepage pit performance test if there is standing water in the hole after at least 16 hours of presoaking.

3. Conducting the test. The investigator shall:
   a. Fill the test hole with clean water up to 3 feet below land surface;
   b. Observe the decline of the water level in the hole and determine and record the vertical distance to the water level from a fixed reference point every 10 minutes. The investigator shall ensure that the method for measuring water level depth is accurate and does not significantly affect the rate of fall of the water level in the test hole;
   c. Measure the decline of the water level continually until three consecutive 10-minute measurements indicate that the infiltration rates are within 10 percent. If measurements indicate that infiltration is not approaching a steady rate or if the rate is close to a numerical limit specified in R18-9-A312(E)(1), the investigator shall use, an alternate method based on a graphical solution of the test data to approximate the final stabilized infiltration rate;
   d. Percolation test rate. Calculate the stabilized infiltration rate for a seepage pit determined by the test hole procedure specified in subsection (G)(1)(a) using the formula P = (15 / DS) x IS to determine an equivalent percolation test rate. Once "P" is determined, the investigator shall use R18-9-A312(D)(2)(a) to establish the design SAR for wastewater treated under R18-9-E302 and to calculate the required minimum sidewall area for the seepage pit using the equation specified in R18-9-E302(C)(5)(k).
      i. "P" is the percolation test rate (minutes per inch) tabulated in the first column of the table in R18-9-A312(D)(2)(a),
      ii. "DS" is the diameter of the seepage pit test hole in inches, and
      iii. "IS" is the seepage pit stabilized infiltration rate (minutes per inch) determined by the procedure specified in R18-9-A310(G)(3)(c);
   e. Submit the following information with the site investigation report:
      i. The results of the seepage pit performance testing including data, calculations, and findings on a form provided by the Department;
      ii. The log of the test hole indicating lithologic characteristics and points of change;
      iii. The location of the test hole on the site investigation map;
      iv. A determination of depth to groundwater below the land surface by borings, published groundwater data, subdivision reports, or relevant well data.
   f. Fill the test hole so that groundwater quality and public safety are not compromised if the seepage pit is drilled elsewhere or if a seepage pit cannot be sited at the location because of unfavorable test results.

H. Qualifications. An investigator shall not perform a site investigation under this Section unless the investigator has knowledge and competence in the subject area and is licensed in good standing or otherwise qualified in one of the following categories:

1. Arizona-registered professional engineer,
2. Arizona-registered geologist,
3. Arizona-registered sanitarian,
4. A certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section, or
5. Qualifies under another category designated in writing by the Department.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A311. Facility Selection for Type 4 On-site Wastewater Treatment Facilities

A. A person shall select, design, and install an on-site wastewater treatment facility that is appropriate for the site's geographic location, setback limitations, slope, topography, drainage and soil characteristics, wastewater infiltration capability, depth to the seasonal high water table, and any surface or subsurface limiting condition.

1. A person may use on-site treatment and disposal technologies covered by a Type 4 General Permit alone or in combination with another Type 4 General Permit to overcome site limitations.
2. An applicant may submit a single Notice of Intent to Discharge for an on-site wastewater treatment facility consisting of components or technologies covered by multiple general permits if the information submittal requirements of all the general permits are met.
3. The Director shall issue a single Construction Authorization under R18-9-A301(D)(1) and a single Discharge Authorization under R18-9-A301(D)(2) for an on-site wastewater treatment facility that consists of components or technologies covered by multiple general permits.
4. If either a septic tank or disposal method, or both, as identified in R18-9-E302, is appropriately used in combination with an alternative technology listed under R18-9-E303 through R18-9-E322, the applicant shall apply the design requirements specified in R18-9-E302, except that the specific requirements for R18-9-E303 through R18-9-E323, as applicable, supersede requirements in R18-9-E302 if the rules conflict. If additional modifications are necessary and appropriate to ensure adequate treatment, the applicant may request review under R18-9-A312(G) to allow the Department to approve the application.

B. A person may install a septic tank and disposal works system described in R18-9-E302 as the sole method of wastewater treatment and disposal at a site if the site investigation conducted under R18-9-A310 indicates that no limiting condition identified under R18-9-A310(C) or R18-9-A310(D) exists at the site.

1. A person may install a seepage pit only in valley-fill sediments in a basin-and-range alluvial basin and only if the seepage pit performance test results meet the criteria specified in R18-9-A312(E).
2. The person shall specify in the Notice of Intent to Discharge that no limiting conditions described in R18-9-A310(C) and (D) were identified at the site.

C. If any surface or subsurface limiting condition is identified in the site investigation report, an applicant may propose installation of a septic tank and disposal works system described in R18-9-E302 as the sole method of wastewater treatment and disposal at a facility only if:
1. The applicant submits information under R18-9-A312(G) that describes:
   a. How the design of the septic tank and disposal works system specified in R18-9-E302 was modified to overcome limiting conditions;
   b. How the modified design meets the criteria of R18-9-A312(G)(3); and
   c. A site-specific SAR under R18-9-A312(D)(2)(a) or (b), as applicable; and
2. None of the following surface or subsurface limiting conditions are identified at the site:
   a. An outcropping of rock that cannot be excavated or will impair the function of soil receiving the discharge exists in the intended location of the on-site wastewater treatment facility, as described in R18-9-A310(C)(2)(e);
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation distance, as described in R18-9-A310(D)(2)(b); or
   c. A subsurface condition that promotes accelerated downward movement of insufficiently treated wastewater as described in R18-9-A310(D)(2)(e).

D. If a site can accommodate a septic tank and disposal works system described in R18-9-E302, the applicant shall not install a treatment works or disposal works described in R18-9-E303 through R18-9-E322 unless the applicant submits a statement to the Department with the Notice of Intent to Discharge acknowledging the following:
1. The applicant is aware that although a septic tank and disposal works system described in R18-9-E302 is appropriate for the site, the applicant desires to install a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322; and
2. The applicant is aware that a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322 may result in higher capital, operation, and maintenance costs than a septic tank and disposal works system described in R18-9-E302.

Historical Note

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R18-9-A312. Facility Design for Type 4 On-site Wastewater Treatment Facilities

A. General design requirements. An applicant shall ensure that the person designing an on-site wastewater treatment facility:
1. Signs the design documents submitted as part of the Notice of Intent to Discharge to obtain a Construction Authorization, including plans, specifications, drawings, reports, and calculations; and
2. Locates and designs the on-site wastewater treatment facility project using good design judgment and relies on appropriate design methods and calculations.

B. Design considerations and flow determination. An applicant shall ensure that the person designing the on-site wastewater treatment facility shall:
1. Design the facility to satisfy a 20-year operational life;
2. Design the facility based on the provisions of one or more of the general permits in R18-9-E302 through R18-9-E322 for facilities with a design flow of less than 3000 gallons per day, and R18-9-E323 for facilities with a design flow of 3000 gallons per day to less than 24,000 gallons per day;
3. Design the facility based on the facility's design flow and wastewater characteristics as specified in R18-9-A309(A)(7), (10) and (11) and R18-9-A309(B)(3);
4. For on-site wastewater treatment facilities permitted under R18-9-E303 through R18-9-E323, apply the following design requirements, as applicable:
   a. Include the power source and power components in construction drawings if electricity or another type of power is necessary for facility operation;
   b. If a hydraulic analysis is required under subsection (E), perform the analysis based on the location and dimensions of the bottom and sidewall surfaces of the disposal works that are identified in the design documentation;
   c. Design components, piping, ports, seals, and appurtenances to withstand installation loads, internal and external operational loads, and buoyant forces. Design ports for resistance against movement, and cap or cover openings for protection from damage and entry by rodents, mosquitoes, flies, or other organisms capable of transporting a disease-causing organism;
   d. Design tanks, liners, ports, seals, piping to and within the facility, and appurtenances for watertightness under all operational conditions;
   e. Provide adequate storage capacity above high operating level to:
      i. Accommodate a 24-hour power or pump outage, and
      ii. Contain wastewater that is incompletely treated or cannot be released by the disposal works to the native soil;
   f. If a fixed media process is used, provide in the construction drawings the media material, installation specification, media configuration, and wastewater loading rate of the media at the daily design flow;
   g. Provide a fail-safe wastewater control or operational process, if required by the general permit to prevent discharge of inadequately treated wastewater; and
   h. Reference design. If using a reference design on file with the Department, indicate the reference design within the information submitted with the Notice of Intent to Discharge.

C. Setbacks. The following setbacks apply unless the Department:
1. Specifies alternative setbacks under Article 3, Part E of this Chapter;
2. Approves a different setback under the procedure specified in subsection (G); or
3. Establishes a more stringent setback on a site- or area-specific basis to ensure compliance with water quality standards.

Features Requiring Setbacks	Setback For An On-Site Wastewater Treatment Facility, Including Reserve Area (In Feet)	Special Provisions
1. Building	10	Includes porches, decks (including pool decks), and steps (covered or uncovered), breezeways, roofed patios, carports, covered walks, and similar structures and appurtenances.
2. Property line shared with any adjoining lot or parcel not served by a common drinking water system* or an existing water well	50	A person may reduce the setback to a minimum of 5 feet from the property line if: a. The owners of any affected undeveloped adjacent properties agree, as evidenced by an appropriately recorded document, to limit the location of any new well on their property to at least 100 feet from the proposed treatment works and primary and reserve disposal works; and b. The arrangements and documentation are approved by the Department.
3. All other property lines	5	None
4. Public or private water supply well	100	None
5. Perennial or intermittent stream	100	Measured horizontally from the high water line of the peak streamflow from a 10-year, 24-hour rainfall event.
6. Lake, reservoir, or canal	100	Measured horizontally from the high water line from a 10-year, 24-hour rainfall event at the lake or reservoir and measured horizontally from the edge of the canal.
7. Drinking water intake from a surface water source (includes an open water body, downslope spring or a well tapping streamside saturated alluvium)	200	Measured horizontally from the on-site wastewater treatment facility to the structure or mechanism for withdrawing raw water such as a pipe inlet, grate, pump, intake or diversion box, spring box, well, or similar structure.
8. Wash or drainage easement with a drainage area of more than 20 acres	50	Measured horizontally from the nearest edge of the defined natural channel bank or drainage easement boundary. A person may reduce the setback to 25 feet if natural or constructed erosion protection is approved by the appropriate flood plain administrator.
9. Water main or branch water line	10	None
10. Domestic service water line (including domestic water holding tanks)	5	Measured horizontally between the water line and the wastewater pipe, except that the following are allowed: a. A water line may cross above a wastewater pipe if the crossing angle is between 45 and 90 degrees and the vertical separation distance is 1 foot or more. b. A water line may parallel a wastewater pipe with a horizontal separation distance of 1 foot to 5 feet if the bottom of the water line is 1 foot or more above the top of the wastewater pipe and is in a separate trench or on a bench in the same trench.

11. Downslopes or cut banks greater than 15 percent, culverts, and ditches from:		
a. Treatment works components	10	Measured horizontally from the bottom of the treatment works component to the closest point of daylighting on the surface.
b. Trench, bed, chamber technology, or gravelless trench with:		Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
i. No limiting subsurface condition specified in R18-9-A310(D)(2),	20	
ii. A limiting subsurface condition.	50	
c. Subsurface drip lines.	3	Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
12. Driveway	5	Measured horizontally to the nearest edge of an on-site wastewater treatment facility excavation. A person may place a properly reinforced and protected wastewater treatment facility, except for disposal works, at any location relative to a driveway if access openings, risers, and covers carry the design load and are protected from inflow.
13. Swimming pool excavation	5	Except if soil loading or stability concerns indicate the need for a greater separation distance.
14. Easement (except drainage easement)	5	None
15. Earth fissures	100	None
* A "common drinking water system" means a system that currently serves or is under legal obligation to serve the property and may include a drinking water utility, a well-sharing agreement, or other viable water supply agreement.		

D. Soil absorption rate (SAR) and disposal works sizing.

1. An applicant shall determine the soil absorption area by dividing the design flow by the applicable soil absorption rate. If soil characterization and percolation test methods yield different SAR values or if multiple applications of the same approach yield different values, the designer of the disposal works shall use the lowest SAR value unless a higher SAR value is proposed and justified to the Department's satisfaction in the Notice of Intent to Discharge.
2. The SAR used to calculate disposal works size for systems described in R18-9-E302 is as follows:
   a. The SAR by percolation testing as described in R18-9-A310(F) or (G), as applicable, is determined as follows:

Percolation Rate from Percolation Test (minutes per inch)	**SAR, Trench, Chamber, and Pit (gal/day/ft^2)**	**SAR, Bed (gal/day/ft^2)**
Less than 1.00	A site-specific SAR is required	A site-specific SAR is required
1.00 to less than 3.00	1.20	0.93
3.00	1.10	0.73
4.00	1.00	0.67
5.00	0.90	0.60
7.00	0.75	0.50
10.0	0.63	0.42
15.0	0.50	0.33
20.0	0.44	0.29
25.0	0.40	0.27
30.0	0.36	0.24
35.0	0.33	0.22

40.0	0.31	0.21
45.0	0.29	0.20
50.0	0.28	0.19
55.0	0.27	0.18
55.0+ to 60.0	0.25	0.17
60.0+ to 120	0.20	0.13
Greater than 120	A site-specific SAR is required	A site-specific SAR is required

b. The SAR using the soil evaluation method described in R18-9-A310(E) is determined by answering the questions in the following table. The questions are read in sequence starting with "A." The first "yes" answer determines the SAR. A seepage pit is required to determine percolation rate under the procedure described in R18-9-A310(G) and would only use this table to augment the percolation test results, if appropriate.

Sequence of Soil Characteristics Questions	**SAR, Trench, Chamber, and Pit gal/day/ft^2**	**SAR, Bed gal/day/ft^2**
A. Is the horizon gravelly coarse sand or coarser?	A site-specific SAR is required	A site-specific SAR is required
B. Is the structure of the horizon moderate or strongly platy?	A site-specific SAR is required	A site-specific SAR is required
C. Is the texture of the horizon sandy clay loam, clay loam, silty clay loam, or finer and the soil structure weak platy?	A site-specific SAR is required	A site-specific SAR is required
D. Is the moist consistence stronger than firm or any cemented class?	A site-specific SAR is required	A site-specific SAR is required
E. Is the texture sandy clay, clay, or silty clay of high clay content and the structure massive or weak?	A site-specific SAR is required	A site-specific SAR is required
F. Is the texture sandy clay loam, clay loam, silty clay loam, or silt loam and the structure massive?	A site-specific SAR is required	A site-specific SAR is required
G. Is the texture of the horizon loam or sandy loam and the structure massive?	0.20	0.13
H. s the texture sandy clay, clay, or silty clay of low clay content and the structure moderate or strong?	0.20	0.13
I. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure weak?	0.20	0.13
J. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure moderate or strong?	0.40	0.27
K. Is the texture sandy loam, loam, or silty loam and the structure weak?	0.40	0.27
L. Is the texture sandy loam, loam, or silt loam and the structure moderate or strong?	0.60	0.40
M. Is the texture fine sand, very fine sand, loamy fine sand, or loamy very fine sand?	0.40	0.27
N. Is the texture loamy sand or sand?	0.80	0.53
O. Is the texture coarse sand?	1.20	A site-specific SAR is required

c. If the percolation rate determined under R18-9-A310(F) or (G), whichever is applicable, is a value that lies between two consecutive percolation rate values listed in subsection (2)(a), the applicant must use the higher of the two listed percolation rates to obtain the most conservative SAR.

3. For an on-site wastewater treatment facility described in a general permit other than R18-9-E302, the SAR is dependent on the ability of the facility to reduce the level of TSS and BOD_5 and is calculated using the following formula:

$$SAR_a = \left[\left(\frac{11.39}{\sqrt[3]{TSS + BOD_5}} - 1.87\right) SAR^{1.13} + 1\right] SAR$$

a. "SAR_a" is the adjusted soil absorption rate for disposal works design in gallons per day per square foot,

b. "TSS" is the total suspended solids in wastewater delivered to the disposal works in milligrams per liter,

c. "BOD_5" is the five-day biochemical oxygen demand of wastewater delivered to the disposal works in milligrams per liter, and

d. "SAR" is the soil absorption rate for septic tank effluent determined by the subsurface characterization method described in R18-9-A310.

4. An applicant shall ensure that the facility is designed so that the area of the intended installation is large enough to allow for construction of the facility and for future replacement or repair and is at least as large as the following:

a. For a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works. A reserve area is not required for a lot in a subdivision approved before 1974 if the lot conforms to its original approved configuration;

b. For other than a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works.

5. An applicant shall ensure that the subsurface disposal works is designed to achieve the design flow established in R18-9-A309(B)(3) through proper hydraulic function, including conditions of seasonally cold and wet weather.

E. Vertical separation distances.

1. Minimum vertical separation to the seasonal high water table for a disposal works described in R18-9-E302 receiving septic tank effluent. For a disposal works described in R18-9-E302 receiving septic tank effluent at a facility where the septic tank and disposal system described in R18-9-E302 is the sole method of treatment and disposal of wastewater, the minimum vertical separation distance between the lowest point in the disposal works and the seasonal high water table is dependent on the soil absorption rate and is determined as follows:

Soil Absorption Rate (gallons per day per square foot)			**Minimum Vertical Separation Between The Bottom Of The Disposal Works And The Seasonal High Water Table (feet)**	
Trench and Chamber	Bed	Seepage Pit	Trench, Chamber, and Bed	Seepage Pit
1.20+	0.93+	1.20+	Not allowed for septic tank effluent	Not Allowed
0.63+ to 1.20	0.42 to 0.93	0.63+ to 1.20	10	60
0.20 to 0.63	0.13 to 0.42	0.36 to 0.63	5	60
Less than 0.20	Less than 0.13	Less than 0.36	Not allowed for septic tank effluent	Not Allowed

2. Minimum vertical separation to the seasonal high water table for treatment and disposal works technologies described in R18-9-E303 through R18-9-E322. If the minimum vertical separation distance to the seasonal high water table for a disposal works receiving septic tank effluent specified in subsection (E)(1) is not met, the applicant shall comply with the following:

a. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml) delivered to native soil at the bottom of the disposal works. The applicant shall use the following table to select works that achieve a reduced total coliform concentration corresponding to the available vertical separation distance between the bottom of the disposal works and the seasonal high water table:

Available Vertical Separation Distance Between the Bottom of The Disposal Works and the Seasonal High Water Table (feet)		**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Natural Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)**
For SAR*, 0.20 to 0.63	**For SAR*, 0.63+ to 1.20**	
5	10	8**
4	8	7
3.5	7	6
3	6	5
2.5	5	4
2	4	3
1.5	3	2
1	2	1
0	0	0***

* Soil absorption rate from percolation testing or soil characterization, in gallons per square foot per day.
** Nominal value for a standard septic tank and disposal field (10^8 colony forming units per 100 ml).
*** Nominally free of coliform bacteria.

b. Include a hydraulic analysis with the Notice of Intent to Discharge, based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater downward and laterally without surfacing for the site conditions at the disposal works.

3. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(d) that may cause or contribute to surfacing of wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(d) exists at the location of the disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of acceptable native soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 4 feet thick, and
      ii. The zone of soil is sufficiently permeable to conduct wastewater released from the disposal works vertically downward and laterally without causing surfacing of the wastewater as documented by a hydraulic analysis submitted with the Notice of Intent to Discharge that is based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b);
   b. The subsurface limiting condition is thin enough to allow placement of a disposal works into acceptable native soil beneath the subsurface limiting condition if the following criteria are met:
      i. The bottom of the subsurface limiting condition is not deeper than 10 feet below the land surface, and
      ii. The vertical separation distance from the bottom of the disposal works to the seasonal high water table complies with subsection (E)(1) or (2), as applicable; or
   c. If the disposal works is placed above the subsurface limiting condition and the depth to the subsurface limiting condition is less than 4 feet below the bottom of the disposal works, the design for the on-site wastewater treatment facility shall comply with all of the following:
      i. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml), delivered to acceptable native soil at the bottom of the disposal works, as follows:

Available Vertical Separation Distance from the Bottom of the Disposal Works to the Subsurface Limiting Condition (feet)	**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Acceptable Native Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)**
3.5	7
3	6
2.5	5
2	4
1.5	0*
1	0*
0.5	0*
0	0*

* Nominally free of coliform bacteria.

      ii. Include a hydraulic analysis with the Notice of Intent to Discharge, based on the location and dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater vertically downward and laterally without surfacing for the site conditions at the disposal works; and
      iii. If a disinfection device under R18-9-E320 is proposed but is not used with surface disposal of wastewater under R18-9-E321 or "Category A" drip irrigation disposal under R18-9-E322, provide a justification with the Notice of Intent to Discharge stating why the selected type of disposal works is favored over disposal under R18-9-E321 or R18-9-E322.
4. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(e) that promotes accelerated downward movement of insufficiently treated wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(e) exists at the location of the proposed disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of naturally occurring soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 2 feet thick, and
      ii. The SAR of the soil is not less than 0.20 gallons per day per square foot nor more than 1.20 gallons per day per square foot; or
   b. The on-site wastewater treatment facility employs one or more technologies described in R18-9-E303 through R18-9-E322 that produces treated wastewater that meets a total coliform concentration of 1,000,000 ($Log_{10}6$) colony forming units per 100 milliliters, 95th percentile.

F. Materials and manufactured system components.
1. Materials. An applicant shall use aggregate if no specification for disposal works material is provided in this Article.
2. Manufactured components. If manufactured components are used, an applicant shall design, install, and operate the on-site wastewater treatment facility following the manufacturer's specifications. The applicant shall ensure that:
   a. Treatment and containment components, mechanical equipment, instrumentation, and controls have mon-

itoring, inspection, access and cleanout ports or covers, as appropriate, for monitoring and service;

b. Treatment and containment components, pipe, fittings, pumps, and related components and controls are durable, watertight, structurally sound, and capable of withstanding stress from installation and operational service; and

c. Distribution lines for disposal works are constructed of perforated high density polyethylene pipe, perforated ABS pipe, perforated PVC pipe, or other pipe material, if the pipe is suitable for wastewater disposal use and sufficient openings are available for distribution of the wastewater into the trench or bed area.

3. Electronic components. When electronic components are used, the applicant shall ensure that:

a. The component connections are compliant with the electrical code encompassed in the local building codes applicable in the county in which the facility is installed, except as required for a pressure distribution system under R18-9-E304(D)(2)(e);

b. Instructions and a wiring diagram are mounted on the inside of a control panel cover;

c. The control panel is equipped with a multimode operation switch, red alarm light, buzzer, and reset button;

d. The multimode operation switch operates in the automatic position for normal system operation; and

e. An anomalous condition is indicated by a glowing alarm light and sounding buzzer. The continued glowing of the alarm light after pressing the reset button shall signal the need for maintenance or repair of the system at the earliest practical opportunity.

4. If a conflict exists between this Article and the manufacturer's specifications, the requirements of this Article apply. Except for the requirements in subsection (D) and (E), which always apply, if the conflict voids a manufacturer's warranty, the applicant may submit a request under subsection (G) justifying use of the manufacturer's specifications.

G. Alternative design, setback, installation, or operational features. When an applicant submits a Notice of Intent to Discharge, the applicant may request that the Department review and approve a feature of improved or alternative technology, design, setback, installation, or operation that differs from a general permit requirement in this Article. Designs incorporating alternative features already approved in a current listing on the "proprietary and other reviewed product list" pursuant to R18-9-A309(E) do not need additional approval under this subsection for only those specific alternative features already approved in the proprietary products listing.

1. The applicant shall make the request for an improved or alternative feature of technology, design, setback, installation, or operation on a form provided by the Department and include:

a. A description of the requested change;

b. A citation to the applicable feature or technology, design, setback, installation, or operational requirement for which the change is being requested; and

c. Justification for the requested change, including any necessary supporting documentation.

2. The applicant shall submit the appropriate fee specified under 18 A.A.C. 14 for each requested change. For purposes of calculating the fee, a requested change that is applied multiple times in a similar manner throughout the facility is considered a single request if submitted for concurrent review.

3. The applicant shall provide sufficient information for the Department to determine that the change achieves equal or better performance compared with the general permit requirement, or addresses site or system conditions more satisfactorily than the requirements of this Article.

4. The Department shall review and may approve the request for change.

5. The Department shall deny the request for the change if the change will adversely affect other permittees or cause or contribute to a violation of an Aquifer Water Quality Standard.

6. The Department shall deny the request for the change if the change:

a. Fails to achieve equal or better performance compared to the general permit requirement;

b. Fails to address site or system conditions more satisfactorily than the general permit requirement;

c. Is insufficiently justified based on the information provided in the submittal;

d. Requires excessive review time, research, or specialized expertise by the Department to act on the request; or

e. For any other justifiable cause.

7. The Department may approve a reduced setback for a facility authorized to discharge under one or more of the general permits in R18-9-E302 through R18-9-E323, either separately or in combination, if the applicant additionally demonstrates at least one of the following:

a. The treatment performance is significantly better than that provided under R18-9-E302(B),

b. The wastewater loading rate is reduced, or

c. Surface or subsurface characteristics ensure that reduced setbacks are protective of human health or water quality.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (E)(1) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A313. Facility Installation, Operation, and Maintenance for On-site Wastewater Treatment Facilities

A. Facility installation. In addition to installation requirements in the general permit, the applicant shall ensure that the following tasks are performed, as applicable:

1. The facility is installed as described in design documents submitted with the Notice of Intent to Discharge;

2. Components are installed on a firm foundation that supports the components and operating loads;

3. The site is prepared to protect native soil beneath the soil absorption area and in adjacent areas from compaction, prevent smeared absorption surfaces, minimize disturbances from grubbing, and otherwise preclude damage to the disposal area that would impair performance;

4. Components are protected from damage at the construction site and installed in conformance with the manufacturer's instructions if consistent with this Article;

5. Treatment media are placed to achieve uniform density, prevent differential settling, produce a level inlet surface unless otherwise specified by the manufacturer, and avoid introduction of construction contaminants;
6. Backfill is placed to prevent damage to geotextile, liners, tanks, and other components;
7. Soil cover is shaped to shed rainfall away from the backfill areas and prevent ponding of runoff; and
8. Anti-buoyancy measures are implemented during construction if temporary saturated backfill conditions are anticipated during construction.

B. Operation and maintenance. In addition to operation and maintenance requirements in the general permit or specified in the operation and maintenance manual, the permittee shall ensure that the following tasks are performed, as applicable:

1. Pump accumulated residues, inspect and clean wastewater treatment and distribution components, and manage residues to protect human health and the environment;
2. Clean, backwash, or replace effluent filters according to the manufacturer's instructions, and manage residues to protect human health and the environment;
3. Inspect and clean the effluent baffle screen and pump tank, and properly dispose of cleaning residue;
4. Clean the dosing tank effluent screen, pump switches, and floats, and properly dispose of cleaning residue;
5. Flush lateral lines and return flush water to the pretreatment headworks;
6. Inspect, remove and replace, if necessary, and properly dispose of filter media;
7. Rod pressurized wastewater delivery lines and secondary distribution lines (for dosing systems), and return cleaning water to the pretreatment headworks;
8. Inspect and clean pump inlets and controls and return cleaning water to the pretreatment headworks;
9. Implement corrective measures if anomalous ponding, dryness, noise, odor, or differential settling is observed;
10. Inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for:
    a. Influent wastewater quality;
    b. The pressurized dosing system;
    c. The aggregate infiltration bed and mound system;
    d. Wastewater delivery and the engineered pad;
    e. The pressurized delivery system, filter, underdrain, and native soil absorption system;
    f. Saturation condition status in peat and other media; and
    g. Treatment system components;
11. Inspect tanks, liners, ports, seals, piping, and appurtenances for watertightness under all operational conditions;
12. Manage vegetation in areas that contain components subject to physical impairment or damage due to root invasion or animals;
13. Maintain drainage, berms, protective barriers, cover materials, and other features; and
14. Maintain the usefulness of the reserve area to allow for repair or replacement of the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A314. Septic Tank Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A person shall not install a septic tank in an on-site wastewater treatment facility unless the tank meets the following requirements:

1. The tank is:
    a. Designed to produce a clarified effluent and provide adequate space for sludge and scum accumulations;
    b. Watertight and constructed of solid durable materials not subject to excessive corrosion or decay;
    c. Manufactured with at least two compartments unless two separate structures are placed in series. The tank is designed so that:
        i. The inlet compartment of any septic tank not placed in series is nominally 67 percent to 75 percent of the total required capacity of the tank,
        ii. Septic tanks placed in series are considered a unit and meet the same criteria as a single tank,
        iii. The liquid depth of the septic tank is at least 42 inches, and
        iv. A septic tank of 1000 gallon capacity is at least 8 feet long and the tank length of septic tanks of greater capacity is at least 2 times but not more than 3 times the width;
    d. Manufactured with at least two access openings to the tank interior, each at least 20 inches in diameter. The tank is designed so that:
        i. One access opening is located over the inlet end of the tank and one access opening is located over the outlet end;
        ii. Whenever a first compartment exceeds 12 feet in length, another access opening is provided over the baffle wall; and
        iii. Access openings and risers are constructed to ensure accessibility within 6 inches below finished grade;
    e. Manufactured so that the sewage inlet and wastewater outlet openings are not smaller than the connecting sewer pipe. The tank is designed so that:
        i. The vertical leg of round inlet and outlet fittings is at least 4 inches but not smaller than the connecting sewer pipe, and
        ii. A baffle fitting has the equivalent cross-sectional area of the connecting sewer pipe and not less than a 4 inch horizontal dimension if measured at the inlet and outlet pipe inverts;
    f. Manufactured so that the inlet and outlet pipe or baffle extends 4 inches above and at least 12 inches below the water surface when the tank is installed according to the manufacturer's instructions consistent with this Chapter. The invert of the inlet pipe is at least 2 inches above the invert of the outlet pipe;
    g. Manufactured so that the inlet and outlet fittings or baffles and compartment partitions have a free vent area equal to the required cross-sectional area of the connected sewer pipe to provide free ventilation above the water surface from the disposal works or seepage pit through the septic tank, house sewer, and stack to the outer air;
    h. Manufactured so that the open space extends at least 9 inches above the liquid level and the cover of the

septic tank is at least 2 inches above the top of the inlet fitting vent opening;

i. Manufactured so that partitions or baffles between compartments are of solid durable material (wooden baffles are prohibited) and extend at least 4 inches above the liquid level. The open area of the baffle shall be between one and 2 times the open area of the inlet pipe or horizontal slot and located at the midpoint of the liquid level of the baffle. If a horizontal slot is used, the slot shall be no more than 6 inches in height;

j. Structurally designed to withstand all anticipated earth or other loads. The tank is designed so that:

i. All septic tank covers are capable of supporting an earth load of 300 pounds per square foot; and

ii. If the top of the tank is greater than 2 feet below finish grade, the septic tank and cover are capable of supporting an additional load of 150 pounds per square foot for each additional foot of cover;

k. Manufactured or installed so that the influent and effluent ends of the tank are clearly and permanently marked on the outside of the tank with the words "INLET" or "IN," and "OUTLET" or "OUT," above or to the right or left of the corresponding openings; and

l. Clearly and permanently marked with the manufacturer's name or registered trademark, or both, the month and year, or Julian date, of manufacture, the maximum recommended depth of earth cover in feet, and the design liquid capacity of the tank. The tank is manufactured to protect the markings from corrosion so that they remain permanent and readable for the operational life of the tank.

2. Materials used to construct or manufacture septic tanks.

a. A septic tank cast-in-place at the site of use shall be protected from corrosion by coating the tank with a bituminous coating, by constructing the tank using a concrete mix that incorporates 15 percent to 18 percent fly ash, or by any other Department-approved means. The tank is designed so that:

i. The coating extends at least 4 inches below the wastewater line and covers all of the internal area above that point; and

ii. A septic tank cast-in-place complies with the "Building Code Requirements for Structural Concrete and Commentary ACI 318-02/318R-02 (2002)," and the "Code Requirements for Environmental Engineering Concrete Structures and Commentary, ACI 350/350R-01 (2001)," published by the American Concrete Institute. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from American Concrete Institute, P.O. Box 9094, Farmington Hills, MI 48333-9094.

b. A steel septic tank shall have a minimum wall thickness of No. 12 U.S. gauge steel and be protected from corrosion, internally and externally, by a bituminous coating or other Department-approved means.

c. A prefabricated concrete septic tank shall meet the "Standard Specification for Precast Concrete Septic Tanks, C1227-20," published by the American Society for Testing and Materials. This information is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International West.

d. A septic tank manufactured using fiberglass or thermoplastic shall meet the requirements set forth in "Prefabricated Septic Tanks – IAPMO/ANSI Z1000-2019," published by the International Association of Plumbing and Mechanical Officials. This information is incorporated by reference, does not include any later amendments or editions of the incorporated material, and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or obtained from International Association of Plumbing and Mechanical Officials, 4755 E. Philadelphia Street, Ontario, CA 917761.

3. Conformance with design, materials, and manufacturing requirements.

a. If any conflict exists between this Article and the information incorporated by reference in subsection (2), the requirements of this Article apply.

b. The Department may approve use of alternative construction materials under R18-9-A312(G). Tanks constructed of wood, block, or bare steel are prohibited.

c. The Department may inspect septic tanks at the site of manufacturing to verify compliance with subsections (1) and (2).

d. The septic tank sale documentation includes:

i. A certificate attesting that the septic tank conforms with the design, materials, and manufacturing requirements in subsections (1) and (2); and

ii. Instructions for handling and installing the septic tank.

4. The septic tank's daily design flow is determined as follows:

a. For a single family dwelling:

i. The design liquid capacity of the septic tank and the septic tank's daily design flow are determined based on the number of bedrooms and fixture count as follows:

Criteria for Septic Tank Size and Design Flow			
Number of Bedrooms	**Fixture Count**	**Minimum Design Liquid Capacity (gallons)**	**Design Flow (gal/day)**

1	7 or less	1000	150
	More than 7	1000	300
2	14 or less	1000	300
	More than 14	1000	450
3	21 or less	1000	450
	More than 21	1250	600
4	28 or less	1250	600
	More than 28	1500	750
5	35 or less	1500	750
	More than 35	2000	900
6	42 or less	2000	900
	More than 42	2500	1050
7	49 or less	2500	1050
	More than 49	3000	1200
8	56 or less	3000	1200
	More than 56	3000	1350

ii. Fixture count is determined as follows:

Residential Fixture Type	Fixture Units	Residential Fixture Type	Fixture Units
Bathtub	2	Sink, bar	1
Bidet	2	Sink, kitchen (including dishwasher)	2
Clothes washer	2	Sink, service	3
Dishwasher (Separate from kitchen)	2	Utility tub or sink	2
Lavatory, single	1	Water closet, 1.6 gallons per flush (gpf)	3
Lavatory, double in master bedroom	1	Water closet, >1.6 to 3.2 gpf	4
Shower, single stall	2	Water closet, greater than 3.2 gpf	6

b. For other than a single family dwelling, the design liquid capacity of a septic tank in gallons is 2.1 times the daily design flow into the tank as determined from Table 1, Unit Design Flows. If the wastewater strength exceeds that of typical sewage, additional tank volume is required.

c. A person may place two septic tanks in series to meet the septic tank design liquid capacity requirements if the capacity of the first tank is at least 67 percent of the total required tank capacity and the capacity of the second tank is at least 33 percent of the total required tank capacity.

5. The following requirements regarding new or replacement septic tank installation apply:
   a. Permanent surface markers for locating the septic tank access openings are provided for maintenance;
   b. A septic tank installed under concrete or pavement has the required access openings extended to grade;
   c. A septic tank effluent filter is installed on the septic tank. The filter shall:
      i. Prevent the passage of solids larger than 1/8 inch in diameter while under two feet of hydrostatic head; and
      ii. Be constructed of materials that are resistant to corrosion and erosion, sized to accommodate hydraulic and organic loading, and removable for cleaning and maintenance; and
   d. The septic tank is tested for watertightness after installation by the water test described in subsections (5)(d)(i) and (5)(d)(ii) and repaired or replaced, if necessary.
      i. The septic tank is filled with clean water, as specified in R18-9-A310(A), to the invert of the outlet and the water left standing in the tank for 24 hours and:
         (1) After 24 hours, the tank is refilled to the invert, if necessary;
         (2) The initial water level and time is recorded; and
         (3) After one hour, water level and time is recorded.
      ii. The tank passes the water test if the water level does not drop over the one-hour period. Any visible leak of flowing water is considered a failure. A damp or wet spot that is not flowing is not considered a failure.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A315. Interceptor Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A. Interceptor requirement. An applicant shall ensure that an interceptor as required by R18-9-A309(A)(7)(c) or necessary due to excessive amounts of grease, garbage, sand, or other

wastes in the sewage is installed between the sewage source and the on-site wastewater treatment facility.

B. Interceptor design. An applicant shall ensure that:

1. An interceptor has not less than two compartments with fittings designed for grease retention and capable of removing excessive amounts of grease, garbage, sand, or other similar wastes. An interceptor may not accept human excreta or toilet wastewater. Applicable structural and materials requirements prescribed in R18-9-A314 apply;
2. Interceptors are located as close to the source as possible and are accessible for servicing. The applicant shall ensure that access openings for servicing are at grade level and gas-tight;
3. The interceptor size for grease and garbage from non-residential kitchens is calculated using by the following equation: Interceptor Size (in gallons) = M × F × T × S.
   a. "M" is the number of meals per peak hour;
   b. "F" is the applicable waste flow rate from Table 1, Unit Design Flows.
   c. "T" is the estimated retention time:
      i. Commercial kitchen waste, dishwasher or disposal: 2.5 hours; or
      ii. Single service kitchen with utensil wash disposal: 1.5 hours;
   d. "S" is the estimated storage factor:
      i. Fully equipped commercial kitchen, 8-hour operation: 1.0;
      ii. Fully equipped commercial kitchen, 16-hour operation: 2.0;
      iii. Fully equipped commercial kitchen, 24-hour operation: 3.0; or
      iv. Single service kitchen, 1.5;
4. The interceptor size for silt and grease from laundries and laundromats is calculated using the following equation: Interceptor Size (in gallons) = M × C × F × T × S.
   a. "M" is the number of machines;
   b. "C" is the machine cycles per hour (assume 2);
   c. "F" is the waste flow rate from Table 1, Unit Design Flows;
   d. "T" is the estimated retention time (assume 2); and
   e. "S" is the estimated storage factor (assume 1.5 that allows for rock filter).

C. The applicant may calculate the size of an interceptor using different factor values than those given in subsections (B)(3) and (4) based on the values justified by the applicant in the Notice of Intent to Discharge submitted to the Department for the on-site wastewater treatment facility.

D. The Department may require installation of a sampling box if the volume or characteristics of the waste will impair the performance of the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-A316. Transfer of Ownership Inspection for On-site Wastewater Treatment Facilities

A. Conforming with this Section satisfies the Notice of Transfer requirements under R18-9-A304.

B. Within six months before the date of property transfer, the person who is transferring a property served by an on-site wastewater treatment facility shall retain an inspector to perform a transfer of ownership inspection of the on-site wastewater treatment facility who meets the following qualifications:

1. Possesses working knowledge of the type of facility and the inspection process;
2. Holds a certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section by July 1, 2006; and
3. Holds a license in one of the following categories:
   a. An Arizona-registered engineer;
   b. An Arizona-registered sanitarian;
   c. An owner of a vehicle with a human excreta collection and transport license issued under 18 A.A.C. 13, Article 11 or an employee of the owner of the vehicle;
   d. A contractor licensed by the Registrar of Contractors in one of the following categories:
      i. Residential license B-4 or C-41;
      ii. Commercial license A, A-12, or L-41; or
      iii. Dual license KA or K-41;
   e. A wastewater treatment plant operator certified under 18 A.A.C 5, Article 1; or
   f. A person qualifying under another category designated by the Department.

C. The inspector shall complete a Report of Inspection on a form approved by the Department, sign it, and provide it to the person transferring the property. The Report of Inspection shall:

1. Address the physical and operational condition of the on-site wastewater treatment facility and describe observed deficiencies and repairs completed, if any;
2. Indicate that each septic tank or other wastewater treatment container on the property was pumped or otherwise serviced to remove, to the maximum extent possible, solid, floating, and liquid waste accumulations, or that pumping or servicing was not performed for one of the following reasons:
   a. A Discharge Authorization for the on-site wastewater treatment facility was issued and the facility was put into service within 12 months before the transfer of ownership inspection,
   b. Pumping or servicing was not necessary at the time of the inspection based on the manufacturer's written operation and maintenance instructions, or
   c. No accumulation of floating or settled waste was present in the septic tank or wastewater treatment container; and
3. Indicate the date the inspection was performed.

D. Before the property is transferred, the person transferring the property shall provide to the person to whom the property is transferred:

1. The completed Report of Inspection; and
2. Documents in the person's possession relating to permitting, operation, and maintenance of the on-site wastewater treatment facility.

E. The person to whom the property is transferred shall complete a Notice of Transfer on a form approved by the Department and send the form with the applicable fee specified in 18 A.A.C. 14 within 15 calendar days after the property transfer to:

1. The Department for transfer of a property with an on-site wastewater treatment facility for which construction was completed before January 1, 2001; or

2. The health or environmental agency delegated by the Director to administer the on-site wastewater treatment facility program for transfer of a property with an on-site wastewater treatment facility constructed on or after January 1, 2001.

F. If the Department issued a Discharge Authorization for the on-site wastewater treatment facility but the facility was not put into service before the property transfer, an inspection of the facility is not required and the transferee shall complete the Notice of Transfer form as specified in subsection (E).

G. Effective date.
1. The owner of an on-site wastewater treatment facility operating under a Type 4 General Permit shall comply with this Section by November 12, 2005.
2. The owner of any on-site wastewater treatment facility other than a facility identified in subsection (G)(1) shall comply with this Section by July 1, 2006.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2002 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A317. Nitrogen Management Area

A. The Director may designate a new Nitrogen Management Area to control groundwater pollution by sources of nitrogen regulated by Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes and not covered under an individual permit, modify the boundaries or requirements of a Nitrogen Management Area, or rescind designation of a Nitrogen Management Area.
1. If existing conditions or trends in nitrogen loading to an aquifer will cause or contribute to an exceedance of the Aquifer Water Quality Standard for nitrate at a point or points of current or reasonably foreseeable use of the aquifer, the Director shall use the following criteria to determine whether to designate the area as a Nitrogen Management Area:
   a. Population of the area;
   b. The degree to which the area is unsewered;
   c. Gross areal nitrogen loading, calculated as the amount of nitrogen discharged into the subsurface by use of on-site wastewater treatment facilities, divided by the land area under consideration for designation as a Nitrogen Management Area;
   d. Population growth rate of area;
   e. Existing contamination of groundwater by nitrogen species;
   f. Existing and potential impact to groundwater by sources of nitrogen other than on-site wastewater treatment facilities;
   g. Characteristics of the vadose zone and aquifer;
   h. Location, number, and areal extent of existing and potential sources of nitrogen;
   i. Location and characteristics of existing and potential drinking water supplies; and
   j. Any other information relevant to determining the severity of actual or potential nitrogen impact on the aquifer.
2. The Director may modify the boundaries or requirements of a Nitrogen Management Area or rescind designation of a Nitrogen Management Area based on:
   a. A material change to one or more criterion specified in subsection (A)(1); or
   b. The adoption by a local agency of a master plan to substantially sewer the area as soon as possible, but with a completion deadline within 10 years, unless a completion deadline of more than 10 years is approved by the Director.

B. Preliminary designation, modification, or rescission.
1. The Director shall provide a report to the mayors and members of the Board of Supervisors of all towns, cities, and counties and the directors of all sanitary districts affected by the Department's proposed action to designate, modify, or rescind a Nitrogen Management Area as follows:
   a. If the Department proposes to designate a Nitrogen Management Area, the Department shall provide a report discussing each criterion specified in subsection (A)(1).
   b. If the Department proposes to modify the boundaries or requirements of a Nitrogen Management Area or rescind the designation of a Nitrogen Management Area, the Department shall provide a report discussing applicable criteria in subsections (A)(1) and (2).
2. The town, city, county, or sanitary district receiving the Director's report may provide written comments to the Department within 120 days to dispute the factual information presented in the report and supply any information supporting the comments.
3. The Director shall evaluate the comments and supporting information obtained under subsection (B)(2) and either designate, modify, or rescind the Nitrogen Management Area or withdraw the proposal.

C. Final designation.
1. If the Director designates or modifies the Nitrogen Management Area, the Department shall:
   a. Issue or modify the Nitrogen Management Area designation and any special provisions established for the area to control groundwater pollution by sources of nitrogen regulated by Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes but not covered under an individual permit. The Department shall provide notice to the mayors and members of the Board of Supervisors of all towns, cities, and counties and the directors of all sanitary districts affected by the determination;
   b. Maintain the designation and a map showing the boundaries of the Nitrogen Management Area at the Arizona Department of Environmental Quality, 1110 West Washington, Phoenix, Arizona 85007 and on the Department's web site at www.azdeq.gov; and
   c. Provide, upon request, a copy of the Nitrogen Management Area designation and a map of the area.
2. If the Director withdraws the preliminary Nitrogen Management Area designation or rescinds the Nitrogen Management Area designation, the Director shall issue a determination stating the decision and post it on the Department's web site at www.azdeq.gov.

D. Nitrogen Management Area requirements. Within a Nitrogen Management Area:
1. The Department shall issue a Construction Authorization, under R18-9-A301(D)(1)(c), for an on-site wastewater treatment facility only if the applicant proposes, in the Notice of Intent to Discharge, to employ one or more of the technologies allowed under R18-9-E302 through R18-9-E322 that achieves a discharge level containing not more than 15 mg/l of total nitrogen.

2. An agricultural operation shall use the best control measure necessary to reduce nitrogen discharge when implementing the best management practices developed under 18 A.A.C. 9, Article 4. The Director may require the owner or operator to reassess the performance of the impoundment liner systems constructed under R18-9-403 before November 12, 2005.
3. A person shall comply with any special provision established for the Nitrogen Management Area, as applicable, for the person's facility.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART B. TYPE 1 GENERAL PERMITS

R18-9-B301. Type 1 General Permit

A. A 1.01 General Permit allows any discharge of wash water from a sand and gravel operation, placer mining operation, or other similar activity, including construction, foundation, and underground dewatering, if only physical processes are employed and only hazardous substances at naturally occurring concentrations in the sand, gravel, or other rock material are present in the discharge.

B. A 1.02 General Permit allows any discharge from hydrostatic tests of a drinking water distribution system and pipelines not previously used, if all the following conditions are met:
1. The quality of the water used for the test does not exceed an Aquifer Water Quality Standard or for non-drinking water pipelines, if reclaimed water is used, the reclaimed water meets Class A+ Reclaimed Water Quality Standards under A.A.C. R18-11-303 or Class B+ Reclaimed Water Quality Standards under A.A.C. R18-11-305;
2. The discharge is not to a water of the United States, unless the discharge is under an AZPDES permit; and
3. The test site is restored to its natural grade.

C. A 1.03 General Permit allows any discharge from hydrostatic tests of a pipeline, tank, or appurtenance previously used for transmission of fluid, other than those previously used for drinking water distribution systems, if all the following conditions are met:
1. All liquid discharge is contained in an impoundment lined with flexible geomembrane. The liquid is evaporated or removed from the impoundment and taken to a treatment works or landfill authorized to accept the material within:
   a. 60 days of the hydrostatic test if the liner is 10 mils, or
   b. 180 days of the hydrostatic test if the liner is 30 mils or greater;
2. The liner is placed over a layer, at least 3 inches thick, of well-sorted sand or finer grained material, or over an underliner that provides protection equal to or better than sand or finer grained material and the calculated seepage is less than 550 gallons per acre per day;
3. The liner is removed and disposed of at an approved landfill unless the liner can be reused at another test location without a reduction in integrity;
4. The test site is restored to its natural grade; and
5. If the test waters are removed using a method not specified in subsection (C)(1), including a discharge under an AZPDES permit, the test waters meet Aquifer Water Quality Standards and the specific method is approved by the Department before the discharge.

D. A 1.04 General Permit allows any discharge from a facility that, for water quality sampling, hydrologic parameter testing, well development, redevelopment, or potable water system maintenance and repair purposes, receives water, drilling fluids, or drill cuttings from a well if the discharge is to the same aquifer in approximately the same location from which the water supply was originally withdrawn, or the discharge is under an AZPDES permit.

E. A 1.05 General Permit allows a discharge to an injection well, surface impoundment, and leach line only if the discharge is filter backwash from a potable water treatment system, condensate from a refrigeration unit, overflows from an evaporative cooler, heat exchange system return water, or swimming pool filter backwash and the discharge is less than 1000 gallons per day. The 1.05 General Permit allows a discharge of those sources to a navigable water if the discharge is authorized by an AZPDES permit.

F. A 1.06 General Permit allows the burial of mining industry off-road motor vehicle waste tires at the mine site in a manner consistent with the cover requirements in R18-13-1203.

G. A 1.07 General Permit allows the operation of dockside facilities and watercraft if the following conditions are met:
1. Docks that service watercraft equipped with toilets provide sanitary facilities at dockside for the disposal of sewage from watercraft toilets. No wastewater from sinks, showers, laundries, baths, or other plumbing fixtures at a dockside facility is discharged into waters of the state;
2. Docks that service watercraft have conveniently located toilet facilities for men and women;
3. No boat, houseboat, or other type of watercraft is equipped with a marine toilet constructed and operated to discharge sewage directly or indirectly into a water of the state, nor is any container of sewage placed, left, discharged, or caused to be placed, left, or discharged in or near any waters of the state by a person;
4. Watercraft with marine toilets constructed to allow sewage to be discharged directly into waters of the state are locked and sealed to prevent usage. Chemical or other type marine toilets with approved storage containers are permitted if dockside disposal facilities are provided; and
5. No bilge water or wastewater from sinks, showers, laundries, baths, or other plumbing fixtures on houseboats or other watercraft is discharged into waters of the state.

H. A 1.08 General Permit allows for any earth pit privy, fixed or transportable chemical toilet, incinerator toilet or privy, or pail or can-type privy if allowed by a county health or environmental department under A.R.S. Title 36 or a delegation agreement under A.R.S. § 49-107.

I. A 1.09 General Permit allows:
1. The operation of:
   a. A sewage treatment facility with flows less than 20,000 gallons per day and approved by the Department before January 1, 2001, and
   b. An on-site wastewater treatment facility with flows less than 20,000 gallons per day operating before January 1, 2001;
2. The person who owns or operates a facility under subsections (I)(1)(a) or (b) to operate the facility if the following conditions are met:
   a. The discharge from the facility does not cause or contribute to a violation of a water quality standard;
   b. The owner or operator does not expand the facility to accommodate flows above the design flow or 20,000 gallons per day, whichever is less;

c. The facility only treats typical sewage;
d. The facility does not treat flows from commercial operations using hazardous substances or creating hazardous wastes, as defined in A.R.S. § 49-921(5);
e. The discharge from the facility does not create any environmental nuisance condition listed in A.R.S. § 49-141; or
f. The owner or operator does not alter the treatment or disposal characteristics of the original facility, except as allowed under R18-9-A309(A)(9)(a).

J. A 1.10 General Permit allows the operation of a sewage collection system installed before January 1, 2001 that serves downstream from the point where the daily design flow is 3000 gallons per day or that includes a manhole, force main, or lift station serving more than one dwelling regardless of flow, if:
1. The system complies with the performance standards in R18-9-E301(B),
2. No sewage is released from the sewage collection system to the land surface, and
3. The system is not operating under the 2.05 General Permit.

K. A 1.11 General Permit allows the operation of a sewage collection system that serves upstream from the point where the daily design flow is 3000 gallons per day to the building drains, or a single gravity sewer line conveying sewage from a building drain directly to an interceptor, lateral, or manhole, regardless of daily design flow, if all of the following are met:
1. The system does not cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4;
2. No sewage is released from the sewage collection system to the land surface;
3. No environmental nuisance condition listed in A.R.S. § 49-141 is created;
4. The system does not include a manhole, force main, or lift station serving more than one dwelling;
5. Applicable local administrative requirements for review and approval of design and construction are followed;
6. The performance standards specified in R18-9-E301(B) are met using:
   a. Local building and construction codes,
   b. Relevant design and construction standards specified in R18-9-E301, and
   c. Appropriate operation and maintenance;
7. The system flows directly into one of the following downstream facilities:
   a. An on-site wastewater treatment facility;
   b. A sewage treatment facility operating under an individual permit; or
   c. A sewage collection system operating under a 1.10, 2.05, or 4.01 General Permit; and
8. The system is not operating under a 2.05 General Permit.

L. A 1.12 General Permit allows the discharge of wastewater resulting from washing concrete from trucks, pumps, and ancillary equipment to an impoundment if the following conditions are met:
1. The person holds an AZPDES Construction General Permit authorizing the concrete washout activities;
2. The Stormwater Pollution Prevention Plan required by the Construction General Permit issued according to 18 A.A.C. 9, Article 9, Part C, for the construction activity addresses the concrete washout activities;
3. The vegetation at the soil base of the impoundment is cleared, grubbed, and compacted to uniform density not less than 95 percent. If the impoundment is located above grade, the berms or dikes are compacted to a uniform density not less than 95 percent;
4. If groundwater is less than 20 feet below land surface, the impoundment is lined with a synthetic liner at least 30 mils thick;
5. The impoundment is located at least 50 feet from any storm drain inlet, open drainage facility, or watercourse and 100 feet from any water supply well;
6. The impoundment is designed and operated to maintain adequate freeboard to prevent overflow or discharge of wastewater;
7. The concrete washout wastewater from any wash pad is routed to the impoundment;
8. The impoundment receives only concrete washout wastewater;
9. The annual average daily flow of wastewater to the impoundment is less than 3000 gallons per day; and
10. The following closure requirements are met.
    a. The facility is closed by removing and appropriately disposing of any liquids remaining in the impoundment,
    b. The area is graded to prevent ponding of water, and
    c. Closure activities are completed before filing of the Notice of Termination under the AZPDES Construction General Permit.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART C. TYPE 2 GENERAL PERMITS

R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated

A. A 2.01 General Permit allows for a drywell that drains an area where hazardous substances are used, stored, loaded, or treated.

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
1. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation has concluded that:
   a. Analytical results from sampling the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
   b. The settling chamber does not contain sediments that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
   c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5-foot increments starting from 5 feet

below ground surface and extending to 10 feet below the base of the drywell injection pipe; or

d. If coarse grained lithology prevents the collection of representative soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance;

3. Design information to demonstrate that the requirements in subsection (C) are satisfied; and
4. A copy of the Best Management Practices Plan described in subsection (D)(5).

C. Design requirements. An applicant shall:

1. Locate the drywell no closer than 100 feet from a water supply well and 20 feet from an underground storage tank;
2. Clearly mark the drywell "Stormwater Only" on the surface grate or manhole cover;
3. Locate the bottom of the drywell hole at least 10 feet above groundwater. If during drilling and well installation the drywell borehole encounters saturated conditions, the applicant shall backfill the borehole with cement grout to at least 10 feet above the elevation of saturated conditions before constructing the drywell in the borehole;
4. Ensure that the drywell design or drainage area design includes a method to remove, intercept, or collect pollutants that may be present at the operation with the potential to reach the drywell. The applicant may include a flow control or pretreatment device, such as an interceptor, sump, or another device or structure designed to remove, intercept, or collect pollutants. The applicant may use flow control or pretreatment devices listed under R18-9-C304(D)(1) or (2) to satisfy the design requirements of this subsection;
5. Record the accurate latitude and longitude of the drywell using a Global Positioning System device or site survey; and
6. Develop and maintain a current site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns, the location of floor drains and French drains plumbed to the drywell, water supply wells, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas.

D. Operational and maintenance requirements.

1. A permittee shall operate the drywell only for the disposal of stormwater. The permittee shall not release industrial process waters or wastes in the drywell or drywell retention basin drainage area.
2. The permittee shall implement a Best Management Practices Plan for operation of the drywell and control of pollutants in the drywell drainage area.
3. The permittee shall keep the Best Management Practices Plan on-site or at the closest practical place of work and provide the plan to the Department upon request.
4. The permittee may substitute any Spill Prevention Containment and Control Plan, facility response plan, or an AZPDES Stormwater Pollution Prevention Plan that meets the requirements of this subsection for a Best Management Practices Plan. If the permittee submits a substitute for the Best Management Practices Plan, the permittee shall identify the conditions within the substitute plan that satisfy the requirements of subsection (D).
5. The Best Management Practices Plan shall include:
   a. A site plan showing surface drainage patterns and the location of floor drains, water supply, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas. The site plan shall show surface grading details designed to prevent drainage and spills of hazardous substances from leaving the drainage area and entering the drywell;
   b. A design plan showing details of drywell design and drainage design, including flow control or pretreatment devices, such as interceptors, sumps, and other devices and structures designed to remove, intercept, and collect any pollutant that may be present at the operation with the potential to reach the drywell;
   c. Procedures to prevent and contain spills and minimize discharges to the drywell;
   d. Operational practices that include routine inspection and maintenance of the drywell and associated pretreatment and flow-control devices, periodic inspection of waste storage facilities, and proper handling of hazardous substances to prevent discharges to the drywell. Routine inspection and maintenance shall include:
      i. Replacing the adsorbent material in the skimmers, if installed, when the adsorbent capacity is reached;
      ii. Maintaining valves and associated piping for a drywell injection and treatment system;
      iii. Maintaining magnetic caps and mats, if installed;
      iv. Removing sludge from the oil/water separator, if installed, and replacing the filtration or adsorption material to maintain treatment capacity;
      v. Removing sediment from the catch basin inlet filters and retention basin to maintain required storage capacity; and
   e. Procedures for periodic employee training on practices required by the Best Management Practices Plan specific to the drywell and prevention of unauthorized discharges.
6. The permittee shall implement waste management practices to prohibit and prevent discharges, other than those exempted in A.R.S. § 49-250(B)(23), in the drywell drainage area, including:
   a. Maintaining an up-to-date inventory of generated wastes and waste products;
   b. Disposing or recycling all wastes or solvents through a company licensed to handle the material;
   c. Where possible, collecting and storing waste in waste receptacles located outside the drywell drainage area. If the permittee collects and stores the waste within the drywell drainage area, the permittee shall collect and store the waste in properly designed receptacles; and
   d. Using a licensed waste hauler to transport waste offsite to a permitted waste disposal facility.

E. Inspection. A permittee shall:

1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers and the flow-control and treatment systems, and remove sediment annually or when 25 percent of the effective capacity is filled, whichever comes first, to restore capacity and ensure that the drywell functions properly. The permittee shall character-

ize the sediments that are removed from the drywell after inspection and dispose of the sediments according to local, state, and federal requirements; and

2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that the treatment system is functioning properly, make repairs, and perform maintenance as needed to restore proper function.

F. Recordkeeping. A permittee shall maintain for at least 10 years, the following documents on-site or at the closest place of work and make the documents available to the Department upon request:

1. Documentation of drywell maintenance, inspections, employee training, and sampling activities;
2. A site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains or French drains that are plumbed to the drywell or are used to alter drainage patterns, the location of water supply wells, monitor wells, underground storage tanks, and places where hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including any flow control and pretreatment technologies;
4. An operations and maintenance manual that includes:
   a. Procedures to prevent and contain spills and minimize any discharge to the drywell and a list of actions and methods proposed to prevent and contain hazardous substance spills or leaks;
   b. Methods and procedures for inspection, operation, and maintenance activities;
   c. Procedures for spill response; and
   d. A description of the employee training program for drywell inspections, operations, maintenance, and waste management practices;
5. Drywell sediment waste characteristics and disposal manifest records for sediments removed during routine inspections and maintenance activities; and
6. Sampling plans, certified laboratory reports, and chain of custody forms for soil, sediment, and groundwater sampling associated with drywell site investigations.

G. Spills.

1. In the event of a spill, the permittee shall:
   a. Notify the Department within 24 hours of any spill of hazardous or toxic substance that enters the drywell inlet;
   b. Contain, clean up, and dispose of, according to local, state, and federal requirements, any spill or leak of a hazardous substance in the drywell drainage area and basin drainage area;
   c. If a pretreatment system is present, verify that treatment capacity has not been exceeded; and
   d. If the spill reaches the drywell injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample the soil in 5-foot increments from 5 feet below ground surface to a depth extending at least 10 feet below the base of the injection pipe to determine whether a soil remediation level or groundwater protection level has been exceeded in the subsurface. The permittee shall:
      i. Submit the results to the Department within 60 days of the date of the spill; and
      ii. Notify the Department if soil contamination at the facility, not related to the spill, is being addressed by an existing approved remedial action plan.
2. Based on the results of subsection (G)(1)(d), the Director may require the permittee to submit an application for clean closure or an individual Aquifer Protection Permit.

H. Closure and decommissioning requirements.

1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. Materials containing hazardous substances are prohibited from use in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
   a. The reason for the closure;
   b. The drywell registration number;
   c. The general permit reference number;
   d. The materials and methods used to close the drywell;
   e. The name of the contractor who performed the closure;
   f. The completion date;
   g. Any sampling data;
   h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
   i. Any other information necessary to verify that closure has been achieved.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites

A. A 2.02 General Permit allows for intermediate stockpiles not qualifying as inert material under A.R.S. § 49-201(19) at a mining site.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge under R18-9-A301(B), an applicant shall submit the construction and operation specifications used to satisfy the requirements in subsection (C)(1).

C. Design and operational requirements.

1. An applicant shall design, construct, and operate the stockpile so that it does not impound water. An applicant may rely on stormwater run-on controls or facility design features, such as drains, or both.

2. An applicant shall direct storm runoff contacting the stockpile to a mine pit or a facility covered by an individual or general permit.
3. A permittee shall maintain any engineered feature of the facility in good working condition.
4. A permittee shall visually inspect the facility at least quarterly and repair any defect as soon as practical.
5. A permittee shall not add hazardous substances to the stockpiled material.

D. Closure requirements. In addition to the closure requirements in R18-9-A306, the following apply:
1. If an intermediate stockpile covered under a 2.02 General Permit is permanently closed, a permittee shall remove any remaining material, to the greatest extent practical, and regrade the area to prevent impoundment of water.
2. The permittee shall submit a narrative description of closure measures to the Department within 30 days after closure.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C303. 2.03 General Permit: Hydrologic Tracer Studies

A. A 2.03 General Permit allows for a discharge caused by the performance of tracer studies.
1. The 2.03 General Permit does not authorize the use of any hazardous substance, radioactive material, or any substance identified in A.R.S. § 49-243(I) in a tracer study.
2. A permittee shall complete a single tracer test within two years of the Notice of Intent to Discharge.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A narrative description of the tracer test including the type and amount of tracer used;
2. A Material Safety Data Sheet for the tracer; and
3. Unless the injection or distribution is within the capture zone of an established passive containment system meeting the requirements of A.R.S. § 49-243(G), the following information:
   a. A narrative description of the impacts that may occur if a solution migrates outside the test area, including a list of downgradient users, if any;
   b. The anticipated effects and expected concentrations, if possible to calculate; and
   c. A description of the monitoring, including types of tests and frequency.

C. Design and operational requirements. A permittee shall:
1. Ensure that injection into a well inside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) does not exceed the total depth of the influence of the hydrologic sink;
2. Ensure that injection into a well outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) does not exceed rock fracture pressures during injection of the tracer;
3. Not add a substance to a well that is not compatible with the well's construction;
4. Ensure that a tracer is compatible with the construction materials at the impoundment if a tracer is placed or collected in an existing impoundment;
5. For at least two years, monitor quarterly a well that is hydraulically downgradient of the test site for the tracer if a tracer is used outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) and less than 85 percent of the tracer is recovered. The permittee may adjust this period with the consent of the Department if the permittee shows that the hydraulic gradient causes the tracer to reach the monitoring point in a shorter or longer period of time;
6. Ensure that a tracer does not leave the site in concentrations distinguishable from background water quality; and
7. Monitor the amount of tracer used and recovered and submit a report summarizing the test and results to the Department within 30 calendar days of test completion.

D. Recordkeeping. A permittee shall retain the following information at the site where the facility is located for at least three years after test completion and make it available to the Department upon request.
1. Test protocols,
2. Material Safety Data Sheet information,
3. Recovery records, and
4. A copy of the report submitted to the Department under subsection (C)(7).

E. Closure requirements.
1. If a tracer was used outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G), a permittee shall account for any tracer not recovered through attenuation, modeling, or monitoring.
2. The permittee shall achieve closure immediately following the test, or if the test area is within a pollutant management area defined in an individual permit, at the conclusion of operations.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

A. A 2.04 General Permit allows for a drywell that drains an area at a facility for dispensing motor fuel, as defined in A.A.C. R20-2-701(19), including a commercial gasoline station with an underground storage tank.
1. A drywell at a motor fuel dispensing facility using hazardous substances is eligible for coverage under the 2.04 General Permit.
2. A drywell at a vehicle maintenance facility owned or operated by a commercial enterprise or by a federal, state, county, or local government is not eligible for coverage under this general permit, unless the facility design ensures that only motor fuel dispensing areas will drain to the drywell. Areas where hazardous substances other than motor fuels are used, stored, or loaded, including service bays, are not covered under the 2.04 General Permit.
3. Definition. For purposes of this Section, "hazardous substances" means substances that are components of commercially packaged automotive supplies, such as motor oil, antifreeze, and routine cleaning supplies such as those

used for cleaning windshields, but not degreasers, engine cleaners, or similar products.

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:

1. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation concluded that:
   a. Analytical results from sampling sediment from the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
   b. The settling chamber does not contain sediment that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
   c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5 foot increments starting at a depth of 5 feet below ground surface and extending to a depth of 10 feet below the base of the drywell injection pipe; or
   d. If coarse grained lithology prevents the collection of soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance.
3. Design information to demonstrate that the requirements in subsection (C) are satisfied.

C. Design requirements.

1. An applicant shall:
   a. Include a flow control or pretreatment device identified in subsections (D)(1) or (2), or both, that removes, intercepts, or collects spilled motor fuel or hazardous substances before stormwater enters the drywell injection pipe;
   b. Calculate the volume of runoff generated in the design storm event and anticipate the maximum potential contaminant release quantity to design the treatment and holding capacity of the drywell;
   c. Follow local codes and regulations to meet retention periods for removing standing water;
   d. Locate the drywell at least 100 feet from a water supply well and 20 feet from an underground storage tank;
   e. Locate the bottom of the drywell injection pipe at least 10 feet above groundwater. If during drilling and well installation the drywell borehole encounters saturated conditions, the applicant shall backfill the borehole with cement grout to a level at least 10 feet above the elevation at which saturated conditions were encountered in the borehole before constructing the drywell in the borehole;
   f. Record the accurate latitude and longitude of the drywell using a Global Positioning System device or site survey and record the location on the site plans;
   g. Clearly mark the drywell "Stormwater Only" on the surface grate or manhole cover;
   h. Develop and maintain a current site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains and French drains that are plumbed to the drywell or are used to alter drainage patterns, water supply wells, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas; and
   i. Prepare design plans showing details of drywell design and drainage design, including one or a combination of pre-approved technologies described in subsections (D)(1) and (2) designed to remove, intercept, and collect any pollutant that may be present at the operation with the potential to reach the drywell.
2. For an existing drywell, an applicant that cannot meet the design requirements in subsections (C)(1)(d) and (e) shall provide the Department with the date of drywell construction, the depth of the drywell borehole and injection pipe, the distance from the drywell to the nearest water supply well and from the drywell to the underground storage tank, and the depth to the groundwater from the bottom of the drywell injection pipe.

D. Flow control and pretreatment. A permittee shall ensure that motor fuels and other hazardous substances are not discharged to the subsurface. A permittee may use any of the following flow control or pretreatment technologies:

1. Flow control. The permittee shall ensure that motor fuel and hazardous substance spills are removed before allowing stormwater to enter the drywell.
   a. Normally closed manual or automatic valve. The permittee shall leave a normally closed valve in a closed position except when stormwater is allowed to enter the drywell;
   b. Raised drywell inlet. The permittee shall:
      i. Raise the drywell inlet at least six inches above the bottom of the retention basin or other storage structure, or install a six-inch asphalt or concrete raised barrier encircling the drywell inlet to provide a non-draining storage capacity within the retention basin or storage structure for complete containment of a spill; and
      ii. Ensure that the storage capacity is at least 110 percent of the volume of the design storm event required by the local jurisdiction and the estimated volume of a potential motor fuel spill based on the facility's past incident reports or incident reports for other facilities that are similar in design;
   c. Magnetic mat or cap. The permittee shall ensure that the drywell inlet is sealed with a mat or cap at all times, except after rainfall or a storm event when the mat or cap is temporarily removed to allow stormwater to enter the drywell; and that the mat or cap is always used with a retention basin or other type of storage;
   d. Primary sump, interceptor, or settling chamber. The permittee may use a primary sump, interceptor, or settling chamber only in combination with another flow control or pre-treatment technology.
      i. The permittee shall remove motor fuel or hazardous substances from the sump, interceptor,

or chamber before allowing stormwater to enter the drywell.

ii. The permittee shall install a settling chamber or sump and allow the suspended solids to settle before stormwater flows into a drywell; install the drywell injection pipe in a separate chamber and connect the sump, interceptor, or chamber to the drywell inlet by piping and valving to allow the stormwater to enter the drywell.

iii. The permittee may install fuel hydrocarbon detection sensors in the sump, interceptor, or settling chamber that use flow control to prevent fuel from discharging into the drywell;

2. Pretreatment. The permittee shall prevent the bypass of motor fuels and hazardous substances from the pretreatment system to the drywell during periods of high flow.

a. Catch basin inlet filter. The permittee shall:

i. Install a catch basin inlet filter to fit inside a catchment drain to prevent motor fuels and hazardous substances from entering the drywell,

ii. Ensure that a motor fuel spill or a spill during a high rainfall does not bypass the system and directly release to the drywell injection pipe, and

iii. Combine the catch basin inlet filter with a flow control technology to prevent contaminated stormwater from entering the drywell injection pipe;

b. Combined settling chamber and an oil/water separator.

i. The permittee shall install a system that incorporates a catch basin inlet, a settling chamber, and an oil/water separator.

ii. The permittee may incorporate a self-sealing mechanism, such as fuel hydrocarbon detection sensors that activate a valve to cut off flow to the drywell inlet.

c. Combined settling chamber and oil/water separator, and filter/adsorption. The permittee shall:

i. Allow for adequate collection and treatment capacity for solid and liquid separation; and

ii. Allow a minimum treated outflow from the system to the drywell inlet of 20 gallons per minute. If a higher outflow rate is anticipated, the applicant shall design a larger collection system with storage capacity.

d. Passive skimmer.

i. If a passive skimmer is used, the permittee shall install sufficient hydrocarbon adsorbent materials, such as pads and socks, or suspend the materials on top of the static water level in a sump or other catchment to absorb the entire volume of expected or potential spill.

ii. The permittee may use a passive skimmer only in combination with another flow control or pre-treatment technology.

E. Operation and maintenance. A permittee shall:

1. Operate the drywell only for the subsurface disposal of stormwater;
2. Remove or treat any motor fuel or hazardous substance spills;
3. Replace the adsorbent material in skimmers, if installed; when the adsorbent capacity is reached;
4. Maintain valves and associated piping;
5. Maintain magnetic caps and mats, if installed;
6. Remove sludge from the oil/water separator and replace the filtration or adsorption materials to maintain treatment capacity;
7. Remove sediment from the catch basin inlet filters and retention basins to maintain required storage capacity;
8. Remove accumulated sediment from the settling chamber annually or when 25 percent of the effective settling capacity is filled, whichever occurs first; and
9. Provide new employee training within one month of hire and annual employee training on how to maintain and operate flow control and pretreatment technology used in the drywell.

F. Inspection. A permittee shall:

1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers and in the flow control and treatment systems to ensure that the drywell is functioning properly; and
2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that it is functioning properly, make repairs, and perform maintenance as needed to restore proper function.

G. Recordkeeping. A permittee shall maintain, for at least 10 years, the following documents on-site or at the closest place of work and make the documents available to the Department upon request:

1. Documentation of drywell maintenance, inspections, employee training, and sampling activities;
2. A site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains or French drains that are plumbed to the drywell or are used to alter drainage patterns, water supply wells, monitor wells, underground storage tanks, and places where motor fuel and hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including one or a combination of the pre-approved flow control and pretreatment technologies;
4. An operations and maintenance manual that includes:
   a. Procedures to prevent and contain spills and minimize any discharge to the drywell and a list of actions and specific methods proposed for motor fuel and hazardous substance spills or leaks;
   b. Methods and procedures for inspection, operation, and maintenance activities;
   c. Procedures for spill response; and
   d. A description of the employee training program for drywell inspections, operations, and maintenance;
5. Drywell sediment waste characterization and disposal manifest records for sediments removed during routine inspections and maintenance activities; and
6. Sampling plans, certified laboratory reports, and chain of custody forms for soil, sediment, and groundwater sampling associated with drywell site investigations.

H. Spills.

1. In the event of a spill, a permittee shall:
   a. Notify the Department within 24 hours of any spill of motor fuel or hazardous or toxic substances that enters into the drywell inlet;
   b. Contain, clean up, and dispose of, according to local, state, and federal requirements, any spill or leak of

motor fuel or hazardous substance in the drywell drainage area and basin drainage area;

c. If a pretreatment system is present, verify that treatment capacity has not been exceeded; and

d. If the spill reaches the injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample in 5-foot increments from 5 feet below ground surface to a depth extending at least 10 feet below the base of the injection pipe to determine whether a soil remediation level or groundwater protection level has been exceeded in the subsurface. The permittee shall:

i. Submit the results to the Department within 60 days of the date of the spill; and

ii. Notify the Department if soil contamination at the facility, not related to the spill, is being addressed by an existing approved remedial action plan.

2. The Director may, based on the results of subsection (H)(1)(d), require the permittee to submit an application for clean closure or an individual Aquifer Protection Permit.

I. Closure and decommissioning requirements.

1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. A permittee shall not use materials containing hazardous substances in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
   a. The reason for the closure;
   b. The drywell registration number;
   c. The general permit reference number;
   d. The materials and methods used to close the drywell;
   e. The name of the contractor who performed the closure;
   f. The completion date;
   g. Any sampling data;
   h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
   i. Any other information necessary to verify that closure has been achieved.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4096, effective September 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C305. 2.05 General Permit: Capacity, Management, Operation, and Maintenance of a Sewage Collection System

A. Definition. For purposes of this Section, "imminent and substantial threat to public health or the environment" means when:

1. The volume of a release is more than 2000 gallons; or
2. The volume of a release is more than 50 gallons but less than 2000 gallons and any one of the following apply:
   a. The release entered onto a recognized public area and members of the public were present during the release or before the release was mitigated;
   b. The release occurred on a public or private street and pedestrians were at risk of being splashed by vehicles during the release or before the release was mitigated;
   c. The release entered a perennial stream, an intermittent stream during a time of flow, a waterbody other than an ephemeral stream, a normally dry detention or sedimentation basin, or a drywell;
   d. The release occurred within an occupied building due to a condition in the permitted sewage collection system; or
   e. The release occurred within 100 feet of a school or a public or private drinking water supply well.

B. A 2.05 General Permit allows a permittee to manage, operate, and maintain a sewage collection system under the terms of a CMOM Plan that complies with subsection (D). The Department considers a sewage collection system operating in compliance with an AZPDES permit that incorporates provisions for capacity, management, operation, and maintenance of the system to comply with the provisions of the 2.05 General Permit regardless of whether a Notice of Intent to Discharge for the system was submitted to the Department.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:

1. The name and ownership of any downstream sewage collection system and sewage treatment facility that receives sewage from the applicant's sewage collection system;
2. A map of the service area for which general permit coverage is sought, showing streets and sewage service boundaries for the sewage collection system;
3. A statement indicating that the CMOM Plan is in effect and the principal officer or ranking elected official of the sewage collection system has approved the plan; and
4. A statement indicating whether a local ordinance requires an on-site wastewater treatment facility to hookup to the sewage collection system.

D. CMOM Plan.

1. A permittee shall continuously implement a CMOM Plan for the sewage collection system under the permittee's ownership, management, or operational control. The CMOM Plan shall include information to comply with subsection (E)(1) and instructions on:
   a. How to properly manage, operate, and maintain all parts of the sewage collection system that are owned or managed by the permittee or under the permittee's operational control, to meet the performance requirements in R18-9-E301(B);
   b. How to maintain sufficient capacity to convey the base flows and peak wet weather flow of a 10-year, 24-hour storm event for all parts of the collection system owned or managed by the permittee or under the permittee's operational control;

c. All reasonable and prudent steps to minimize infiltration to the sewage collection system;
d. All reasonable and prudent steps to stop all releases from the collection system owned or managed by the permittee or under the permittee's operational control; and
e. The procedure for reporting releases described in subsection (F).

2. The permittee shall maintain and update the CMOM Plan for the duration of this general permit and make it available for Department and public review.
3. If the Department requests the CMOM Plan and upon review finds that the CMOM Plan is deficient, the Department shall:
a. Notify the permittee in writing of the specific deficiency and the reason for the deficiency, and
b. Establish a deadline of at least 60 days to allow the permittee to correct the deficiency and submit the amended provision to the Department for approval.

E. Sewage release response determination. If the sewage collection system releases sewage, the Director shall consider any of the following factors in determining compliance:
1. Sufficiency of the CMOM Plan.
a. The level of detail provided by the CMOM Plan is appropriate for the size, complexity, and age of the system;
b. The level of detail provided by the CMOM Plan is appropriate considering geographic, climatic, and hydrological factors that may influence the sewage collection system;
c. The CMOM Plan provides schedules for the periodic preventative maintenance of the sewage collection system, including cleaning of all reaches of the sewage collection system below a specified pipe diameter.
i. The CMOM Plan may allow inspection of sewer lines by Closed Circuit Television (CCTV) and postponement of cleaning to the next scheduled cleaning cycle if the CCTV inspection indicated that cleaning of a reach of the sewer is not needed.
ii. The CMOM Plan may specify inspection and cleaning schedules that differ according to pipe diameter or other characteristics of the sewer;
d. The CMOM Plan identifies components of the sewage collection system that have insufficient capacity to convey, when properly maintained, the peak wet weather flow of a 10-year, 24-hour storm event. For those identified components, a capital improvement plan exists for achieving sufficient wet weather flow capacity within ten years of the effective date of permit coverage;
e. The CMOM Plan includes an overflow emergency response plan appropriate to the size, complexity, and age of the sewage collection system considering geographic, climatic, and hydrological factors that may influence the system;
f. The CMOM Plan establishes a procedure to investigate and enforce against any commercial or industrial entity whose flows to the sewage collection system have caused or contributed to a release;
g. The CMOM Plan adequately addresses management of flows from upstream sewage collection systems not under the ownership, management, or operational control of the permittee; or
h. Any other factor necessary to determine if the CMOM Plan is sufficient;

2. Compliance with the CMOM Plan.
a. The permittee's response to releases as established in the overflow emergency response plan, including whether:
i. Maintenance staff responds to and arrive at the release within the time period specified in the plan;
ii. Maintenance staff follow all written procedures to remove the cause of the release;
iii. Maintenance staff contain, recover, clean up, disinfect, and otherwise mitigate the release of sewage; and
iv. Required notifications to the Department, public health agencies, drinking water suppliers, and the public are provided;
b. The permittee's activities and timeliness in:
i. Implementing specified periodic preventative maintenance measures;
ii. Implementing the capital improvement plan; and
iii. Investigating and enforcing against an upstream sewage collection system, not under the ownership and operational control of the permittee, if those systems are impediments to the proper management of flows in the permittee's sewage collection system; or
c. Any other factor necessary to determine CMOM Plan compliance;

3. Compliance with the reporting requirements in subsection (F) and the public notice requirements in subsection (G); or
4. The release substantially endangers public health or the environment.

F. Reporting requirements.
1. Sewage releases.
a. A permittee shall report to the Department, by telephone, facsimile, or on the applicable notification form on the Department's Internet web site, any release that is an imminent and substantial threat to public health or the environment as soon as practical, but no later than 24 hours of becoming aware of the release.
b. A permittee shall submit a report to the Department within five business days after becoming aware of a release that is an imminent and substantial threat to public health or the environment. The report shall include:
i. The location of the release;
ii. The sewage collection system component from which the release occurred;
iii. The date and time the release began, was stopped, and when mitigation efforts were completed;
iv. The estimated number of persons exposed to the release, the estimated volume of sewage released, the reason the release is considered an imminent and substantial threat to public health or the environment if the volume is 2000 gallons or less, and where the release flowed;

v. The efforts made by the permittee to stop, contain, and clean up the released material;
vi. The amount and type of disinfectant applied to mitigate any associated public health or environmental risk; and
vii. The cause of the release or effort made to determine the cause and any effort made to help prevent a future reoccurrence.

2. Annual report. The permittee shall:
   a. Submit an annual report to the Department postmarked no later than March 1. The report shall:
      i. Tabulate all releases of more than 50 gallons from the permitted sewage collection system;
      ii. Provide the date of any release that is an imminent and substantial threat to public health or the environment; and
      iii. For other reportable releases under subsection (F)(2)(a)(i), provide the information in subsection (F)(1)(b);
   b. Provide an amended map of the service area boundaries if, during the calendar year, any area was removed from the service area or if any area was added to the service area that the permittee wishes to include under the 2.05 General Permit and associated CMOM Plan.

G. Public notice. The permittee shall:
1. Post a notice, in a format approved by the Department, at any location where there were more than three reportable releases under subsection (F)(2)(a) from the sewage collection system during any 12-month period,
2. Include within the notice a warning that identified the releases or potential releases at the location and potential health hazards from any release,
3. Post the notice at a place where the public is likely to come in contact with the release, and
4. Maintain the postings until no releases from the location are reported for at least 12 months from the last release and the permittee followed all actions specified in the CMOM Plan to prevent releases at that location during the period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C306. 2.06 General Permit: Fish Hatchery Discharge to a Perennial Surface Water

A. A 2.06 General Permit allows a fish hatchery to discharge to a perennial surface water if Aquifer Water Quality Standards are met at the point of discharge and the fish hatchery is operating under a valid AZPDES permit.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall provide:
1. The applicable AZPDES permit number;
2. A description of the facility; and
3. A laboratory report characterizing the wastewater discharge, including the analytical results for all numeric Aquifer Water Quality Standards under R18-11-406.

C. Design and operational requirements. An applicant shall:
1. Collect a representative sample of the discharge to demonstrate compliance with all numeric Aquifer Water Quality Standards and make the results available to the Department upon request, and
2. Maintain a record of the average and daily flow rates and make it available to the Department upon request.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART D. TYPE 3 GENERAL PERMITS

R18-9-D301. 3.01 General Permit: Lined Impoundments

A. A 3.01 General Permit allows a lined surface impoundment and a lined secondary containment structure. A permittee shall:
1. Ensure that inflow to the lined surface impoundment or lined secondary containment structure does not contain organic pollutants identified in A.R.S. § 49-243(I);
2. Ensure that inflow to the lined surface impoundment or lined secondary containment structure is from one or more of the following sources:
   a. Evaporative cooler overflow, condensate from a refrigeration unit, or swimming pool filter backwash;
   b. Wastewater that does not contain sewage, temporarily stored for short periods of time due to process upsets or rainfall events, provided the wastewater is promptly removed from the facility as required under subsection (D)(5). Facilities that continually contain wastewater as a normal function of facility operations are not covered under this general permit;
   c. Stormwater runoff that is not permitted under A.R.S. § 49-245.01 because the facility does not receive solely stormwater or because the runoff is regulated but not considered stormwater under the Clean Water Act;
   d. Emergency fire event water;
   e. Wastewater from air pollution control devices at asphalt plants if the wastewater is routed through a sedimentation trap or sump and an oil/water separator before discharge;
   f. Non-contact cooling tower blowdown and non-contact cooling water, except discharges from electric generating stations with more than 100 megawatts generating capacity;
   g. Boiler blowdown;
   h. Wastewater derived from a potable water treatment system, including clarification sludge, filtration backwash, lime and lime-softening sludge, ion exchange backwash, and reverse osmosis spent waste;
   i. Wastewater from food washing;
   j. Heat exchanger return water;
   k. Wastewater from industrial laundries;
   l. Hydrostatic test water from a pipeline, tank, or appurtenance previously used for transmission of fluid;
   m. Wastewater treated through an oil/water separator before discharge; and
   n. Cooling water or wastewater from food processing.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A listing and description of all sources of inflow;
2. A representative chemical analysis of each expected source of inflow. If a sample is not available before facility construction, a permittee shall provide the chemical

analysis of each inflow to the Department within 60 days of each inflow to the facility;

3. A narrative description of how the conditions of this general permit are satisfied. The narrative shall include a Quality Assurance/Quality Control program for liner installation, impoundment maintenance and repair, and impoundment operational procedures; and
4. A contingency plan that specifies actions proposed in case of an accidental release from the facility, overtopping of the impoundment, breach of the berm, or unauthorized inflows into the impoundment or containment structure.

C. Design and installation requirements. An applicant shall:

1. Design and construct surface water controls to:
   a. Ensure that the impoundment or secondary containment structure maintains, using design volume or mechanical systems, normal operating volumes, if any, and any inflow from the 100-year, 24-hour storm event. The facility shall maintain at least 2 feet of freeboard or an alternative level of freeboard that the applicant demonstrates is reasonable, considering the size of the impoundment and meteorologic and other site-specific factors; and
   b. Direct any surface water run-on from the 100-year 24-hour storm event around the facility if not intended for capture by facility;
2. Ensure that the facility design accommodates any significant geologic hazard, addressing static and seismic stability. The applicant shall document any design adjustments made for this reason in the Notice of Intent to Discharge;
3. Ensure that site preparation includes, as appropriate, clearing the area of vegetation, grubbing, grading, and embankment and subgrade preparation. The applicant shall ensure that supporting surface slopes and foundation are stable and structurally sound; and
4. Comply with the following impoundment lining requirements:
   a. If a synthetic liner is used, ensure that the liner is at least a 30-mil geomembrane liner or a 60-mil liner if High Density Polyethylene, or an alternative, that the liner's calculated seepage rate is less than 550 gallons per acre per day, and:
      i. Anchor the liner by securing it in an engineered anchor trench;
      ii. Ensure that the liner is ultraviolet resistant if it is regularly exposed to sunlight; and
      iii. Ensure that the liner is constructed of a material that is chemically compatible with the wastewater or impounded solution and is not affected by corrosion or degradation;
   b. If a soil liner is used:
      i. Ensure that it resists swelling, shrinkage, and cracking and that the liner's calculated seepage rate is less than 550 gallons per acre per day;
      ii. Ensure that the soil is at least 1-foot thick and compacted to a uniform density of 95 percent to meet the "Standard Test Method for Laboratory Compaction Characteristics of Soil Using Standard Effect (12,400 ft-lbf/ft^3), D698-00ae1," (2000) published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; and
      iii. Upon installation, protect the soil liner to prevent desiccation; and
   c. For new facilities, develop and implement a construction Quality Assurance/Quality Control program that addresses site and subgrade preparation, inspection procedures, field testing, laboratory testing, and final inspection after construction of the liner to ensure functional integrity.

D. Operational requirements. A permittee shall:

1. Maintain sufficient freeboard to manage the 100-year, 24-hour storm event including at least 2 feet of freeboard under normal operating conditions. Management of the 100-year, 24-hour storm event may be through design, pumping, or a combination of both;
2. Remove accumulated residues, sediments, debris, and vegetation to maintain the integrity of the liner and the design capacity of the impoundment;
3. Perform and document a visual inspection for damage to the liner and for accumulation of residual material at least monthly. The operator shall conduct an inspection within 72 hours after the facility receives a significant volume of stormwater inflow;
4. Repair damage to the liner by following the Quality Assurance/Quality Control Plan required under subsection (B)(3); and
5. Remove all inflow from the impoundment as soon as practical, but no later than 60 days after a temporary event, for facilities designed to contain inflow only for temporary events, such as process upsets.

E. Recordkeeping. A permittee shall maintain at the site, the following information for at least 10 years and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure;
3. Capacity design criteria;
4. A list of standard operating procedures;
5. The construction Quality Assurance/Quality Control program documentation; and
6. Records of any inflow into the impoundment other than those permitted by this Section.

F. Reporting requirements.

1. If the liner leaks, as evidenced by a drop in water level not attributable to evaporation, or if the berm breaches or an impoundment is overtopped due to a catastrophic or other significant event, the permittee shall report the circumstance to the Department within five days of discovery and implement the contingency plan required in subsection (B)(4). The permittee shall submit a final report to the Department within 60 days of the event summarizing the circumstances of the problem and corrective actions taken.
2. The permittee shall report unauthorized flows into the impoundment to the Department within five days of discovery and implement the contingency plan required in subsection (B)(4).

G. Closure requirements. The permittee shall notify the Department of the intent to close the facility permanently. Within 90 days following closure notification the permittee shall comply with the following requirements, as applicable:
1. Remove liquids and any solid residue on the liner and dispose appropriately;
2. Inspect the liner for evidence of holes, tears, or defective seams that could have leaked;
3. If evidence of leakage is discovered, remove the liner in the area of suspected leakage and sample potentially impacted soil. If soil remediation levels are exceeded, the permittee shall define the lateral and vertical extent of contamination and, within 60 days of the exceedance, notify the Department and submit an action plan for achieving clean closure for the Department's approval before implementing the plan;
4. If there is no evidence of holes, tears, or defective seams that could have leaked:
   a. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
   b. Remove and dispose of the liner elsewhere if the impoundment is bermed, and
   c. Grade the facility to prevent the impoundment of water; and
5. Notify the Department within 60 days following closure that the action plan was implemented and the closure is complete.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D302. 3.02 General Permit: Process Water Discharges from Water Treatment Facilities

A. A 3.02 General Permit allows filtration backwash and discharges obtained from sedimentation and coagulation in the water treatment process from facilities that treat water for industrial process or potable uses. The permittee shall ensure that:
1. Liquid fraction. The discharge meets:
   a. All numeric Aquifer Water Quality Standards for inorganic chemicals, organic chemicals, and pesticides established in R18-11-406(B) through (D);
   b. The discharge meets one of the following criteria for microbiological contaminants:
      i. Either the concentration of fecal coliform organisms is not more than 2/100 ml or the concentration of *E. coli* bacteria is not more than 1/100 ml, or
      ii. Either the concentration of fecal coliform organisms is less than 200/100 ml or the concentration of *E. coli* bacteria is less than 126/100 ml if the average daily flow processed by the water treatment facility is less than 250,000 gallons; and
2. Solid Fraction. The solid material in the discharge qualifies as inert material, as defined in A.R.S. § 49-201(19).

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A characterization of the discharge, including a representative chemical and biological analysis of expected discharges and all source waters; and
2. The design capacity of any impoundment covered by this general permit.

C. Impoundment design and siting requirements. An applicant shall:
1. Ensure that the depth to the static groundwater table is greater than 20 feet;
2. Not locate the area of discharge immediately above karstic or fractured bedrock, unless the discharge meets the microbial limits specified in subsection (A)(1)(b)(i);
3. Maintain a minimum horizontal setback of 100 feet between the facility and any water supply well;
4. Design and construct an impoundment to maintain, using design volume or mechanical systems, normal operating volumes and any inflow from the 100-year, 24-hour storm event. The applicant shall:
   a. Divert any surface water run-on from the 100-year, 24-hour storm event around the facility if not intended for capture by facility design; and
   b. Design the facility to maintain 2 feet of freeboard or an alternative level of freeboard that the applicant demonstrates is reasonable, considering meteorological factors, the size of the impoundment, and other site-specific factors; or
   c. Discharge to surface water under the conditions of an AZPDES permit; and
5. Manage off-site disposal of sludge according to A.R.S. Title 49, Chapter 4.

D. Operational requirements.
1. Inorganic chemical, organic chemical, and pesticide monitoring.
   a. The permittee shall monitor any discharge annually to determine compliance with the requirements of subsection (A).
   b. If the concentration of any pollutant exceeds the numeric Aquifer Water Quality Standard, the permittee shall submit a report to the Department with a proposal for mitigation and shall increase monitoring frequency for that pollutant to quarterly.
   c. If, in the quarterly sampling, the condition in subsection (D)(1)(b) continues for two consecutive quarters, the permittee shall submit an application for an individual permit.
2. Microbiological contaminant monitoring.
   a. The permittee shall monitor any discharge annually to determine compliance with the requirements of subsection (A)(1)(b).
   b. If the concentration of any pollutant exceeds the limits established in subsection (A)(1)(b), the permittee shall submit a report to the Department with a proposal for mitigation and increase monitoring frequency for that pollutant to monthly.
   c. If, in the monthly sampling, the condition in subsection (D)(2)(b) continues for three consecutive months, the permittee shall submit an application for an individual permit.

E. Recordkeeping. A permittee shall maintain at the site, the following information, if applicable for the disposal method, for at least 10 years, and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available;

2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure;
3. Water quality data collected under subsection (D);
4. Standard operating procedures; and
5. Records of any discharge other than those identified under subsection (B).

F. Reporting requirements. The permittee shall:
1. Report unauthorized flows into the impoundment to the Department within five days of discovery, and
2. Submit the report required in subsections (D)(1)(b) or (2)(b) within 30 days of receiving the analytical results.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D303. 3.03 General Permit: Vehicle and Equipment Washes

A. A 3.03 General Permit allows a facility to discharge water from washing vehicle exteriors and vehicle equipment. The 3.03 General Permit does not authorize:
1. Discharge water that typically results from the washing of vehicle engines unless the discharge is to a lined surface impoundment;
2. Direct discharges of sanitary sewage, vehicle lubricating oils, antifreeze, gasoline, paints, varnishes, solvents, pesticides, or fertilizers;
3. Discharges resulting from washing the interior of vessels used to transport fuel products or chemicals, or washing equipment contaminated with fuel products or chemicals; or
4. Discharges resulting from washing the interior of vehicles used to transport mining concentrates that originate from the same mine site, unless the discharge is to a lined surface impoundment.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit a narrative description of the facility and a design of the disposal system and wash operations.

C. Design, installation, and testing requirements. An applicant shall:
1. Design and construct the wash pad:
   a. To drain and route wash water to a sump or similar sediment-settling structure and an oil/water separator or a comparable pretreatment technology;
   b. Of concrete or material chemically compatible with the wash water and its constituents; and
   c. To support the maximum weight of the vehicle or equipment being washed with an appropriate safety factor;
2. Not use unlined ditches or natural channels to convey wash water;
3. Ensure that a surface impoundment meets the requirements in R18-9-D301(C)(1) through (3). The applicant shall ensure that berms or dikes at the impoundment can withstand wave action erosion and are compacted to a uniform density not less than 95 percent;
4. Ensure that a surface impoundment required for wash water described in subsection (A)(1) meets the design and installation requirements in R18-9-D301(C);
5. If wash water is received by an unlined surface impoundment or engineered subsurface disposal system, the applicant shall:
   a. Ensure that the annual daily average flow is less than 3000 gallons per day;
   b. Maintain a minimum horizontal setback of 100 feet between the impoundment or subsurface disposal system and any water supply well;
   c. Ensure that the bottom of the surface impoundment or subsurface disposal system is at least 50 feet above the static groundwater level and the intervening material does not consist of karstic or fractured bedrock;
   d. Ensure that the wash water receives primary treatment before discharge through, at a minimum, a sump or similar structure for settling sediments or solids and an oil/water separator or a comparable pretreatment technology designed to reduce oil and grease in the wastewater to 15 mg/l or less;
   e. Withdraw the separated oil from the oil/water separator using equipment such as adjustable skimmers, automatic pump-out systems, or level sensing systems to signal manual pump-out; and
   f. If a subsurface disposal system is used, design the system to prevent surfacing of the wash water.

D. Operational requirements. The permittee shall:
1. Inspect the oil/water separator before operation to ensure that there are no leaks and that the oil/water separator is in operable condition;
2. Inspect the entire facility at least quarterly. The inspection shall, at a minimum, consist of a visual examination of the wash pad, the sump or similar structure, the oil/water separator, and all surface impoundments;
3. Visually inspect each surface impoundment at least monthly, to ensure the volume of wash water is maintained within the design capacity and freeboard limitation;
4. Repair damage to the integrity of the wash pad or impoundment liner as soon as practical;
5. Maintain the oil/water separator to achieve the operational performance of the separator;
6. Remove accumulated sediments in all surface impoundments to maintain design capacity; and
7. Use best management practices to minimize the introduction of chemicals not typically associated with the wash operations. Only biodegradable surfactant or soaps are allowed. The permittee shall not use products that contain chemicals in concentrations likely to cause a violation of an Aquifer Water Quality Standard at the applicable point of compliance.

E. Monitoring requirements.
1. If wash water is discharged to an unlined surface impoundment or other area for subsurface disposal, the permittee shall monitor the wash water quarterly at the point of discharge for pH and for the presence of C_{10} through C_{32} hydrocarbons using a Department of Health Services certified method.
2. If pH is not between 6.0 and 9.0 or the concentration of C_{10} through C_{32} hydrocarbons exceeds 50 mg/l, the permittee shall, within 30 days of the monitorings, submit a report to the Department with a proposal for mitigation and shall increase monitoring frequency to monthly.

3. If the condition in subsection (E)(2) persists for three consecutive months, the permittee shall submit, within 90 days, an application for an individual permit.

F. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure; and
3. The Material Safety Data Sheets for the chemicals used in the wash operations and any required monitoring results.

G. Closure requirements. A permittee shall comply with the closure requirements specified in R18-9-D301(G) if a liner has been used. If no liner is used the permittee shall remove and appropriately dispose of any liquids and grade the facility to prevent impoundment of water.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D304. 3.04 General Permit: Non-Stormwater Impoundments at Mining Sites

A. A 3.04 General Permit allows discharges to lined surface impoundments, lined secondary containment structures, and associated lined conveyance systems at mining sites.
1. The following discharges are allowed under the 3.04 General Permit:
   a. Seepage from tailing impoundments, unleached rock piles, or process areas;
   b. Process solution temporarily stored for short periods of time due to process upsets or rainfall, provided the solution is promptly removed from the facility as required under subsection (D);
   c. Stormwater runoff not permitted under A.R.S. § 49-245.01 because the facility does not receive solely stormwater or because the runoff is regulated but not considered stormwater under the Clean Water Act; and
   d. Wash water specific to sand and gravel operations not covered by R18-9-B301(A).
2. Facilities that continually contain process solution as a normal function of facility operations are not eligible for coverage under the 3.04 General Permit. If a normal process solution contains a pollutant regulated under A.R.S. § 49-243(I) the 3.04 General Permit does not apply if the pollutant will compromise the integrity of the liner.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A description of the sources of inflow to the facility. An applicant shall include a representative chemical analysis of expected sources of inflow to the facility unless a sample is not available, before facility construction, in which case the applicant shall provide a chemical analysis of solution present in the facility to the Department within 90 days after the solution first enters the facility;
2. Documentation demonstrating that the facility design and operation under subsections (C) and (D) have been reviewed by a mining engineer or an Arizona-registered professional engineer before submission to the Department; and
3. A contingency plan that specifies actions proposed in case of an accidental release from the facility, overtopping of the impoundment, breach of the berm, or unauthorized inflows into the impoundment or containment structure.

C. Design, construction, and installation requirements. An applicant shall:
1. Design and construct the impoundment or secondary containment structure as specified under R18-9-D301(C)(1);
2. Ensure that conveyance systems are capable of handling the peak flow from the 100-year storm;
3. Construct the liner as specified in R18-9-D301(C)(4)(a);
4. Develop and implement a Quality Assurance/Quality Control program that meets or exceeds the liner manufacturer's guidelines. The program shall address site and subgrade preparation, inspection procedures, field testing, laboratory testing, repair of seams during installation, and final inspection of the completed liner for functional integrity;
5. If the facility is located in the 100-year flood plain, design the facility so it is protected from damage or flooding as a result of a 100-year, 24-hour storm event;
6. Design and manage the facility so groundwater does not come into contact with the liner;
7. Ensure that the facility design addresses any significant geologic hazard relating to static and seismic stability. The applicant shall document any design adjustments made for this reason in the Notice of Intent to Discharge;
8. Ensure that the site preparation includes, as appropriate, clearing the area of vegetation, grubbing, grading, and embankment and subgrade preparation. The applicant shall ensure that supporting surface slopes and foundation are stable and structurally sound;
9. Ensure that the liner is anchored by being secured in an engineered anchor trench. If regularly exposed to sunlight, the applicant shall ensure that the liner is ultraviolet resistant; and
10. Use compacted clay subgrade in areas with shallow groundwater conditions.

D. Operational requirements. The permittee shall:
1. Maintain the freeboard required in subsection (C)(1) through design, pumping, or both;
2. Remove accumulated residues, sediments, debris, and vegetation to maintain the integrity of the liner and the design capacity of the impoundment;
3. Perform and document a visual inspection for cracks, tears, perforations and residual build-up at least monthly. The operator shall conduct and document an inspection after the facility receives significant volumes of stormwater inflow;
4. Report cracks, tears, and perforations in the liner to the Department, and repair them as soon as practical, but no later than 60 days under normal operating conditions, after discovery of the crack, tear, or perforation;
5. For facilities that temporarily contain a process solution due to process upsets, remove the process solution from the facility as soon as practical, but no later than 60 days after cessation of the upset; and
6. For facilities that temporarily contain a process solution due to rainfall, remove the process solution from the facility as soon as practical.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results and facility closure;
3. Capacity design criteria;
4. A list of standard operating procedures;
5. The Quality Assurance/Quality Control program required under subsection (C)(4); and
6. Records of any unauthorized flows into the impoundment.

F. Reporting requirements.
1. If the liner is breached, as evidenced by a drop in water level not attributable to evaporation, or if the impoundment breaches or is overtopped due to a catastrophic or other significant event, the permittee shall report the circumstance to the Department within five days of discovery and implement the contingency plan required in subsection (B)(3). The permittee shall submit a final report to the Department within 60 days of the event summarizing the circumstances of the problem and corrective actions taken.
2. The permittee shall report unauthorized flows into the impoundment to the Department within five days of discovery and implement the contingency plan required in subsection (B)(3).

G. Closure requirements.
1. The permittee shall notify the Department of the intent to close the facility permanently.
2. Within 90 days following closure notification the permittee shall comply with the following requirements, as applicable:
   a. Remove liquids and any solid residue on the liner and dispose appropriately;
   b. Inspect the liner for evidence of holes, tears, or defective seams that could have leaked;
   c. If evidence of leakage is discovered, remove the liner in the area of suspected leakage and sample potentially impacted soil. If soil remediation levels are exceeded, the permittee shall, within 60 days notify the Department and submit an action plan for the Department's approval before implementing the plan;
   d. If there is no evidence of holes, tears, or defective seams that could have leaked:
      i. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
      ii. Remove and dispose of the liner elsewhere if the impoundment is bermed, and
      iii. Grade the facility to prevent the impoundment of water; and
3. Notify the Department within 60 days following closure that the action plan has been implemented and the closure is complete.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D305. 3.05 General Permit: Disposal Wetlands

A. A 3.05 General Permit allows discharges of reclaimed water into constructed or natural wetlands, including waters of the United States, waters of the state, and riparian areas, for disposal. This general permit does not apply if the purpose of the wetlands is to provide treatment.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the name and individual permit number of the facility providing the reclaimed water.

C. Design requirements. An applicant shall:
1. Ensure that the reclaimed water released into the wetland meets numeric and narrative Aquifer Water Quality Standards for all parameters except for coliform bacteria and is Class A+ reclaimed water. A+ reclaimed water is wastewater that has undergone secondary treatment established under R18-9-B204(B)(1), filtration, and meets a total nitrogen concentration under R18-9-B204(B)(3) and fecal coliform limits under R18-9-B204(B)(4);
2. Maintain a minimum horizontal separation of 100 feet between any water supply well and the maximum wetted area of the wetland;
3. Post signs at points of access and every 250 feet along the perimeter of the wetland stating, "CAUTION. THESE WETLANDS CONTAIN RECLAIMED WATER. DO NOT DRINK." The applicant shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol; and
4. Ensure that wetland siting is consistent with local zoning and land use requirements.

D. Operational requirements.
1. A permittee shall manage the wetland to minimize vector problems.
2. The permittee shall submit to the Department and implement a Best Management Practices Plan for operation of the wetland. The Best Management Practices Plan shall include:
   a. A site plan showing the wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. Management of flows into and through the wetland to minimize erosion and damage to vegetation;
   c. Management of visitation and use of the wetlands by the public;
   d. A management plan for vector control;
   e. A plan or criteria for enhancing or supplementing of wetland vegetation; and
   f. Management of shallow groundwater conditions on existing on-site wastewater treatment facilities.
3. The permittee shall perform quarterly inspections to review bank integrity, erosion evidence, the condition of signage and vegetation, and correct any problem noted.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the wetland, including the volume of inflow to the wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by

final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D306. 3.06 General Permit: Constructed Wetlands to Treat Acid Rock Drainage at Mining Sites

A. A 3.06 General Permit allows the operation of constructed wetlands that receive, with the intent to treat, acid rock drainage from a closed facility.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit a design, including information on the quality of the influent, the treatment process to be used, the expected quality of the wastewater, and the nutrients and other constituents that will indicate wetland performance.

C. Design, construction, and installation. An applicant shall:
1. Ensure that:
   a. Water released into the treatment wetland is compatible with construction materials and vegetation;
   b. Water released from the treatment wetland:
      i. Meets numeric Aquifer Water Quality Standards,
      ii. Has a pH between 6.0 and 9.0, and
      iii. Has a sulfate concentration less than 1000 mg/l; and
   c. Water released from the treatment wetland complies with and is released under an individual permit and an AZPDES Permit, if required;
2. Construct the treatment wetland with a liner, using a low-hydraulic conductivity synthetic liner, site-specific liner, or both, to achieve a calculated seepage rate of less than 550 gallons per acre per day. The applicant shall:
   a. Ensure that, if a synthetic liner is used, such as geomembrane, the liner is underlain by at least 6 inches of prepared and compacted subgrade;
   b. Anchor the liner along the perimeter of the treatment wetland; and
   c. Manage the plants in the treatment wetland to prevent species with root penetration that impairs liner performance;
3. Design the treatment wetland for optimum:
   a. Sizing appropriate for the anticipated treatment,
   b. Cell configuration,
   c. Vegetative species composition, and
   d. Berm configuration;
4. Construct and locate the treatment wetland so that it:
   a. Maintains physical integrity during a 100-year, 24-hour storm event; and
   b. Operates properly during a 25-year, 24-hour storm event;
5. Ensure that the bottom of the treatment wetland is at least 20 feet above the seasonal high groundwater table; and
6. If public access to the treatment wetland is anticipated or encouraged, post signs at points of access and every 250 feet along the perimeter of the treatment wetland stating, "CAUTION. THESE WETLANDS CONTAIN MINE DRAINAGE WATER. DO NOT DRINK." The permittee shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol.

D. Operational requirements.
1. The permittee shall monitor the water leaving the treatment wetlands at least quarterly for the standards specified in subsection (C)(1)(b). Monitoring shall include nutrients or other constituents used as indicators of treatment wetland performance.
2. The permittee shall submit to the Department and implement a Best Management Practices Plan for operation of the treatment wetland. The Best Management Practices Plan shall include:
   a. A site plan showing the treatment wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. A contingency plan to address problems, including treatment performance, wash-out and vegetation die-off, and a plan to apply for an individual permit if the treatment wetland is unable to achieve the treatment standards in subsection (C)(1)(b) on a continued basis;
   c. Management of flows into and through the treatment wetland to minimize erosion and damage to vegetation;
   d. A description of the measures for restricting access to the treatment wetlands by the public;
   e. A management plan for vector control; and
   f. A plan or criteria for enhancing or supplementing treatment wetland vegetation.
3. The permittee shall perform quarterly inspections to review the bank and liner integrity, erosion evidence, and the condition of signage and vegetation, and correct any problems noted.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements.
1. If preliminary laboratory results indicate that the quality of the water leaving the treatment wetlands does not meet the standards specified in subsection (C)(1)(b), the permittee may request that the laboratory re-analyze the sample before reporting the results to the Department. The permittee shall:
   a. Conduct verification sampling within 15 days of receiving final laboratory results,
   b. Conduct verification sampling only for parameters that are present in concentrations greater than the standards specified in subsection (C)(1)(b), and
   c. Notify the Department in writing within five days of receiving final laboratory results.
2. If the final laboratory result confirms that the quality of the water leaving the treatment wetlands does not meet the standards in subsection (C)(1)(b), the permittee shall implement the contingency plan required by subsection (D)(2)(b) and notify the Department that the plan is being implemented.
3. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the treatment wetland, including the volume of inflow to the treatment wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by

final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D307. 3.07 General Permit: Tertiary Treatment Wetlands

A. A 3.07 General Permit allows constructed wetlands that receive with the intent to treat, discharges of reclaimed water that meet the secondary treatment level requirements specified in R18-9-B204(B)(1).

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. The name and individual permit number of any facility that provides the reclaimed water to the treatment wetland;
2. The name and individual permit number of any facility that receives water released from the treatment wetland;
3. The design of the treatment wetland construction and management project, including information on the quality of the influent, the treatment process, and the expected quality of the wastewater;
4. A Best Management Practices Plan that includes:
   a. A site plan showing the treatment wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. A contingency plan to address any problem, including treatment performance, wash-out, and vegetation die-off;
   c. A management plan for flows into and through the treatment wetland to minimize erosion and damage to vegetation;
   d. A description of the measures for restricting access to the treatment wetlands by the public;
   e. A management plan for vector control; and
   f. A plan or criteria for enhancing or supplementing treatment wetland vegetation.

C. Design requirements. An applicant shall:
1. Release water from the treatment wetland under an individual permit and an AZPDES permit, if required. The applicant shall release water from the treatment wetland only to a direct reuse site if the site is permitted to receive reclaimed water of the quality generated under the individual permit specified in subsection (B)(1);
2. Construct and locate the treatment wetland so that it:
   a. Maintains physical integrity during a 100-year, 24-hour storm event; and
   b. Operates properly during a 25-year, 24-hour storm event;
3. Ensure that the bottom of the treatment wetland is at least 20 feet above the seasonal high groundwater table;
4. Maintain a minimum horizontal separation of 100 feet between a water supply well and the maximum wetted area of the treatment wetland;
5. Maintain the setbacks specified in R18-9-B201(I) for no noise, odor, or aesthetic controls between the property boundary at the site and the maximum wetted area of the treatment wetland;
6. Fence the treatment wetland area to prevent unauthorized access;
7. Post signs at points of access stating "CAUTION. THESE WETLANDS CONTAIN RECLAIMED WATER, DO NOT DRINK." The applicant shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol;
8. Construct the treatment wetland with a liner using low hydraulic conductivity liner, site-specific liner, or both, to achieve a calculated seepage rate of less than 550 gallons per acre per day. The applicant shall:
   a. Ensure that if a synthetic liner is used, such as geomembrane, the liner is underlain by at least 6 inches of prepared and compacted subgrade;
   b. Anchor the liner along the perimeter of the treatment wetland; and
   c. Manage the plants in the treatment wetland to prevent species with root penetration that impairs liner performance;
9. Calculate the size and depth of the treatment wetland so that the rate of flow allows adequate treatment detention time. The applicant shall design the treatment wetland with at least two parallel treatment cells to allow for efficient system operation and maintenance;
10. Ensure that the treatment wetland vegetation includes cattails, bulrush, common reed, or other species of plants with high pollutant treatment potential to achieve the intended water quality identified in subsection (B)(3); and
11. Ensure that construction and operation of the treatment wetlands is consistent with local zoning and land use requirements.

D. Operational requirements. The permittee shall:
1. Implement the Best Management Practices Plan approved under subsection (B);
2. Monitor wastewater leaving the treatment wetland to ensure that discharge water quality meets the expected wastewater quality specified in subsection (B)(3). The permittee shall ensure that analyses of wastewater samples are conducted by a laboratory certified by the Department of Health Services, following the Department's Quality Assurance/Quality Control requirements;
3. Follow the prescribed measures as required in the contingency plan under subsection (B)(4)(b) and submit a written report to the Department within five days if verification sampling demonstrates that an alert level or discharge limit is exceeded;
4. Inspect the treatment wetlands at least quarterly for bank and liner integrity, erosion evidence, and condition of signage and vegetation, and correct any problem discovered; and
5. Ensure that the treatment wetland is operated by a certified operator under 18 A.A.C. 5, Article 1.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the treatment wetland including the volume of inflow to the treatment wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART E. TYPE 4 GENERAL PERMITS

R18-9-E301. 4.01 General Permit: Sewage Collection Systems

A. A 4.01 General Permit allows for construction and operation of a new sewage collection system or expansion of an existing sewage collection system involving new construction as follows:
1. A sewage collection system or portion of a sewage collection system that serves downstream from the point where the daily design flow is 3000 gallons per day based on Table 1, Unit Design Flows, except a gravity sewer line conveying sewage from a single building drain directly to an interceptor, collector sewer, lateral, or manhole regardless of daily design flow;
2. A sewage collection system that includes a manhole; or
3. A sewage collection system that includes a force main or lift station serving more than one dwelling.

B. Performance. An applicant shall design, construct, and operate a sewage collection system so that the sewage collection system:
1. Provides adequate wastewater flow capacity for the planned service area;
2. Minimizes sedimentation, blockage, and erosion through maintenance of proper flow velocities throughout the system;
3. Prevents releases of sewage to the land surface through appropriate sizing, capacities, and inflow and infiltration prevention measures throughout the system;
4. Protects water quality through minimization of exfiltration losses from the system;
5. Provides for adequate inspection, maintenance, testing, visibility, and accessibility;
6. Maintains system structural integrity; and
7. Minimizes septic conditions in the sewage collection system.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information:
1. A statement on a form approved by the Director, signed by the owner or operator of the sewage treatment facility that treats or processes the sewage from the proposed sewage collection system.
   a. The statement shall affirm that the additional volume of wastewater delivered to the facility by the proposed sewage collection system will not cause any flow or effluent quality limits of the individual permit for the facility to be exceeded.
   b. If the facility is classified as a groundwater protection permit facility under A.R.S. § 49-241.01(C), or if no flow or effluent limits are applicable, the statement shall affirm that the design flow of the facility will not be exceeded;
2. If the proposed sewage collection system delivers wastewater to a downstream sewage collection system under different ownership or control, a statement on a form approved by the Director, signed by the owner or operator of the downstream sewage collection system, affirming that the downstream system can maintain the performance required by subsection (B) when receiving the increased flows;
3. A general site plan showing the boundaries and key aspects of the project;
4. Construction quality drawings that provide overall details of the site and the engineered works comprising the project including:
   a. The plans and profiles for all sewer lines, manholes, force mains, depressed sewers, and lift stations with sufficient detail to allow Department verification of design and performance characteristics;
   b. Relevant cross sections showing construction details and elevations of key components of the sewage collection system to allow Department verification of design and performance characteristics, including the slope of each gravity sewer segment stated as a percentage; and
   c. Drainage features and controls, and erosion protection as applicable, for the components of the project; and
   d. Horizontal and vertical location of utilities within the area affected by the sewer line construction;
5. Documentation of design flows for significant components of the sewage collection system and the basis for calculating the design flows;
6. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department. The applicant may submit the drawings in a Department-approved electronic format; and
7. Design documents, including plans, specifications, drawings, reports, and calculations that are signed, dated, and sealed by an Arizona-registered professional engineer. The designer shall use good engineering judgment by following engineering standards of practice, and rely on appropriate engineering methods, calculations, and guidance.

D. Design requirements.
1. General Provisions. An applicant shall design and construct a new sewage collection system or an expansion of an existing sewage collection system involving new construction, according to the requirements of this general permit. An applicant shall:
   a. Base design flows for components of the system on unit flows specified in Table 1, Unit Design Flows.
   b. Design gravity sewer lines and all other sewage collection system components, including, manholes, force mains, lift stations, depressed sewers, and appurtenant devices and structures to accommodate maximum sewage flows as follows:
      i. Any point in a sewer main when flowing full can accommodate a peak wet weather flow calculated by multiplying the sum of the upstream sources of flow from Table 1, Unit Design Flows by a dry weather peaking factor based on upstream population, as tabulated below, and adding a wet weather infiltration and inflow rate based on either a percentage of peak dry weather flow or a gallons per acre rate of flow;

Upstream Population	Dry Weather Peaking Factor
100	3.62
200	3.14
300	2.90
400	2.74
500	2.64
600	2.56

700	2.50
800	2.46
900	2.42
1000	2.38
1001 to 10,000	$PF = (6.330 \times p^{-0.231}) + 1.094$
10,001 to 100,000	$PF = (6.177 \times p^{-0.233}) + 1.128$
More than 100,000	$PF = (4.500 \times p^{-0.174}) + 0.945$
PF = Dry Weather Peaking Factor p = Upstream Population	

ii. For a lift station serving less than 600 single family dwelling units (d.u.), use either of the following methods to size the pumps for peak dry weather flow in gallons per minute and add an allowance for wet weather flow and infiltration:

(1) Peak dry weather flow = 17 $d.u.^{0.42}$, or

(2) Peak dry weather flow = 11.2 $(population)^{0.42}$

iii. If justified by the applicant, the Department may accept lower unit flow values in the served area due to significant use of low-flow fixtures, hydrographs of actual flows, or other factors;

c. Use the "Uniform Standard Specifications for Public Works Construction" (revisions through 2004) and the "Uniform Standard Details for Public Works Construction" (revisions through 2004) published by the Maricopa Association of Governments, and the "Standard Specifications for Public Improvements," (2003 Edition), and "Standard Details for Public Improvements," (2003 Edition), published jointly by Pima County Wastewater Management and the City of Tucson, as the applicable design and construction criteria, unless the Department approves alternative design standards or specifications. An applicant in a county other than Maricopa and Pima shall use design and construction criteria from either the Maricopa Association of Governments or the Pima County Wastewater Management and the City of Tucson for the facility unless alternative criteria are designated by the Department.

i. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material.

ii. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the Maricopa Association of Governments, 302 N. 1st Avenue, Suite 300, Phoenix, Arizona 85003, or on the web at http://www.mag.maricopa.gov/archive/Newpages/on-line.htm; or from Pima County Wastewater Management, 201 N. Stone Avenue, Tucson, Arizona 85701-1207, or on the web at http://www.pima.gov/wwm/stddet;

d. Ensure that sewage collection system components are separated from drinking water distribution system components as specified in 18 A.A.C. 5, Article 5;

e. Ensure that sewage collection system components are separated from reclaimed water system components as specified in 18 A.A.C. 9, Article 6; and

f. Request review and approval of an alternative to a design feature specified in this Section by following the requirements in R18-9-A312(G).

2. Gravity sewer lines. An applicant shall:

a. Ensure that any sewer line that runs between manholes, if not straight, is of constant horizontal curvature with a radius of curvature not less than 200 feet;

b. Cover each sewer line with at least 3 feet of earth cover meeting the requirements of subsection (D)(2)(h). The applicant shall:

i. Include at least one note specifying this requirement in construction plans;

ii. If site-specific limitations prevent 3 feet of earth cover, provide the maximum cover attainable, construct the sewer line of ductile iron pipe or other design of equivalent or greater tensile and compressive strength, and note the change on the construction plans; and

iii. Ensure that the design of the pipe and joints can withstand crushing or shearing from any expected static and live load to protect the structural integrity of the pipe. Construction plans shall note locations requiring these measures;

c. If sewer lines cross or are constructed in floodways;

i. Place the lines at least 2 feet below the level of the 100-year storm scour depth and calculated 100-year bed degradation and construct the lines using ductile iron pipe or pipe with equivalent tensile strength, compressive strength, shear resistance, and scour protection.

ii. If it is not possible to maintain the 2 feet of clearance specified in subsection (D)(2)(c)(i), using the process described in R18-9-A312(G), provide a design that ensures that the sewer line will withstand any lateral and vertical load for the scour and bed degradation conditions specified in subsection (D)(2)(c)(i);

iii. Ensure that sewer lines constructed in a floodway extend at least 10 feet beyond the boundary of the 100-year storm scouring;

iv. If a sewer line is constructed in a floodway and is longer than the applicable maximum manhole spacing distance in subsection (D)(3)(a), using the process described in R18-9-A312(G), provide a design that ensures the performance standards in subsection (B) are met; and

v. Note locations requiring these measures on the construction plans;

d. Ensure that each sewer line is 8 inches in diameter or larger except the first 400 feet of a dead end sewer line with no potential for extension may be 6 inches in diameter if the design flow criteria specified in subsections (D)(1)(a) and (D)(1)(b) are met and the sewer line is installed with a slope sufficient to achieve a velocity of at least 3 feet per second when flowing full. If the line is extended, the applicant seeking the extension shall replace the entire length with larger pipe to accommodate the new design flow unless the applicant demonstrates with engineering calculations that using the existing 6-inch pipe will accommodate the design flow;

e. Design sewer lines with at least the minimum slope calculated from Manning's Formula using a coeffi-

cient of roughness of 0.013 and a sewage velocity of 2 feet per second when flowing full.

i. An applicant may request a smaller minimum slope under R18-9-A312(G) if the smaller slope is justified by a quarterly program of inspections, flushings, and cleanings.

ii. If a smaller minimum slope is requested, the applicant shall not specify a slope that is less than 50 percent of that calculated from Manning's formula using a coefficient of roughness of 0.013 and a sewage velocity of 2 feet per second.

iii. The ratio of flow depth in the pipe to the diameter of the pipe shall not exceed 0.75 in peak dry weather flow conditions;

f. Design sewer lines to avoid a slope that creates a sewage velocity greater than 10 feet per second. The applicant shall construct any sewer line carrying a flow with a normal velocity of greater than 10 feet per second using ductile iron pipe or pipe with equivalent erosion resistance, and structurally reinforce the receiving manhole or sewer main;

g. Design and install sewer lines, connections, and fittings with materials that meet or exceed manufacturer's specifications consistent with this Chapter to:

i. Limit inflows, infiltration, and exfiltration;

ii. Resist corrosion in the ambient electrochemical environment;

iii. Withstand anticipated static and live loads; and

iv. Provide internal erosion protection;

h. Indicate trenching and bedding details applicable for each pipe material and size in the design plans. Unless the Department approved alternative design standards or specifications under subsection (D)(1)(c), the applicant shall place and bed the sewer lines in trenches following the specifications in "Trench Excavation, Backfilling, and Compaction" (Section 601) revised 2004, published by the Maricopa Association of Governments; and "Rigid Pipe Bedding for Sanitary Sewers" (WWM 104) revised July 2002, and "Flexible Pipe Bedding for Sanitary Sewers" (WWM 105) revised July 2002, published by Pima County Wastewater Management. This material is part of the material incorporated by reference in subsection (D)(1)(b).

i. Perform a deflection test of the total length of all sewer lines made of flexible materials to ensure that the installation meets or exceeds the manufacturer's recommendations and record the results;

j. Test each segment of the sewer line for leakage using the applicable method below and record the results:

i. "Standard Test Method for Installation of Acceptance of Plastic Gravity Sewer Lines Using Low-Pressure Air, F1417-92(1998)," published by the American Society for Testing and Materials;

ii. "Standard Practice for Testing Concrete Pipe Sewer Lines by Low-Pressure Air Test Method, C924-02 (2002)," published by the American Society for Testing and Materials;

iii. "Standard Test Method for Low-Pressure Air Test of Vitrified Clay Pipe Lines, C828-03 (2003)," published by the American Society for Testing and Materials;

iv. "Standard Test Method for Hydrostatic Infiltration Testing of Vitrified Clay Pipe Lines, C1091-03a (2003)," published by the American Society for Testing Materials;

v. "Standard Practice for Infiltration ion and Exfiltration Acceptance Testing of Installed Precast Concrete Pipe Sewer Lines, C969-02 (2002)," published by the American Society for Testing Material; or

vi. "Standard Practice for Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity-Flow Applications, D2321-00 (2000)," published by the American Society for Testing Materials; or

vii. The material listed in subsections (D)(2)(j)(i) through (vi) is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;

k. Test the total length of the sewer line for uniform slope by lamp lighting, remote camera or similar method approved by the Department, and record the results; and

l. Minimize the planting within the disturbed area of new sewage collection system construction of plant species having roots that are likely to reach and damage the sewer or impair the operation of the sewer or visual and vehicular access to any manhole.

3. Manholes.

a. An applicant shall install manholes at all grade changes, size changes, alignment changes, sewer intersections, and at any location necessary to comply with the following spacing requirements:

Sewer Pipe Diameter (inches)	Maximum Manhole Spacing (feet)
Less than 8	400
8 to less than 18	500
18 to less than 36	600
36 to less than 60	800
60 or greater	1300

b. The Department shall allow greater manhole spacing if the applicant follows the procedure provided in R18-9-A312(G) and provides documentation showing the operator possesses or has available specialized sewer cleaning equipment suitable for the increased spacing.

c. The applicant shall ensure that manhole design is consistent with "Pre-cast Concrete Sewer Manhole" #420-1, revised January 1, 2004 and #420-2, revised January 1, 2001, "Offset Manhole for 8" – 30" Pipe" #421 (1998), and "Sewer Manhole and Cover Frame Adjustment" #422, revised January 1, 2001, published by the Maricopa Association of Governments; and "Manholes and Appurtenant Items" (WWM 201 through WWM 211, except WWM 204, 205, and

206), revised July 2002, published by Pima County Wastewater Management. This material is part of the material incorporated by reference in subsection (D)(1)(b).

d. The applicant shall not locate manholes in areas subject to more than incidental runoff from rain falling in the immediate vicinity unless the manhole cover assembly is designed to restrict or eliminate stormwater inflow.

e. The applicant shall test each manhole using one of the following test protocols:

i. Watertightness testing by filling the manhole with water. The applicant shall ensure that the drop in water level following presoaking does not exceed 0.0034 of total manhole volume per hour;

ii. Negative air pressure testing using the "Standard Test Method for Concrete Sewer Manholes by Negative Air Pressure (Vacuum) Test, C1244-02e1 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference, does not include any later amendments or editions of the incorporated material and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007, or obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or

iii. Holiday testing of a lined manhole constructed with uncoated rebar using the "High-Voltage Electrical Inspection of Pipeline Coatings, RP0274-2004 (2004)," published by the National Association of Corrosion Engineers (NACE International). This material is incorporated by reference as modified below, does not include any later amendments or editions of the incorporated material and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or obtained from NACE International, 1440 South Creek Drive, Houston, Texas 77084-4906. The following substitutions apply:

(1) Where the word "metal" is used in the standard, use the word "surface" instead; and

(2) Where the words "pipe" or "pipeline" are used, use the word "manhole" instead.

f. The applicant shall perform manhole testing under subsection (D)(3)(e) after installation of the manhole cone or top riser to verify watertightness integrity of the manhole from the top of the cone or riser down.

i. Upon satisfactory test results, the applicant shall install the manhole ring and any spacers, complete the joints, and seal the manhole to a watertight condition.

ii. If the applicant can install the manhole cone or top riser, spacers, and ring to final grade without disturbance or adjustment by later construction, the applicant may perform the testing from the top of the manhole ring on down.

g. The applicant shall locate a manhole to provide adequate visibility and vehicular maintenance accessibility following construction.

4. Force mains. An applicant may install a force main if it meets the following design, installation, and testing requirements. The applicant shall:

a. Design force mains to maintain a minimum flow velocity of 3 feet per second and a maximum flow velocity of 7 feet per second. The applicant may design for sustained periods of flow above 7 feet per second, if the applicant justifies the design using the process specified in R18-9-A312(G);

b. Ensure that force mains have the appropriate valves and controls required to prevent drainback to the lift station. If drainback is necessary during cold weather to prevent freezing, the control system may allow manual or automatic drainback;

c. Incorporate air release valves or other appropriate components in force mains at all high points along the line to eliminate air accumulation. If engineering calculations provided by the applicant demonstrate that air will not accumulate in a given high point under typical flow conditions, the Department shall waive the requirement for an air release valve;

d. Design restrained joints or thrust blocks on force mains to accommodate water hammer, surge control, and to prevent excessive movement of the force main. Submitted construction plans shall show restrained joint or thrust block locations and details;

e. If a force main is proposed to discharge directly to a sewage treatment facility without entering a flow equalization basin, include in the Notice of Intent to Discharge a statement from the owner or operator of the sewage treatment facility that the design is acceptable;

f. Design a force main to withstand a pressure of 50 pounds per square inch or more above the design working pressure for two hours and test upon completion to ensure no leakage;

g. Supply flow to a force main using a lift station that meets the requirements of subsection (D)(5); and

h. Ensure that force mains are designed to control odor.

5. Lift stations. An applicant shall:

a. Secure a lift station to prevent tampering and affix on its exterior, or on the nearest vertical object if the lift station is entirely below grade, at least one warning sign that includes the 24-hour emergency phone number of the owner or operator of the collection system;

b. Protect lift stations from physical damage from a 100-year flood event. An applicant shall not construct a lift station in a floodway;

c. Lift station wet well design.

i. Ensure that the minimum wet well volume in gallons is 1/4 of the product of the minimum pump cycle time, in minutes, and the total pump capacity, in gallons per minute;

ii. Protect the wet well against corrosion to provide at least a 20-year operational life;

iii. Ensure that wet well volume does not allow the sewage retention time to exceed 30 minutes unless the sewage is aerated, chemicals are added to prevent or eliminate hydrogen sulfide formation, or adequate ventilation is provided.

Notwithstanding these measures, the applicant shall not allow the septic condition of the sewage to adversely affect downstream collection systems or sewage treatment facility performance;

iv. Ensure that excessively high or low levels of sewage in the wet well trigger an audible or visible alarm at the wet well site and at the system control center;

v. Ensure that a wet well designed to accommodate more than 5000 gallons per day has a horizontal cross-sectional area of at least 20 square feet; and

vi. Ensure that lift stations are designed to prevent odor from emanating beyond the lift station site;

d. Equip a lift station wet well with at least two pumps. The applicant shall ensure that:

i. The pumps are capable of passing a 2.5-inch sphere or are grinder pumps;

ii. The lift station is capable of operating at design flow with any one pump out of service; and

iii. Piping, valves, and controls are arranged to allow independent operation of each pump;

e. Not use suction pumps if the sewage lift is more than 15 feet. The applicant shall ensure that other types of pumps are self-priming and that pump water brake horsepower is at least 0.00025 times the product of the required discharge, in gallons per minute, and the required total dynamic head, in feet; and

f. For lift stations receiving an average flow of more than 10,000 gallons per day, include a standby power source and redundant wastewater level controls in the lift station design that will provide immediate service and remain available for 24 hours per day if the main power source or controls fail.

6. Depressed sewers. An applicant shall:

a. Size the depressed sewer to attain a minimum velocity of 3 feet per second through all barrels of the depressed sewer when the flow equals or exceeds the design daily peak dry weather flow,

b. Design the depressed sewer to convey the sewage flow through at least two parallel pipes at least 6 inches in diameter,

c. Include an inlet and outlet structure at each end of the inverted sewer,

d. Design the depressed sewer so that the barrels are brought progressively into service as flow increases to its design value, and

e. Design the depressed sewer to minimize release of odors to the atmosphere.

E. Additional Discharge Authorization requirements. An applicant shall:

1. Supply a signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department that provides the following:

a. Confirmation that the project was completed in compliance with the requirements of this Chapter, as described in the plans and specifications corresponding to the Construction Authorization issued by the Director, or with changes that are reflected in as-built plans submitted with the Engineer's Certificate of Completion;

b. As-built plans, if required, that are properly identified and numbered; and

c. Satisfactory field test results from deflection, leakage, and uniform slope testing;

2. Provide any other relevant information required by the Department to determine that the facility conforms to the terms of the 4.01 General Permit; and

3. Provide a signed certification on a form approved by the Department that:

a. Confirms that an operation and maintenance manual exists for the sewage collection system;

b. Confirms that the operation and maintenance manual addresses components of operation and maintenance specified on the certification form;

c. Provides the 24-hour emergency number of the owner or operator of the sewage collection system; and

d. Provides an address where the operation and maintenance manual is maintained and confirms that the manual is available for inspection at that address by the Department on request.

F. Operation and maintenance requirements. The permittee shall:

1. Operate the new sewage collection system or expansion of an existing sewage collection system involving new construction using the operation and maintenance manual certified by the owner or operator in subsection (E)(3), to meet the performance standards specified in subsection (B), unless the permittee is operating the sewage collection system under a CMOM Plan under the general permit established in R18-9-C305;

2. Ensure that the sewage collection system is operated according to the operator certification requirements in 18 A.A.C. 5, Article 1; and

3. For safety during operation and maintenance of lift station and other confined space components of the sewage collection system, follow all applicable state and federal confined space entry requirements.

G. Recordkeeping. A person owning or operating a facility permitted under this Section shall maintain the documents listed in subsection (E) for the life of the facility and make them available to the Department upon request.

H. Repairs.

1. A Notice of Intent to Discharge is not required for sewage collection system repairs. Repairs include work performed in response to deterioration or damage of existing structures, devices, and appurtenances with the intent to maintain or restore the system to its original design flow and operational characteristics. Repairs do not include changes in vertical or horizontal alignment.

2. Components used in the repair shall meet the design, installation, and operational requirements of this Section.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E302. 4.02 General Permit: Septic Tank with Disposal by Trench, Bed, Chamber Technology, or Seepage Pit, Less Than 3000 Gallons Per Day Design Flow

A. A 4.02 General Permit allows for the construction and operation of a system with less than 3000 gallons per day design flow consisting of a septic tank dispensing wastewater to an approved means of disposal described in this Section. Only

gravity flow of wastewater from the septic tank to the disposal works is authorized by this general permit.

1. The standard septic tank and disposal works design specified in the 4.02 General Permit serves sites where no site limitations are identified by the site investigation conducted under R18-9-A310.
2. If site conditions allow, this general permit authorizes the discharge of wastewater from a septic tank meeting the requirements of R18-9-A314 to one of the following disposal works:
   a. Trench,
   b. Bed,
   c. Chamber technology, or
   d. Seepage pit.

B. Performance. An applicant shall design a system consisting of a septic tank and one of the disposal works listed in subsection (A)(2) so that treated wastewater released to the native soil meets the following criteria:

1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Design and installation requirements.

1. General provisions. In addition to the applicable requirements in R18-9-A312, the applicant shall:
   a. Ensure that the septic tank meets the requirements specified in R18-9-A314;
   b. Before placing aggregate or disposal pipe in a prepared excavation, remove all smeared or compacted surfaces from trenches by raking to a depth of 1 inch and removing loose material. The applicant shall:
      i. Place aggregate in the trench to the depth and grade specified in subsection (C)(2);
      ii. Place the drain pipe on aggregate and cover it with aggregate to the minimum depth specified in subsection (C)(2); and
      iii. Cover the aggregate with landscape filter material, geotextile, or similar porous material to prevent filling of voids with earth backfill;
   c. Use a grade board stake placed in the trench to the depth of the aggregate if the disposal pipe is constructed of drain tile or flexible pipe that will not maintain alignment without continuous support;
   d. Disposal pipe. If two or more disposal pipes are installed, install a distribution box approved by the Department of sufficient size to receive all lateral lines and flows at the head of each disposal works and:
      i. Ensure that the inverts of all outlets are level and the invert of the inlet is at least 1 inch above the outlets;
      ii. Design distribution boxes to ensure equal flow and install the boxes on a stable level surface such as a concrete slab or native or compacted soil; and
      iii. Protect concrete distribution boxes from corrosion by coating them with an appropriate bituminous coating, constructing the boxes with concrete that has a 15 to 18 percent fly ash content, or by using other equivalent means;
   e. Construct all lateral pipes running from a distribution box to the disposal works with watertight joints and ensure that multiple disposal laterals, wherever practical, are of uniform length;
   f. Lay pipe connections between the septic tank and a distribution box on natural ground or compact fill and construct the pipe connections with watertight joints;
   g. Construct steps within distribution line trenches or beds, if necessary, to maintain a level disposal pipe on sloping ground. The applicant shall construct the lines between each horizontal section with watertight joints and install them on natural or unfilled ground; and
   h. Ensure that a disposal works consisting of trenches, beds, chamber technology, or seepage pits is not paved over or covered by concrete or any material that can reduce or inhibit possible evaporation of wastewater through the soil to the land surface or oxygen transport to the soil absorption surfaces.
2. Trenches.
   a. The applicant shall calculate the trench absorption area as the total of the trench bottom area and the sum of both trench sidewall areas to a maximum depth of 48 inches below the bottom of the disposal pipe.
   b. The applicant shall ensure that trench bottoms and disposal pipe are level. The applicant shall calculate trench sizing from the soil absorption rate specified under R18-9-A312(D) and the design flow established in R18-9-A312(B).
   c. The following design criteria for trenches apply:

Trenches	**Minimum**	**Maximum**
1. Number of trenches	1 (2 are recommended)	No Maximum
2. Length of trench[1]	----	100 feet
3. Bottom width of trench	12 inches	36 inches
4. Trench absorption area (sq. ft. of absorption area per linear foot of trench)	No Minimum	11 sq. ft.
5. Depth of cover over aggregate surrounding disposal pipe	9 inches	24 inches[2]
6. Thickness of aggregate material over disposal pipe	2 inches	2 inches
7. Thickness of aggregate material under disposal pipe	12 inches	No Maximum
8. Slope of disposal pipe	Level	Level
9. Disposal pipe diameter	3 inches	4 inches
10. Spacing of trenches (measured between nearest sidewalls)	2 times effective depth[3] or five feet, whichever is greater	No Maximum

Notes:
[1] If unequal trench lengths are used, proportional distribution of wastewater is required.
[2] For more than 24 inches, Standard Dimensional Ratio 35 or equivalent strength pipe is required.
[3] The effective depth is the distance between the bottom of the disposal pipe and the bottom of the trench bed.

d. The applicant may substitute clean, durable, crushed, and washed recycled concrete for aggregate if noted in design documents and the trench absorption area calculation excludes the trench bottom.

3. Beds. An applicant shall:
   a. If a bed is installed, use the soil absorption rate specified in R18-9-A312(D) for "SAR, Bed. The applicant may, in computing the bed bottom absorption area, include the bed bottom and the perimeter sidewall area not more than 36 inches below the disposal pipe;
   b. Comply with the following design criteria for beds:

Gravity Beds	Minimum	Maximum
1. Number of disposal pipes	2	No Maximum
2. Length of bed	No Minimum	100 feet
3. Distance between disposal pipes	4 feet	6 feet
4. Spacing of beds measured between nearest sidewalls	2 times effective depth[1] or 5 feet, whichever is greater	No Maximum
5. Width of bed	10 feet	12 feet
6. Distance from disposal pipe to sidewall	3 feet	3 feet
7. Depth of cover over disposal pipe	9 inches	14 inches
8. Thickness of aggregate material under disposal pipe	12 inches	No Maximum
9. Thickness of aggregate material over disposal pipe	2 inches	2 inches
10. Slope of disposal pipe	Level	Level
11. Disposal pipe diameter	3 inches	4 inches

Note:
[1] The effective depth is the distance between the bottom of the disposal pipe and the bottom of the bed.

4. Chamber technology. An applicant shall:
   a. Calculate an effective chamber absorption area to size the disposal works area and determine the number of chambers needed. The effective absorption area of each chamber is calculated as follows:
      $A = (1.8 \times B \times L) + (2 \times V \times L)$
      i. "A" is the effective absorption area of each chamber,
      ii. "B" is the exterior width of the bottom of the chamber,
      iii. "V" is the vertical height of the louvered sidewall of the chamber, and
      iv. "L" is the length of the chamber;
   b. Calculate the disposal works size and number of chambers from the effective absorption area of each chamber and the soil absorption rates specified in R18-9-A312(D);
   c. Ensure that the sidewall of the chamber provides at least 35 percent open area for sidewall credit and that the design and construction minimizes the movement of fines into the chamber area. The applicant shall not use filter fabric or geotextile against the sidewall openings.

5. Seepage pits. If allowed by R18-9-A311(B)(1), the applicant shall:
   a. Design a seepage pit to comply with R18-9-A312(E)(1) for minimum vertical separation distance;
   b. Ensure that multiple seepage pit installations are served through a distribution box approved by the Department or connected in series with a watertight connection laid on undisturbed or compacted soil. The applicant shall ensure that the outlet from the pit has a sanitary tee with the vertical leg extending at least 12 inches below the inlet;
   c. Ensure that each seepage pit is circular and has an excavated diameter of 4 to 6 feet. If multiple seepage pits are installed, ensure that the minimum spacing between seepage pit sidewalls is 12 feet or three times the diameter of the seepage pit, whichever is greater. The applicant may use the alternative design procedure specified in R18-9-A312(G) for a proposed seepage pit more than 6 feet in diameter;
   d. For a gravel filled seepage pit, backfill the entire pit with aggregate. The applicant shall ensure that each pit has a breather conductor pipe that consists of a perforated pipe at least 4 inches in diameter, placed vertically within the backfill of the pit. The pipe shall extend from the bottom of the pit to within 12 inches below ground level;
   e. For a lined, hollow seepage pit, lay a concrete liner or a liner of a different protective material in the pit on a firm foundation and fill excavation voids behind the liner with at least 9 inches of aggregate;
   f. For the cover of a lined seepage pit, use an approved one or two piece reinforced concrete slab with a minimum compressive strength of 2500 pounds per square inch. The applicant shall ensure that the cover:
      i. Is at least 5 inches thick and designed to support an earth load of at least 400 pounds per square foot;
      ii. Has a 12-inch square or diameter minimum access hole with a plug or cap that is coated on the underside with an protective bituminous seal, constructed of concrete with 15 percent to 18 percent fly ash content, or made of other nonpermeable protective material; and
      iii. Has a 4 inch or larger inspection pipe placed vertically not more than 6 inches below ground level;
   g. Ensure that the top of the seepage pit cover is 4 to 18 inches below the surface of the ground;

h. Install a vented inlet fitting in every seepage pit to prevent flows into the seepage pit from damaging the sidewall. An applicant may use a 1/4 bend fitting placed through an opening in the top of the slab cover if a one or two piece concrete slab cover inlet is used;

i. Bore seepage pits five feet deeper than the proposed pit depth to verify underlying soil characteristics and backfill the five feet of overdrill with low permeability drill cuttings or other suitable material;

j. Backfill seepage pits that terminate in gravelly, coarse sand zones five feet above the beginning of the zone with low permeability drill cuttings or other suitable material;

k. Determine the minimum sidewall area for a seepage pit from the design flow and the soil absorption rate derived from the testing procedure described in R18-9-A310(G). The effective absorption surface for a seepage pit is the sidewall area only. The sidewall area is calculated using the following formula:

$A = 3.14 \times D \times H$

i. "A" is the minimum sidewall area in square feet needed for the design flow and soil absorption rate for the installation,

ii. "D" is the diameter of the proposed seepage pit in feet,

iii. "H" is the vertical height in feet in the seepage pit through which wastewater infiltrates native soil. The applicant shall ensure that H is at least 10 feet for any seepage pit.

D. Operation and maintenance. The permittee shall follow the applicable operation and maintenance requirements in R18-9-A313.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E303. 4.03 General Permit: Composting Toilet, Less Than 3000 Gallons Per Day Design Flow

A. A 4.03 General Permit allows for the use of a composting toilet with less than 3000 gallons per day design flow.

1. Definition. For purposes of this Section, "composting toilet" means a manufactured turnkey or kit form treatment technology that receives human waste from a waterless toilet directly into an aerobic composting chamber where dehydration and biological activity reduce the waste volume and the content of nutrients and harmful microorganisms to an appropriate level for later disposal at the site or by other means.
2. An applicant may use a composting toilet if:
   a. Limited water availability prevents use of other types of on-site wastewater treatment facilities,
   b. Environmental constraints prevent the discharge of wastewater or nutrients to a sensitive area,
   c. Inadequate space prevents use of other systems,
   d. Severe site limitations exist that make other forms of treatment or disposal unacceptable, or
   e. The applicant desires maximum water conservation.
3. A permittee may use a composting toilet only if:
   a. Wastewater is managed as provided in this Section and, if gray water is separated and reused, the gray water reuse complies with18 A.A.C. 9, Article 7; and
   b. Soil conditions support subsurface disposal of all wastewater sources.

B. Restrictions.

1. A permittee shall ensure that no more than 50 persons per day use the composting toilet.
2. A composting toilet shall only receive human excrement unless the manufacturer's specifications allow the deposit of kitchen or other wastes into the toilet.

C. Performance. An applicant shall ensure that:

1. The composting toilet provides containment to prevent the discharge of toilet contents to the native soil except leachate, which may drain to the wastewater disposal works described in subsection (F);
2. The composting toilet limits access by vectors to the contained waste; and
3. Wastewater is disposed into the subsurface to prevent any wastewater from surfacing.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit the following information:

1. Composting toilet.
   a. The name and address of the composting toilet system manufacturer;
   b. A copy of the manufacturer's warranty, and the specifications for installation operation, and maintenance;
   c. The product model number;
   d. Composting rate, capacity, and waste accumulation volume calculations;
   e. Documentation of listing by a national listing organization indicating that the composting toilet meets the stated manufacturer's specifications for loading, treatment performance, and operation, unless the composting toilet is listed under R18-9-A309(E) or is a component of a reference design approved by the Department;
   f. The method of vector control;
   g. The planned method and frequency for disposing the composted human excrement residue; and
   h. The planned method for disposing of the drainage from the composting unit; and
2. Wastewater.
   a. The number of bedrooms in the dwelling or persons served on a daily basis, as applicable, and the corresponding design flow of the disposal works for the wastewater;
   b. The results from soil evaluation or percolation testing that adequately characterize the soils into which the wastewater will be dispersed and the locations of soil evaluation and percolation testing on the site plan; and
   c. The design for the disposal works in subsection (F), including the location of the interceptor, the location and configuration of the trench or bed used for wastewater dispersal, the location of connecting wastewater pipelines, and the location of the reserve area.

E. Design requirements for a composting toilet. An applicant shall ensure that:

1. The composting chamber is watertight, constructed of solid durable materials not subject to excessive corrosion or decay, and is constructed to exclude access by vectors;
2. The composting chamber has airtight seals to prevent odor or toxic gas from escaping into the building. The system may be vented to the outside;
3. The capacity of the chamber and rate of composting are calculated based on:
   a. The lowest monthly average chamber temperature; or
   b. The yearly average chamber temperature, if the composting toilet is designed to compost on a yearly cycle or longer; and
4. The composting system provides adequate storage of all waste produced during the months when the average temperature is below 55^{o}F, unless a temperature control device is installed to increase the composting rate and reduce waste volume.

F. Design requirements for the disposal works.
1. Interceptor. An applicant shall ensure that the design complies with the following:
   a. An interceptor may not accept human excreta or toilet wastewater;
   b. Wastewater passes into an interceptor before it is conducted to the subsurface for dispersal;
   c. The interceptor is designed to remove grease, oil, fibers, and solids to ensure long-term performance of the trench or bed used for subsurface dispersal;
   d. The interceptor is covered to restrict access and eliminate habitat for mosquitoes and other vectors; and
   e. Minimum interceptor size is based on design flow.
      i. For a dwelling, the following apply:

No. of Bedrooms	Design Flow (gallons per day)	Minimum Interceptor Size (gallons)	
		Kitchen Wastewater Only (All gray water sources are collected and reused)	Combined Non-Toilet Wastewater (Gray water is not separated and reused)
1 (7 fixture units or less)	90	42	200
1-2 (greater than 7 fixture units)	180	84	400
3	270	125	600
4	330	150	700
5	380	175	800
6	420	200	900
7	460	225	1000

      ii. For other than a dwelling, minimum interceptor size in gallons is 2.1 times the design flow from Table 1, Unit Design Flows.
2. Dispersal of wastewater. An applicant shall ensure that the design complies with the following:
   a. A trench or bed is used to disperse the wastewater into the subsurface;
   b. Sizing of the trench or bed is based on the design flow as determined in subsection (F)(1)(e), including all black and gray water, and an SAR determined under R18-9-A312(D);
   c. The minimum vertical separation from the bottom of the trench or bed to a limiting subsurface condition is at least 5 feet; and
   d. Other aspects of trench or bed design follow R18-9-E302, as applicable.
3. Setback distances. Setback distances are no less than 1/4 of the setback distances specified in R18-9-A312(C), but not less than 5 feet, except the setback distance from wells is 100 feet.

G. Operation and maintenance requirements. A permittee shall:
1. Composting toilet.
   a. Provide adequate mixing, ventilation, temperature control, moisture, and bulk to reduce fire hazard and prevent anaerobic conditions;
   b. Follow manufacturer's specifications for addition of any organic bulking agent to control liquid drainage, promote aeration, or provide additional carbon;
   c. Follow the manufacturer's specifications for operation and maintenance regarding movement of material within the composting chamber;
   d. If batch system containers are mounted on a carousel, place a new container in the toilet area if the previous one is full;
   e. Ensure that only human waste, paper approved for septic tank use, and the amount of bulking material required for proper maintenance is introduced to the composting chamber. The permittee shall remove all other materials or trash. If allowed by the manufacturer's specifications the permittee may add, other nonliquid compostable food preparation residues to the toilet;
   f. Ensure that any liquid end product is:
      i. Sprayed back onto the composting waste material;
      ii. Removed by a person who licensed a vehicle under 18 A.A.C. 13, Article 11; or
      iii. Is drained to the interceptor described in subsection (F);
   g. Remove and dispose of composted waste as necessary, using a person who licensed a vehicle under 18 A.A.C. 13, Article 11 if the waste is not placed in a disposal area for burial or used on-site as mulch;
   h. Before ending use for an extended period take measures to ensure that moisture is maintained to sustain bacterial activity and free liquids in the chamber do not freeze; and
   i. After an extended period of non-use, empty the composting chamber of solid end product and inspect all mechanical components to verify that the mechanical components are operating as designed;
2. Wastewater Disposal Works.

a. Ensure that the interceptor is maintained regularly according to manufacturer's instructions to prevent grease and solid wastes from impairing performance of the trench or bed used for dispersal of wastewater, and
b. Protect the area of the trench or bed from soil compaction or other activity that will impair dispersal performance.

H. Reference design.
1. An applicant may use a composting toilet that achieves the performance requirements in subsection (C) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed system with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-E304. 4.04 General Permit: Pressure Distribution System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.04 General Permit allows for the use of a pressurized distribution of wastewater system with a design flow less than 3000 gallons per day that treats wastewater to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "pressure distribution system" means a tank, pump, controls, and piping that conducts wastewater under pressure in controlled amounts and intervals to a bed or trench or other means of distribution authorized by a general permit for an on-site wastewater treatment facility.
2. An applicant may use a pressure distribution system if a gravity flow system is unsuitable, inadequate, unfeasible, or cost prohibitive because of site limitations or other conditions, or if needed to optimally distribute wastewater.

B. Performance. An applicant shall ensure that a pressure distribution system:
1. Disperses wastewater so that:
   a. Loading rates are optimized for the intended purpose, and
   b. The wastewater is delivered under pressure and evenly distributed within the disposal works, and
2. Prevents ponding on the land surface.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit:
1. A copy of operation, maintenance, and warranty materials for the principal components; and
2. A copy of dosing specifications, including pump curves, dispersing component details, and float control settings.

D. Design requirements.
1. Pumps. An applicant shall ensure that pumps used in the on-site wastewater treatment facility:
   a. Are rated for wastewater service by the manufacturer and certified by Underwriters Laboratories;
   b. Achieve the minimum design flow rate and total dynamic head requirements for the particular site; and
   c. Incorporate a quick disconnect using compression-type unions for pressure connections. The applicant shall ensure that:
      i. Quick-disconnects are accessible in the pressure piping, and
      ii. A pump has adequate lift attachments for removal and replacement of the pump and switch assembly without entering the dosing tank or process chamber.
2. Switches, controls, alarms, timers, and electrical components. An applicant shall ensure that:
   a. Switches and controls accommodate the minimum and maximum dose capacities of the distribution network design. The applicant shall not use pressure diaphragm level control switches;
   b. Fail-safe controls that can be tested in the field are used to prevent discharge of inadequately treated wastewater. The applicant shall include counters or flow meters if critical to control functions, such as timed dosing;
   c. Control panels and alarms:
      i. Are either mounted in an exterior location visible from the structure served, mounted in a conspicuous location on the side of the structure served, or mounted in a conspicuous location adjacent to the structure served,
      ii. Provide manual pump switch and alarm test features, and
      iii. Include written instructions covering standard operation and alarm events;
   d. Audible and visible alarms are used for all critical control functions, such as pump failures, treatment failures, and excess flows. The applicant shall ensure that:
      i. The visual portion of the signal is conspicuous from a distance 50 feet from the system and its appurtenances;
      ii. The audible portion of the signal is between 70 and 75 db at 5 feet and is discernible from a distance of 50 feet from the system and its appurtenances;
      iii. Alarms, test features, and controls are on a non-dedicated electrical circuit separate from the dedicated circuit for the pump with constant visual confirmation that the circuit is electrically active; and
      iv. The alarm is clearly audible and visible inside the structure served;
   e. All electrical wiring complies with the National Electrical Code, 2005 Edition, published by the National Fire Protection Association. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. The applicant shall ensure that:
      i. Connections are made using National Electrical Manufacturers Association (NEMA) 4x junction boxes certified by Underwriters Laboratories; and

ii. All controls are in NEMA 3r, 4, or 4x enclosures for outdoor use.

3. Dosing tanks and wastewater distribution components.
   a. An applicant shall:
      i. Design dosing tanks to withstand anticipated internal and external loads under full and empty conditions, and design concrete tanks to meet the "Standard Specification for Precast Concrete Water and Wastewater Structures, C913-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
      ii. Design dosing tanks to be easily accessible and have secured covers;
      iii. Install risers to provide access to the inlet and outlet of the tank and to service internal components;
      iv. Ensure that the volume of the dosing tank accommodates bottom depth below maximum drawdown, maximum design dose, including any drainback, volume to high water alarm, and a reserve volume above the high water alarm level that is not less than the daily design flow volume. If the tank is time dosed, the applicant shall ensure that the combined surge capacity and reserve volume above the high water alarm is not less than the daily design flow volume;
      v. Ensure that dosing tanks are watertight and anti-buoyant;
      vi. Design the wastewater distribution components to withstand system pumping pressures;
      vii. Design the wastewater distribution system to allow air to purge from the system;
      viii. Design pressure piping to minimize freezing during cold weather;
      ix. Ensure that the end of each wastewater distribution line is accessible for maintenance;
      x. Ensure that orifices emit the design discharge rate uniformly throughout the wastewater distribution system; and
      xi. Design orifices using orifice shields to provide proper distribution of wastewater to the receiving medium.
   b. An applicant may use a septic tank second compartment or a second septic tank in series as a dosing tank if all dosing tank requirements of this Section are met and a screened vault is used instead of the septic tank effluent filter.
4. Design SAR. If the site conditions of the property for the on-site wastewater treatment facility do not require pressure distribution, but an applicant chooses to use pressure distribution, the applicant shall use a design SAR for the absorption surfaces in the disposal works that is not more than 1.10 times the adjusted SAR determined in R18-9-A312(D).

E. Additional Discharge Authorization requirements. An applicant shall obtain copies of instructions for the critical controls of the system from the person who installed the pressure distribution system. The applicant shall submit one copy of the instructions with the information required in subsection (C).

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), a permittee shall ensure that:
1. The operation and maintenance manual for the on-site wastewater treatment facility that supplies the wastewater to the pressure distribution system specifies inspection and maintenance needed for the following items:
   a. Sludge level in the bottom of the treatment and dosing tanks,
   b. Watertightness,
   c. Condition of electrical and mechanical components, and
   d. Piping and other components functioning within design limits;
2. All critical control functions are specified in the operation and maintenance manual for testing to demonstrate compliance with design specifications, including:
   a. Alarms, test features, and controls;
   b. Float switch level settings;
   c. Dose rate, volume, and frequency, if applicable;
   d. Distal pressure or squirt height, if applicable; and
   e. Voltage test on pumps, motors, and controls, as applicable;
3. The finished grade is observed and maintained for proper surface drainage. The applicant shall observe the levelness of the tank for differential settling. If there is settling, the applicant shall grade the facility to maintain surface drainage.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-E305. 4.05 General Permit: Gravelless Trench, Less Than 3000 Gallons Per Day Design Flow

A. A 4.05 General Permit allows for the use of a gravelless trench with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "gravelless trench" means a disposal technology characterized by installation of a proprietary pipe and geocomposite or other substitute media into native soil instead of the distribution pipe and aggregate fill used in a trench allowed in R18-9-E302.
2. A permittee may use a gravelless trench if suitable gravel or volcanic rock aggregate is unavailable, excessively expensive, or if adverse site conditions make movement of gravel difficult, damaging, or time consuming.

B. Performance. An applicant shall design a gravelless trench so that treated wastewater released to the native soil meets the following criteria:
1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;

3. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit the following:
1. The soil absorption area that would be required if a conventional disposal trench filled with aggregate was used at the site,
2. The configuration and size of the proposed gravelless disposal works, and
3. The manufacturer's installation instructions and warranty of performance for absorbing wastewater into the native soil.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall:
1. Ensure that the top of the gravelless disposal pipe or similar disposal mechanism is at least 6 inches below the surface of the native soil and 12 to 36 inches below finished grade if approved fill is placed on top of the installation;
2. Calculate the infiltration surface as follows:
   a. For 8-inch diameter pipe, 2 square feet of absorption area is allowed per linear foot;
   b. For 10-inch diameter pipe, 3 square feet of absorption area is allowed per linear foot;
   c. For bundles of two pipes of the same diameter, the absorption area is calculated as 1.67 times the absorption area of one pipe; and
   d. For bundles of three pipes of the same diameter, the absorption area is calculated as 2.00 times the absorption area of one pipe;
3. Use a pressure distribution system meeting the requirements of R18-9-E304 in medium sand, coarse sand, and coarser soils; and
4. Construct the drainfield of material that will not decay, deteriorate, or leach chemicals or byproducts if exposed to sewage or the subsurface soil environment.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall:
1. Install the gravelless pipe material according to manufacturer's instructions if the instructions are consistent with this Chapter,
2. Ensure that the installed disposal system can withstand the physical disturbance of backfilling and the load of any soil cover above natural grade placed over the installation, and
3. Shape any backfill and soil cover in the area of installation to prevent settlement and ponding of rainfall for the life of the disposal works.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect the finished grade in the vicinity of the gravelless disposal works for maintenance of proper drainage and protection from damaging loads.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E306. 4.06 General Permit: Natural Seal Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

A. A 4.06 General Permit allows for the use of a natural seal evapotranspiration bed with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "natural seal evapotranspiration bed" means a disposal technology characterized by a bed of sand or other media with an internal wastewater distribution system, contained on the bottom and sidewalls by an engineered liner consisting of natural soil and clay materials.
2. An applicant may use a natural seal evapotranspiration bed if site conditions restrict soil infiltration or require reduction of the volume of wastewater discharged to the native soil underlying the natural seal liner.

B. Restrictions. Unless a person provides design documentation to show that a natural seal evapotranspiration bed will properly function, the person shall not install this technology if:
1. Average minimum temperature in any month is 20° F or less,
2. Over 1/3 of the average annual precipitation falls in a 30-day period, or
3. Design flow exceeds net evaporation.

C. Performance. An applicant shall ensure that a natural seal evapotranspiration bed:
1. Minimizes discharge to the native soil through the natural seal liner,
2. Maximizes wastewater disposed to the atmosphere by evapotranspiration, and
3. Prevents ponding of wastewater on the bed surface and maintains an interval of unsaturated media directly beneath the bed surface.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Capillary rise potential test results for the media used to fill the evapotranspiration bed, unless sand meeting a D_{50} of 0.1 millimeter (50 percent by weight of grains equal to or smaller than 0.1 millimeter) is used; and
2. Water mass balance calculations used to size the evapotranspiration bed.

E. Design requirements. An applicant shall:
1. Ensure that the evapotranspiration bed is from 18 to 36 inches deep and shall calculate the bed design based on the capillary rise of the bed media, following the "Standard Test Method for Capillary-Moisture Relationships for Coarse- and Medium-Textured Soils by Porous-Plate Apparatus, D2325-68 (2000)," incorporated by reference in R18-9-E307(E), and the anticipated maximum frost depth;
2. Ensure the media is sand or other durable material;
3. Base design area calculations on a water mass balance for the winter months and the design seepage rate;
4. Ensure that the natural seal liner is a durable, low-hydraulic conductivity liner and is accompanied by the liner performance specification and calculations for bottom and sidewall seepage rate;
5. If a surfacing layer is used, use topsoil, dark cinders, decomposed granite, or similar landscaping material placed to a maximum depth of 2 inches and ensure that:
   a. If topsoil is used as a surfacing layer for growth of landscape plants:
      i. The topsoil is a fertile, friable soil obtained from well-drained arable land;

ii. The topsoil is free of nut grass, refuse, roots, heavy clay, clods, noxious weeds, or any other material toxic to plant growth;
iii. The pH of the topsoil is between 5.5 and 8.0;
iv. The plasticity index of the topsoil is between 3 and 15; and
v. The topsoil contains approximately 1-1/2 percent organic matter, by dry weight, either natural or added;

b. If landscaping material other than topsoil is used as a surfacing layer, the material meets the following gradation:

Sieve Size	Percent Passing
1”	100
1/2”	95-100
No. 4	90-100
No. 10	70-100
No. 200	15-70

6. Use shallow-rooted, non-invasive, salt- and drought-tolerant evergreens if vegetation is planted on the evapotranspiration bed;
7. Install at least two observation ports to determine the level of the liquid surface of wastewater within the evapotranspiration bed;
8. Design the bed to pump out the saturated zone if accumulated salts or a similar condition impairs bed performance; and
9. Instead of the minimum vertical separation required under R18-9-A312(E), ensure that the minimum vertical separation from the bottom of the natural seal evapotranspiration bed liner to the seasonal high water table is at least 12 inches.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The liner covers the bottom and all sidewalls of the bed and is installed on a stable base according to the manufacturer’s installation specifications;
2. If the inlet pipe passes through the liner, the joint is tightly sealed to minimize leakage during the operational life of the facility;
3. The liner is leak tested under the supervision of an Arizona-registered professional engineer to confirm the design leakage rate; and
4. A 2- to 4-inch layer of 1/2- to 1-inch gravel or crushed stone is placed around the distribution pipes within the bed. The applicant shall ensure that the filter cloth is placed on top of the gravel or crushed stone to prevent sand from settling into the gravel or crushed stone.

G. Additional Discharge Authorization requirements. An applicant shall submit the satisfactory results of the leakage test required under subsection (F)(3) to the Department before the Department issues the Discharge Authorization.

H. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall:
1. Not allow irrigation of an evapotranspiration bed, and
2. Protect the bed from vehicle loads and other damaging activities.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E307. 4.07 General Permit: Lined Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

A. A 4.07 General Permit allows for the use of a lined evapotranspiration bed receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a “lined evapotranspiration bed” means a disposal technology characterized by a bed of sand or other media with an internal wastewater distribution system contained on the bottom and sidewalls by an impervious synthetic liner.
2. An applicant may use a lined evapotranspiration bed if site conditions restrict soil infiltration or require reduction or elimination of the volume of wastewater or nitrogen load discharged to the native soil.
3. Provision of a reserve area is not required for a lined evapotranspiration bed.

B. Restrictions. Unless a person provides design documentation to show that a lined evapotranspiration bed will properly function, the person shall not install this technology if:
1. Average minimum temperature in any month is 20° F or less,
2. Over 1/3 of average annual precipitation falls in a 30-day period, or
3. Design flow exceeds net evaporation.

C. Performance. An applicant shall ensure that a lined evapotranspiration bed:
1. Prevents discharge to the native soil by a synthetic liner,
2. Attains full disposal of wastewater to the atmosphere by evapotranspiration, and
3. Prevents ponding of wastewater on the bed surface and maintains an interval of unsaturated media directly beneath the bed surface.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Capillary rise potential test results for the media used to fill the evapotranspiration bed, unless sand meeting a D_{50} of 0.1 millimeter (50 percent by weight of grains equal to or smaller than 0.1 millimeter in size) is used; and
2. Water mass balance calculations used to size the evapotranspiration bed.

E. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall:
1. Ensure that the evapotranspiration bed is from 18 to 36 inches deep and calculate the bed design on the basis of the capillary rise of the bed media, according to the “Standard Test Method for Capillary-Moisture Relationships for Coarse- and Medium-Textured Soils by Porous-Plate Apparatus, D2325-68 (2003),” published by the American Society for Testing and Materials and the anticipated maximum frost depth. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
2. Ensure the media is sand or other durable material;
3. Base design area calculations on a water mass balance for the winter months;

4. Ensure that the evapotranspiration bed liner is a durable, low hydraulic conductivity synthetic liner that has a calculated bottom area and sidewall seepage rate of less than 550 gallons per acre per day;
5. If a surfacing layer is used, use topsoil, dark cinders, decomposed granite, or similar landscaping material placed to a maximum depth of 2 inches. The applicant shall ensure that:
   a. If topsoil is used as a surfacing layer for growth of landscape plants:
      i. The topsoil is a fertile, friable soil obtained from well-drained arable land;
      ii. The topsoil is free of nut grass, refuse, roots, heavy clay, clods, noxious weeds, or any other material toxic to plant growth;
      iii. The pH of the topsoil is between 5.5 and 8.0;
      iv. The plasticity index of the topsoil is between 3 and 15; and
      v. The topsoil contains approximately 1 1/2 percent organic matter, by dry weight, either natural or added;
   b. If another landscaping material is used as a surfacing layer, the material meets the following gradation:

Sieve Size	Percent Passing
1”	100
1/2”	95-100
No. 4	90-100
No. 10	70-100
No. 200	15-70

6. Use shallow-rooted, non-invasive, salt and drought tolerant evergreens if vegetation is planted on the evapotranspiration bed;
7. Install at least two observation ports to allow determination of the depth to the liquid surface of wastewater within the evapotranspiration bed;
8. Design the bed to pump out the saturated zone if accumulated salts or a similar condition impairs bed performance; and
9. Instead of the minimum vertical separation required under R18-9-A312(E), ensure that the minimum vertical separation from the bottom of the evapotranspiration bed liner to the surface of the seasonal high water table or impervious layer or formation is at least 12 inches.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. All liner seams are factory fabricated or field welded according to manufacturer’s specifications. The applicant shall ensure that:
2. The liner covers the bottom and all sidewalls of the bed and is cushioned on the top and bottom with layers of sand at least 2 inches thick or other puncture-protective material;
3. If the inlet pipe passes through the liner, the joint is tightly sealed to minimize leakage during the operational life of the facility;
4. The liner is leak tested under the supervision of an Arizona-registered professional engineer; and
5. A 2- to 4-inch layer of one-half to 1-inch gravel or crushed stone is placed around the distribution pipes within the bed. The applicant shall place filter cloth on top of the gravel or crushed stone to prevent sand from settling into the crushed stone or gravel.

G. Additional Discharge Authorization requirements. An applicant shall submit the liner test results sealed by an Arizona-registered professional engineer to the Department for issuance of the Discharge Authorization.

H. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall:
1. Not allow irrigation of an evapotranspiration bed; and
2. Protect the bed from vehicle loads and other damaging activities.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E308. 4.08 General Permit: Wisconsin Mound, Less Than 3000 Gallons Per Day Design Flow

A. A 4.08 General Permit allows for the use of a Wisconsin mound with a design flow of less than 3000 gallons per day receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a “Wisconsin mound” means a disposal technology characterized by:
   a. An above-grade bed system that blends with the land surface into which is dispensed pressure dosed wastewater from a septic tank or other upstream treatment device,
   b. Dispersal of wastewater under unsaturated flow conditions through the engineered media system contained in the mound, and
   c. Wastewater treated by passage through the mound before percolation into the native soil below the mound.
2. An applicant may use a Wisconsin mound if:
   a. The native soil has excessively high or low permeability,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. A reduction in minimum vertical separation is desired.

B. Performance. An applicant shall design a Wisconsin mound so that treated wastewater released to the native soil meets the following criteria:
1. Performance Category A.
   a. TSS of 20 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 1000 (Log_{10} 3.0) colony forming units per 100 milliliters, 95th percentile; or
2. Performance Category B.
   a. TSS of 30 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Specifications for the internal wastewater distribution system media proposed for use in the Wisconsin mound;
2. Two scaled or dimensioned cross sections of the mound (one of the shortest basal area footprint dimension and one of the lengthwise dimension); and
3. Design calculations following the "Wisconsin Mound Soil Absorption System: Siting, Design, and Construction Manual," published by the University of Wisconsin – Madison, January 1990 Edition (the Wisconsin Mound Manual). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the University of Wisconsin – Madison, SSWMP, 1525 Observatory Drive, Room 345, Madison, WI 53706.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. Pressure dosed wastewater is delivered into the Wisconsin mound through a pressurized line and secondary distribution lines into an engineered aggregate infiltration bed, or equivalent system, in conformance with R18-9-E304 and the Wisconsin Mound Manual. The applicant shall ensure that the aggregate is washed;
2. Wastewater is applied to the inlet surface of the mound media at not more than 1.0 gallon per day per square foot of mound bed inlet surface if the mound bed media conforms with the "Standard Specification for Concrete Aggregates, C33-03 (2003)," published by the American Society for Testing and Materials and the Wisconsin Mound Manual, except if cinder sand is used that is the appropriate grade with not more than 5 percent passing a #200 screen. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. The applicant shall:
   a. For cinder sand, ensure that the rate is not more than 0.8 gallons per day per square foot of mound bed inlet surface; and
   b. Wash the media used for the mound bed;
3. The aggregate infiltration bed and mound bed is capped by coarser textured soil, such as sand, sandy loam, or silt loam. An applicant shall not use silty clay, clay loam, or clays;
4. The cap material is covered by topsoil, following the procedure in the Wisconsin Mound Manual, and the topsoil is capable of supporting vegetation, is not clay, and is graded to drain;
5. The top and bottom surfaces of the aggregate infiltration bed are level and do not exceed 10 feet in width and that:
   a. The minimum depth of the aggregate infiltration bed is 9 inches, or
   b. Synthetic filter fabric permeable to water and air and capable of supporting the cap and topsoil load is placed on the top surface of the aggregate infiltration bed;
6. The minimum depth of mound bed media is:
   a. Performance Category A, 24 inches; or
   b. Performance Category B, 12 inches;
7. The maximum allowable side slope of the mound bed, cap material, and topsoil is not more than one vertical to three horizontal;
8. Ports for inspection and monitoring are provided to verify performance, including verification of unsaturated flow within the aggregate infiltration bed. The applicant shall:
   a. Install a vertical PVC pipe and cap with a minimum diameter of 4 inches as an inspection port at the end of the disposal line, and
   b. Install the pipe with a physical restraint to maintain pipe position;
9. The main pressurized line and secondary distribution lines for the aggregate infiltration bed are equipped at appropriate locations with cleanouts to grade;
10. The following requirements and the setbacks specified in R18-9-A312(C) are observed:
   a. Increase setbacks for the following downslope features at least 30 feet from the toe of the mound system:
      i. Property line,
      ii. Driveway,
      iii. Building,
      iv. Ditch or interceptor drain, or
      v. Any other feature that impedes water movement away from the mound; and
   b. Ensure that no upslope natural feature or improvement channels surface water or groundwater to the mound area;
11. The portion of the basal area of native soil below the mound conforms to the Wisconsin Mound Manual. The applicant shall:
   a. Calculate the absorption of wastewater into the native soil for only the effective basal area;
   b. Apply the soil absorption rate specified in R18-9-A312(D). The applicant may increase allowable loading rate to the mound bed inlet surface up to 1.6 times if the wastewater dispersed to the mound is pretreated to reduce the sum of TSS and BOD_5 to 60 mg/l or less. The applicant may increase the soil absorption rate to not more than 0.20 gallons per day per square foot of basal area if the following slowly permeable soils underlie the mound:
      i. Sandy clay loam, clay loam, silty clay loam, or finer with weak platy structure; or
      ii. Sandy clay loam, clay loam, silty clay loam, or silt loam with massive structure;
12. The slope of the native soil at the basal area does not exceed 25 percent, and a slope stability analysis is performed whenever the basal area or site slope within 50 horizontal feet from the mound system footprint exceeds 15 percent.

E. Installation. An applicant shall:
1. Prepare native soil for construction of a Wisconsin mound system. The applicant shall:
   a. Mow vegetation and cut down trees in the vicinity of the basal area site to within 2 inches of the surface;
   b. Leave in place boulders and tree stumps and other herbaceous material that would excessively alter the soil structure if removed after mowing and cutting;

c. Plow native soil serving as the basal area footprint along the contours to 7- to 8- inch depth;
d. Not substitute rototilling for plowing; and
e. Begin mound construction immediately after plowing;

2. Place each layer of the bed system to prevent differential settling and promote uniform density; and
3. Use the Wisconsin Mound Manual to guide any other detail of installation. The applicant may vary installation procedures and criteria depending on mound design but shall use installation procedures and criteria that are at least equivalent to those in the Wisconsin Mound Manual.

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), the permittee shall:

1. If an existing mound system shows evidence of overload or hydraulic failure, conduct the following sequence of evaluations:
   a. Verify the actual loading and performance of the pretreatment system.
   b. Verify the watertightness of the pretreatment and dosing tanks;
   c. Determine the dosing rates and dosing intervals to the aggregate infiltration bed and compare it with the original design to evaluate the presence or absence of saturated conditions in the aggregate infiltration bed;
   d. If the above steps in subsections (F)(1)(a) through (c) do not indicate an anomalous condition, evaluate the site and recalculation of the disposal capability to determine if mound lengthening is feasible;
   e. Determine if site modifications are possible including changing surface drainage patterns at upgrade locations and lowering the groundwater level by installing interceptor drains to reduce native soil saturation at shallow levels; and
   f. Determine if the basal area can be increased, consistent with R18-9-A309(A)(9)(b)(iv);
2. Prepare servicing and waste disposal procedures and task schedules necessary for clearing the main pressurized wastewater line and secondary distribution lines, septic tank effluent filter, pump intake, and controls.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E309. 4.09 General Permit: Engineered Pad System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.09 General Permit allows for the use of an engineered pad system receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, an "engineered pad system" means a treatment and disposal technology characterized by:
   a. The delivery of pretreated wastewater by gravity or pressure distribution to the engineered pad and sand bed assembly, followed by dispersal of the wastewater into the native soil; and
   b. Wastewater movement through the engineered pad and sand bed assembly by gravity under unsaturated flow conditions to provide additional passive biological treatment.
2. The applicant may use an engineered pad system if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. The available area is limited for installing a disposal works authorized by R18-9-E302.

B. Performance. An applicant shall ensure that:

1. The engineered pad system is designed so that the treated wastewater released to the native soil meets the following criteria:
   a. TSS of 50 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 50 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile; or
2. The engineered pad system is designed to meet any other performance, loading rate, and configuration criteria specified in the reviewed product list maintained by the Department as required under R18-9-A309(E).

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit design materials and construction specifications for the engineered pad system.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. Gravity and pressurized wastewater delivery is from a septic tank or intermediate watertight chamber equipped with a pump and controls. The applicant shall ensure that:
   a. Delivered wastewater is distributed onto the top of the engineered pad system and achieves even distribution by good engineering practice, and
   b. The dosing rate for pressurized wastewater delivery is at least four doses per day and no more than 24 doses per day;
2. The sand bed consists of mineral sand washed to conform to the "Standard Specification for Concrete Aggregates, C33-03 (2003)," which is incorporated by reference in R18-9-E308(D)(2), unless the performance testing and design specifications of the engineered pad manufacturer justify a substitute specification. The applicant shall ensure that:
   a. The sand bed design provides for the placement of at least 6 inches of sand bed material below and along the perimeter of each pad, and
   b. The contact surface between the bottom of the sand bed and the native soil is level;
3. The spacing between adjacent two-pad-wide rows is at least two times the distance between the bottom of the distribution pipe and the bottom of the sand bed or 5 feet, whichever is greater;
4. The wastewater distribution system installed on the top of the engineered pad system is covered with a breathable geotextile material and the breathable geotextile material is covered with at least 10 inches of backfill.
   a. The applicant shall ensure that rocks and cobbles are removed from backfill cover and grade the backfill for drainage.

b. The applicant may place the engineered pad system above grade, partially bury it, or fully bury it depending on site and service circumstances;

5. The engineered pad system is constructed with durable materials and capable of withstanding stress from installation and operational service; and
6. At least two inspection ports are installed in the engineered pad system to confirm unsaturated wastewater treatment conditions at diagnostic locations.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall place sand media to obtain a uniform density of 1.3 to 1.4 grams per cubic centimeter.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), an applicant shall inspect the backfill cover for physical damage or erosion and promptly repair the cover, if necessary.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (B)(2) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E310. 4.10 General Permit: Intermittent Sand Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.10 General Permit allows for the use of an intermittent sand filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, an "intermittent sand filter" means a treatment technology characterized by:
   a. The pressurized delivery of pretreated wastewater to an engineered sand bed in a containment vessel equipped with an underdrain system or designed as a bottomless filter;
   b. Delivered wastewater dispersed throughout the sand media by periodic doses from the delivery pump to maintain unsaturated flow conditions in the bed; and
   c. Wastewater that is treated during passage through the media, collected by a bed underdrain chamber, and removed by pump or gravity to the disposal works, or wastewater that percolates downward directly into the native soil as part of a bottomless filter design.
2. An applicant may use an intermittent sand filter if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. The applicant desires a reduction in setback distances or minimum vertical separation.

B. Performance. An applicant shall ensure that:

1. An intermittent sand filter with underdrain system is designed so that it produces treated wastewater that meets the following criteria:
   a. TSS of 10 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 10 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 40 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level or 1000 (Log_{10} 3) colony forming units per 100 milliliters, 95th percentile; or
2. An intermittent sand filter with a bottomless filter is designed so that it produces treated wastewater released to the native soil that meets the following criteria:
   a. TSS of 20 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
   d. Total coliform level of 100,000 (Log_{10} 5 colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the media proposed for use in the intermittent sand filter.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. Pressurized wastewater delivery is from the septic tank or separate watertight chamber with a pump sized and controlled to deliver the pretreated wastewater to the top of the intermittent sand filter. The applicant shall ensure that the dosing rate is at least 4 doses per day and not more than 24 doses per day;
2. The pressurized wastewater delivery system provides even distribution in the sand filter through good engineering practice. The applicant shall:
   a. Specify all necessary controls, pipes, valves, orifices, filter cover materials, gravel, or other distribution media, and monitoring and servicing components in the design documents; and
   b. Ensure that the cover and topsoil is 6 to 12 inches in depth and graded to drain;
3. The sand filter containment vessel is watertight, structurally sound, durable, and capable of withstanding stress from installation and operational service. The applicant may place the intermittent sand filter above grade, partially buried, or fully buried depending on site and service circumstances;
4. Media used in the intermittent sand filter is mineral sand and that the media is washed and conforms to "Standard Specification for Concrete Aggregates, C33-03," which is incorporated by reference in R18-9-E308(D)(2);
5. The sand media depth is a minimum of 24 inches with the top and bottom surfaces level and the maximum wastewater loading rate is 1.0 gallons per day per square foot of inlet surface at the rated daily design flow;
6. The underdrain system:
   a. Is within the containment vessel;
   b. Supports the filter media and all overlying loads from the unsupported construction above the top surface of the sand media;
   c. Has sufficient void volume above the normal high level of the intermittent sand filter effluent to prevent saturation of the bottom of the sand media by a 24-hour power outage or pump malfunction; and
   d. Includes necessary monitoring, inspection, and servicing features;
7. Inspection ports are installed in the distribution media and in the underdrain;
8. The bottomless filter is designed similar to the underdrain system, except that the sand media is positioned on top of the native soil absorption surface. The applicant shall ensure that companion modifications are made that eliminate the containment vessel bottom and underdrain and

relocate the underdrain inspection port to ensure reliable indication of the presence or absence of water saturation in the sand media;

9. The native soil absorption system is designed to ensure that the linear loading rate does not exceed site disposal capability; and
10. The bottomless sand filter discharge rate per unit area to the native soil does not exceed the adjusted soil absorption rate for the quality of wastewater specified in subsection (B)(2).

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall place the containment vessel, underdrain system, filter media, and pressurized wastewater distribution system in an excavation with adequate foundation and each layer installed to prevent differential settling and promote a uniform density throughout of 1.3 to 1.4 grams per cubic centimeter within the sand media.

F. Operation and maintenance requirements. The applicant shall follow the applicable requirements in R18-9-A313(B).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E311. 4.11 General Permit: Peat Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.11 General Permit allows for the use of a peat filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "peat filter" means a disposal technology characterized by:
   a. The dosed delivery of treated wastewater to the peat bed, which can be a manufactured module or a disposal bed excavated in native soil and filled with compacted peat;
   b. Wastewater passing through the peat that is further treated by removal of positively charged molecules, filtering, and biological activity before entry into native soil; and
   c. If the peat filter system is constructed as a disposal bed filled with compacted peat, wastewater that is absorbed into native soil at the bottom and sides of the bed.
2. An applicant may configure a modular system if a portion of the wastewater that has passed through the peat filter is recirculated back to the pump chamber.
3. An applicant may use a peat filter system if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock,
   c. A reduction in setback distances or minimum vertical separation is desired, or
   d. Cold weather inhibits performance of other treatment or disposal technologies.

B. Performance. An applicant shall ensure that a peat filter is designed so that it produces treated wastewater that meets the following criteria:

1. TSS of 15 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 15 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:

1. Specifications for the peat media proposed for use in the peat filter or provided in the peat module, including:
   a. Porosity;
   b. Degree of humification;
   c. pH;
   d. Particle size distribution;
   e. Moisture content;
   f. A statement of whether the peat is air dried, and whether the peat is from sphagnum moss or bog cotton; and
   g. A description of the degree of decomposition;
2. Specifications for installing the peat media; and
3. If a peat module is used:
   a. The name and address of the manufacturer,
   b. The model number, and
   c. A copy of the manufacturer's warranty.

D. Design requirements.

1. If a pump tank is used to dose the peat module or bed, an applicant shall:
   a. Ensure that the pump tank is sized to contain the dose volume and a reserve volume above the high water alarm that will contain the volume of daily design flow; and
   b. Use a control panel with a programmable timer to dose at the applicable loading rate.
2. Peat module system. In addition to the applicable requirements in R18-9-A312, the applicant shall:
   a. Size the gravel bed supporting the peat filter modules to allow it to act as a disposal works and ensure that the bed is level, long, and narrow, and installed on contour to optimize lateral movement away from the disposal area;
   b. For modules designed to allow wastewater flow through the peat filter and base material into underlying native soil, size the base on which the modules rest to accommodate the soil absorption rate of the native soil;
   c. Place fill over the module so that it conforms to the manufacturer's specification. If the fill is planted, the applicant shall use only grass or shallow rooted plants; and
   d. Ensure that the peat media depth is at least 24 inches, the peat is installed with the top and bottom surfaces level, and the maximum wastewater loading rate is 5.5 gallons per day per square foot of inlet surface at the rated daily design flow, unless the Department approves a different wastewater loading rate under R18-9-A309(E).
3. Peat filter bed system. In addition to the applicable requirements in R18-9-A312, the applicant shall ensure that:
   a. The bed is filled with peat derived from sphagnum moss and compacted according to the installation specification;
   b. The maximum wastewater loading rate is 1 gallon per day per square foot of inlet surface at the rated daily design flow;
   c. At least 24 inches of installed peat underlies the distribution piping and 10 to 14 inches of installed peat overlies the piping;

d. The cover material over the peat filter bed is slightly mounded to promote runoff of rainfall. The applicant shall not place additional fill over the peat; and
e. The peat is air dried, with a porosity greater than 90 percent, and a particle size distribution of 92 to 100 percent passing a No. 4 sieve and less than 8 percent passing a No. 30 sieve.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), the applicant shall:
1. Peat module system.
   a. Compact the bottom of all excavations for the filter modules, pump, aerator, and other components to provide adequate foundation, slope the bottom toward the discharge to minimize ponding, and ensure that the bottom is flat, and free of debris, rocks, and sharp objects. If the excavation is uneven or rocky, the applicant shall use a bed of sand or pea gravel to create an even, smooth surface;
   b. Place the peat filter modules on a level, 6-inch deep gravel bed;
   c. Place backfill around the modules and grade the backfill to divert surface water away from the modules;
   d. Not place objects on or move objects over the system area that might damage the module containers or restrict airflow to the modules;
   e. Cover gaps between modules to prevent damage to the system;
   f. Fit each system with at least one sampling port that allows collection of wastewater at the exit from the final treatment module;
   g. Provide the modules and other components with anti-buoyancy devices to ensure stability in the event of flooding or high water table conditions; and
   h. Provide a mechanism for draining the filter module inlet line; or
2. Peat filter bed system.
   a. Scarify the bottom and sides of the leaching bed excavation to remove any smeared surfaces, and:
      i. Unless directed by an installation specification consistent with this Chapter, place peat media in the excavation in 6-inch lifts; and
      ii. Compact each lift before the next lift is added. The applicant shall take care to avoid compaction of the underlying native soil;
   b. Lay distribution pipe in trenches cut in the compacted peat, and
      i. Ensure that at least 3 inches of aggregate underlie the pipe to reduce clogging of holes or scouring of the peat surrounding the pipe, and
      ii. Place peat on top of and around the sides of the pipes.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect the finished grade over the peat filter for proper drainage, protection from damaging loads, and root invasion of the wastewater distribution system and perform maintenance as needed.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E312. 4.12 General Permit: Textile Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.12 General Permit allows for the use of a textile filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "textile filter" means a disposal technology characterized by:
   a. The flow of wastewater into a packed bed filter in a containment structure or structures. The packed bed filter uses a textile filter medium with high porosity and surface area; and
   b. The textile filter medium provides further treatment by removing suspended material from the wastewater by physical straining, and reducing nutrients by microbial action.
2. An applicant may use a textile filter in conjunction with a two-compartment septic tank or a two-tank system if the second compartment or tank is used as a recirculation and blending tank. The applicant shall divert a portion of the wastewater flow from the textile filter back into the second tank for further treatment.
3. An applicant may use a textile filter if:
   a. Nitrogen reduction is desired,
   b. The native soil is excessively permeable,
   c. There is little native soil overlying fractured or excessively permeable rock, or
   d. A reduction in setback distances or minimum vertical separation is desired.

B. Performance. An applicant shall ensure that a textile filter is designed so that it produces treated wastewater that meets the following criteria:
1. TSS of 15 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 15 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 30 milligrams per liter, five-month arithmetic mean, or 15 milligrams, five-month arithmetic mean per liter if documented under subsection (C)(4); and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the filter manufacturer;
2. The filter model number;
3. A copy of the manufacturer's filter warranty;
4. If the system is for nitrogen reduction to 15 milligrams per liter, five-month arithmetic mean, specifications on the nitrogen reduction performance of the filter system and corroborating third-party test data;
5. The manufacturer's operation and maintenance recommendations to achieve a 20-year operational life; and
6. If a pump or aerator is required for proper operation, the pump or aerator model number and a copy of the manufacturer's warranty.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The textile medium has a porosity of greater than 80 percent;
2. The wastewater is delivered to the textile filter by gravity flow or a pump;
3. If a pump is used to dose the textile filter, the pump and appurtenances meet following criteria:

a. The textile media loading rate and wastewater recirculation rate are based on calculations that conform with performance data listed in the reviewed product list maintained by the Department as required under R18-9-A309(E),
b. The tank and recirculation components are sized to contain the dose volume and a reserve volume above the high water level alarm that will contain the volume of daily design flow, and
c. A control panel with a programmable timer is used to dose the textile media at the applicable loading rate and wastewater recirculation rate.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall:
1. Before placing the filter modules, slope the bottom of the excavation for the modules toward the discharge point to minimize ponding;
2. Ensure that the bottom of all excavations for the filter modules, pump, aerator, or other components is level and free of debris, rocks, and sharp objects. If the excavation is uneven or rocky, the applicant shall use a bed of sand or pea gravel to create an even, smooth surface;
3. Provide the modules and other components with antibuoyancy devices to ensure they remain in place in the event of high water table conditions; and
4. Provide a mechanism for draining the filter module inlet line.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313, the permittee shall not flush corrosives or other materials known to damage the textile material into any drain that transmits wastewater to the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E313. 4.13 General Permit: Denitrifying System Using Separated Wastewater Streams, Less Than 3000 Gallons Per Day Design Flow

A. A 4.13 General Permit allows for the use of a separated wastewater streams, denitrifying system for a dwelling.
1. Definition. For purposes of this Section a "denitrifying system using wastewater streams" means a gravity flow treatment and disposal system for a dwelling that requires separate plumbing drains for conducting dishwasher, kitchen sink, and toilet flush water to wastewater treatment tank "A" and all other wastewater to a wastewater treatment tank "B."
   a. Treated wastewater from tanks "A" and "B" is delivered to an engineered composite disposal bed system that includes an upper distribution pipe to deliver treated wastewater from tank "A" to a columnar celled, sand-filled bed.
   b. The wastewater drains downward into a sand bed, then into a pea gravel bed with an internal distribution pipe system that delivers the treated wastewater from tank "B."
   c. The entire composite bed is constructed within an excavation about 6 feet deep.
   d. The system operates under gravity flow from tanks "A" and "B."
   e. An engineered sampling assembly is installed at the midpoint of the disposal line run and at the base of the composite bed during construction to monitor system performance.
2. An applicant may use a separated wastewater streams, denitrifying system where total nitrogen reduction is required under this Article before release to the native soil.

B. Performance. An applicant shall ensure that a separated wastewater streams, denitrifying system is designed so that the treated wastewater released to the native soil meets the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 30 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B).

D. Design, installation, operation, and maintenance requirements. The applicant shall comply with the applicable design, installation, operation, and maintenance requirements in R18-9-A312, R18-9-A313(A), and R18-9-A313(B).

E. Reference design.
1. An applicant may use a separated wastewater streams, denitrifying system achieving the performance requirements specified in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed system with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E314. 4.14 General Permit: Sewage Vault, Less Than 3000 Gallons Per Day Design Flow

A. A 4.14 General Permit allows for the use of a sewage vault that receives sewage.
1. An applicant may use a sewage vault if a severe site or operational constraint prevents installation of a conventional septic tank and disposal works or any other on-site wastewater treatment facility allowed under this Article; or
2. An applicant may install a sewage vault as a temporary measure if connection to a sewer or installation of another on-site wastewater treatment facility occurs within two years of the connection or installation.

B. Performance. An applicant shall:
1. Not allow a discharge from a sewage vault to the native soil or land surface, and
2. Pump and dispose of vault contents at a sewage treatment facility or other sewage disposal mechanism allowed by law.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), except that a site investigation under R18-9-A309(B)(1) is not required if the reason for using a sewage vault is an operational constraint that exists irrespec-

tive of the results of a site investigation conducted under R18-9-A310(B).

D. Design requirements. In addition to the requirements in R18-9-A312, an applicant shall:
1. Install a sewage vault with a capacity that is at least 10 times the daily design flow determined by R18-9-A314(4)(a)(i),
2. Use design elements to prevent the buoyancy of the vault if installed in an area where a high groundwater table may impinge on the vault,
3. Test the sewage vault for leakage using the procedure under R18-9-A314(5)(d). The tank passes the water test if the water level does not drop over a 24-hour period,
4. Install an alarm or signal on the vault to indicate when 85 percent of the vault capacity is reached, and
5. Contract with a person who licensed a vehicle under 18 A.A.C. 13, Article 11 to pump out the vault on a schedule specified within the contract to ensure that the vault is pumped before full.

E. Installation, operation, and maintenance requirements. The applicant shall comply with the applicable installation, operation, and maintenance requirements in R18-9-A313(A) and (B).

F. Reference design.
1. An applicant may use a sewage vault that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed storage vault with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-E315. 4.15 General Permit: Aerobic System Less Than 3000 Gallons Per Day Design Flow

A. A 4.15 General Permit allows for the construction and use of an aerobic system that uses aeration for treatment.
1. Definition. For purposes of this Section, an "aerobic system" means a treatment unit consisting of components that:
   a. Mechanically introduce oxygen to wastewater,
   b. Typically provide clarification of the wastewater after aeration, and
   c. Convey the treated wastewater by pressure or gravity distribution to the disposal works.
2. An applicant may use an aerobic system if:
   a. Enhanced biological processing is needed to treat wastewater with high organic content,
   b. A soil or site condition is not adequate for installation of a standard septic tank and disposal works under R18-9-E302,
   c. A highly treated wastewater amenable to disinfection is needed, or
   d. Nitrogen removal from the wastewater is needed and removal performance of the system is documented according to subsection (C)(6).

B. Performance.
1. An applicant shall ensure that the aerobic system is designed so that the treated wastewater released to the native soil meets the following criteria:
   a. TSS of 30 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean, or as low as 15 milligrams, five-month arithmetic mean per liter if documented under subsection (C)(6); and
   d. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile.
2. An applicant may use an aerobic system that meets the following less stringent performance criteria if the aerobic technology is listed by the Department under R18-9-A309(E) and the Department bases its review and listing on the technology being less costly and simpler to operate when compared to other aerobic technologies:
   a. TSS of 60 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 60 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean, or as low as 15 milligrams, five month arithmetic mean per liter, if documented under subsection (C)(6); and
   d. Total coliform level of 1,000,000 (Log_{10} 7) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the aerobic system manufacturer;
2. The model number of the aerobic system;
3. Evidence of performance specified in subsection (B)(1) or (B)(2), as applicable;
4. A list of pretreatment components needed to meet performance requirements;
5. A copy of the manufacturer's warranty and operation and maintenance recommendations to achieve performance over a 20-year operational life; and
6. If the aerobic system will be used for nitrogen removal from the wastewater, either:
   a. Evidence of a valid product listing under R18-9-E309(E) indicating nitrogen removal performance, or
   b. Specifications and third party test data corroborating nitrogen reduction to the intended level.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The wastewater is delivered to the aerobic treatment unit by gravity flow either directly or by a lift pump;
2. An interceptor or other pretreatment device is incorporated if necessary to meet the performance criteria specified in subsection (B)(1) or (2), or if recommended by the manufacturer for pretreatment if a garbage disposal appliance is used;
3. A clarifier is provided after aeration for any treatment technology that achieves performance that is equal to or better than the performance criteria specified in subsection (B)(1); and
4. Ports for inspection and monitoring are provided to verify performance.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The installation of the aerobic treatment components conforms to manufacturer's specifications that do not conflict with Articles 1 and 3 of this Chapter and to the design documents specified in the Construction Authorization issued under R18-9-A301(D)(1)(c); and
2. Excavation and foundation work, and backfill placement is performed to prevent differential settling and adverse drainage conditions.

F. Operation and maintenance requirements. The permittee shall:
1. Follow the applicable requirements in R18-9-A313(B), and
2. Ensure that filters are cleaned and replaced as necessary.

G. Reference design.
1. An applicant may use an aerobic system that achieves the applicable performance requirements by following a reference design on file with the Department.
2. An applicant using a reference design shall submit, with the Notice of Intent to Discharge, supplemental information specific to the proposed installation on a form approved by the Department.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E316. 4.16 General Permit: Nitrate-Reactive Media Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.16 General Permit allows for the construction and use of a nitrate-reactive media filter receiving pretreated wastewater.
1. Definition. "Nitrate-reactive media filter" means a treatment technology characterized by:
   a. The application of pretreated, nitrified wastewater to a packed bed filter in a containment structure. A packed bed filter consists of nitrate-reactive media that receives pretreated wastewater under appropriate design and operational conditions, and
   b. The ability of the nitrate-reactive filter to further treat the nitrified wastewater by removing total nitrogen by chemical and physical processes.
2. An applicant shall use a nitrate-reactive media filter with a treatment or disposal works to pretreat and dispose of the wastewater.
3. An applicant may use a nitrate-reactive media filter if nitrogen reduction is required under this Article.

B. Restrictions. The applicant shall not use any product to supply pretreated wastewater to the nitrate-reactive media filter unless:
1. The product meets the pretreatment requirements for the filter based on product performance information in the product listing, and
2. The product is listed by the Department as a reviewed product under R18-9-A309(E).

C. Performance. An applicant shall ensure that a nitrate-reactive media filter is designed so that it produces treated wastewater that does not exceed the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 10 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the filter manufacturer;
2. The filter model number;
3. The manufacturer's requirements for pretreated wastewater supplied to the nitrate-reactive media filter;
4. The manufacturer's specifications for design, installation, and operation for the nitrate-reactive media filter system and appurtenances;
5. The manufacturer's warranty for the nitrate-reactive media filter system and appurtenances;
6. The manufacturer's operation and maintenance recommendations to achieve a 20-year operational life for the nitrate-reactive media filter system and appurtenances; and
7. The manufacturer name and model number for all appurtenances that significantly contribute to achieving the performance required in subsection (C).

E. Design requirements. In addition to the applicable design requirements specified in R18-9-A312, an applicant shall ensure that:
1. The nitrate-reactive media filter and appurtenances conform with manufacturer's specifications,
2. The loading rate of pretreated wastewater to the nitrate-reactive media inlet surface meets the manufacturer's specification and does not exceed 5.00 gallons per day per square foot of media inlet surface area, and
3. The bed packed with nitrate reactive media is at least 24 inches thick.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The nitrate-reactive media filter and appurtenances are installed according to manufacturer's specifications to achieve proper wastewater treatment, hydraulic performance, and operational life; and
2. Anti-buoyancy devices are installed when high water table or extreme soil saturation conditions are likely during operational life of the facility.

G. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B) and the manufacturer's specifications for the nitrite-reactive media filter, the permittee shall not dispose of corrosives or other materials that are known to damage the nitrate-reactive media filter system into the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (Supp. 05-3).

R18-9-E317. 4.17 General Permit: Cap System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.17 General Permit allows for the use of a cap fill cover over a conventional trench disposal works receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "cap system" means a disposal technology characterized by:
   a. A soil cap, consisting of engineered fill placed over a trench that is not as deep as a trench allowed by R18-9-E302; and
   b. A design that compensates for reduced trench depth by maintaining and enhancing the infiltration of

wastewater into native soil through the trench sidewalls.

2. An applicant may use a cap system if:
   a. There is little native soil overlying fractured or excessively permeable rock, or
   b. A high water table does not allow the minimum vertical separation to be met by a system authorized by R18-9-E302.

B. Performance. An applicant shall ensure that the design soil absorption rate and vertical separation complies with this Chapter for a trench, based on the following performance, unless additional pretreatment is provided:
1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the proposed cap fill material.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The soil texture from the natural grade to the depth of the layer or the water table that limits the soil for unsaturated wastewater flow is no finer than silty clay loam;
2. Cap fill material used is free of debris, stones, frozen clods, or ice, and is the same as or one soil group finer than that of the disposal site material, except that the applicant shall not use fill material finer than clay loam as an additive;
3. Trench construction.
   a. The trench bottom is at least 12 inches below the bottom of the disposal pipe and not more than 24 inches below the natural grade, and the trench bottom and disposal pipe are level;
   b. The aggregate cover over the disposal pipe is 2 inches thick and the top of the aggregate cover is level and not more than 9 inches above the natural grade;
   c. The cap fill cover above the top of the aggregate cover is at least 9 inches but not more than 18 inches thick. The applicant shall ensure that:
      i. The cap surface is protected to prevent erosion and sloped to route surface drainage around the ends of the trench; and
      ii. If the top of the aggregate is at or below the original ground surface, the cap surface has side slopes not more than one vertical to three horizontal; or
      iii. If the top of the aggregate is above the original ground surface, the horizontal extent of the finished fill edges is at least 10 feet beyond the nearest trench sidewall or endwall;
   d. The criteria for trench length, bottom width and spacing, and disposal pipe size is the same as that for the trench system prescribed in R18-9-E302;
   e. Permeable geotextile fabric is placed on the aggregate top, trench end, and sidewalls extending above natural grade;
   f. The native soil within the disposal site and the adjacent downgradient area to a 50-foot horizontal distance does not exceed a 12 percent slope if the top of the aggregate cover extends above the natural grade at any location along the trench length. The applicant shall ensure that the slope within the disposal site and the adjacent downgradient area to a 50-foot horizontal distance does not exceed 20 percent if the top of the aggregate cover does not extend above the natural grade;
   g. The fill material is compacted to a density of 90 percent of the native soil if the invert elevation of the disposal pipe is at or above the natural grade at any location along the trench length;
   h. At least one observation port is installed to the bottom of each cap fill trench;
   i. The effective absorption area for each trench is the sum of the trench bottom area and the sidewall area. The height of the sidewall used for calculating the sidewall area is the vertical distance between the trench bottom and the lowest point of the natural land surface along the trench length; and
   j. If the applicant uses correction factors for soil absorption rate under R18-9-A312(D)(3) and minimum vertical separation under R18-9-A312(E), additional wastewater pretreatment is provided.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall prepare the disposal site when high soil moisture is not present and equipment operations do not create platy soil conditions. The applicant shall:
1. Plow or scarify the fill area to disrupt the vegetative mat while avoiding smearing,
2. Construct trenches as specified in subsection (D)(3),
3. Scarify the site and apply part of the cap fill to the fill area and blend the fill with the scarified native soil within the contact layers, and
4. Follow the construction design specified in the Construction Authorization issued under R18-9-A301(D)(1)(c).

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect and repair the cap fill and other surface features as needed to ensure proper disposal function, proper drainage of surface water, and prevention of damaging loads on the cap.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E318. 4.18 General Permit: Constructed Wetland, Less Than 3000 Gallons Per Day Design Flow

A. A 4.18 General Permit allows for the use of a constructed wetland receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. “Constructed wetland” means a treatment technology characterized by a lined excavation, filled with a medium for growing plants and planted with marsh vegetation. The treated wastewater flows horizontally through the medium in contact with the aquatic plants.
   a. As the wastewater flows through the wetland system, additional treatment is provided by filtering, settling, volatilization, and evapotranspiration.
   b. The wetland system allows microorganisms to break down organic material and plants to take up nutrients and other pollutants.

c. The wastewater treated by a wetland system is discharged to a subsurface soil disposal system.

2. An applicant may use a constructed wetland if further wastewater treatment is needed before disposal.

B. Performance. An applicant shall ensure that a constructed wetland is designed so that it produces treated wastewater that meets the following criteria:

1. TSS of 20 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 45 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B).

D. Design, installation, operation, and maintenance requirements. The permittee shall comply with the applicable design, installation, operation, and maintenance requirements in R18-9-A312, R18-9-A313(A), and R18-9-A313(B).

E. Reference design.

1. An applicant may use a constructed wetland that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed constructed wetland with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E319. 4.19 General Permit: Sand-Lined Trench, Less Than 3000 Gallons Per Day Design Flow

A. A 4.19 General Permit allows for the use of a sand-lined trench receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "sand-lined trench" means a disposal technology characterized by:
   a. Engineered placement of sand or equivalently graded glass in trenches excavated in native soil,
   b. Wastewater dispersed throughout the media by pressure distribution technology as specified in R18-9-E304 using a timer-controlled pump in periodic uniform doses that maintain unsaturated flow conditions, and
   c. Wastewater treated during travel through the media and absorbed into the native soil at the bottom of the trench.
2. An applicant may use a sand-lined trench if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. Reduction in setback distances, or minimum vertical separation is desired.

B. Performance. An applicant shall ensure that a sand-lined trench is designed so that treated wastewater released to the native soil meets the following criteria:

1. TSS of 20 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the proposed media in the trench.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. The media used in the trench is mineral sand, crushed glass, or cinder sand and that:
   a. The media conforms to "Standard Specifications for Concrete Aggregates, C33-03," which is incorporated by reference in R18-9-E308(D)(2), "Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing, C117-04 (2004)," published by the American Society for Testing and Materials, or an equivalent method approved by the Department. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; and
   b. Sieve analysis complies with the "Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing, C11704," which is incorporated by reference in subsection (D)(1)(a), or an equivalent method approved by the Department;
2. Trenches.
   a. Distribution pipes are capped on the end;
   b. The spacing between trenches is at least two times the distance between the bottom of the distribution pipe and the bottom of the trench or 5 feet, whichever is greater;
   c. The inlet filter media surface, wastewater distribution pipe, and bottom of the trench are level and the maximum effluent loading rate is not more than 1.0 gallon per day per square foot of sand media inlet surface;
   d. The depth of sand below the gravel layer containing the distribution system is at least 24 inches;
   e. The gravel layer containing the distribution system is 5 to 12 inches thick, at least 36 inches wide, and level;
   f. Permeable geotextile fabric is placed at the base of and along the sides of the gravel layer, as necessary. The applicant shall ensure that:
      i. Geotextile fabric is placed on top of the gravel layer, and
      ii. Any cover soil placed on top of the geotextile fabric is capable of maintaining vegetative growth while allowing passage of air;
   g. At least one observation port is installed to the bottom of each sand lined trench;
   h. If the trench is installed in excessively permeable soil or rock, at least 1 foot of loamy sand is placed in the trench below the filter media. The minimum vertical separation distance is measured from the bottom of the loamy sand; and

i. The trench design is based on the design flow, native soil absorption area at the trench bottom, minimum vertical separation below the trench bottom, design effluent infiltration rate at the top of the sand fill, and the adjusted soil absorption rate for the final effluent quality; and

3. The dosing system consists of a timer-controlled pump, electrical components, and distribution network and that:
   a. Orifice spacing on the distribution piping does not exceed 4 square feet of media infiltrative surface area per orifice, and
   b. The dosing rate is at least four doses per day and not more than 24 doses per day.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that the filter media is placed in the trench to prevent differential settling and promote a uniform density throughout of 1.3 to 1.4 grams per cubic centimeter.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall ensure that:
1. The septic tank filter and pump tank are inspected and cleaned;
2. The dosing tank pump screen, pump switches, and floats are cleaned yearly and any residue is disposed of lawfully; and
3. Lateral lines are flushed and the liquid waste discharged into the treatment system headworks.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E320. 4.20 General Permit: Disinfection Devices, Less Than 3000 Gallons Per Day Design Flow

A. A 4.20 General Permit allows for the use of a disinfection device to reduce the level of harmful organisms in wastewater, provided the wastewater is pretreated to equal or better than the performance criteria in R18-9-E315(B)(1)(a). An applicant may use a disinfection device if:
1. The disinfection device kills the microorganisms by exposing the wastewater to heat, ultraviolet radiation, or a chemical disinfectant.
2. Some means of disinfection is required before discharge.
3. A reduction in harmful microorganisms, as represented by the total coliform level, is needed for surface or near surface disposal of the wastewater or reduction of the minimum vertical separation distance specified in R18-9-A312(E) is desired.

B. Restrictions.
1. Unless the disinfection device is designed to operate without electricity, an applicant shall not install the device if electricity is not permanently available at the site.
2. The 4.20 General Permit does not authorize a disinfection device that releases chemical disinfectants or disinfection byproducts harmful to plants or wildlife in the discharge area or causes a violation of an Aquifer Water Quality Standard.

C. Performance. An applicant shall ensure that:
1. A fail-safe wastewater control or operational process is incorporated to prevent a release of inadequately treated wastewater;
2. The performance of a disinfection device meets the level of disinfection needed for the type of disposal and produces effluent that:
   a. Is nominally free of coliform bacteria;
   b. Is clear and odorless, and
   c. Has a dissolved oxygen content of at least 6 milligrams per liter;

D. Design requirements. An applicant shall ensure that an on-site wastewater treatment facility with a disposal works designed to discharge to the land surface includes disinfection technology that conforms with the following requirements:
1. Chlorine disinfection.
   a. Available chlorine is maintained as indicated in the following table:

pH of Wastewater (s.u.)	Required Concentration of Available Chlorine in Wastewater (mg/L)	
	Wastewater to the Disinfection Device Meets a TSS of 30 mg/L and BOD5 of 30 mg/L	Wastewater to the Disinfection Device Meets a TSS of 20 mg/L and BOD5 of 20 mg/L
6	15 – 30	6 – 10
7	20 – 35	10 – 20
8	30 – 45	20 – 35

   b. The minimum chlorine contact time is 15 minutes for wastewater at 70°F and 30 minutes for wastewater at 50°F, based on a flow equal to four times the daily design flow;
2. Contact chambers are watertight and made of plastic, fiberglass, or other durable material and are configured to prevent short-circuiting; and
3. For a device that disinfects by another method other than chlorine disinfection, dose and contact time are determined to reliably produce treated wastewater that is nominally free of coliform bacteria, based on a flow equal to four times the daily design flow.

E. Operation and maintenance. A permittee shall ensure that:
1. If the disinfection device relies on the addition of chemicals for disinfection, the device is operated to minimize the discharge of disinfection chemicals while achieving the required level of disinfection; and
2. The disinfection device is inspected and maintained at least once every three months by a qualified person.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

R18-9-E321. 4.21 General Permit: Surface Disposal, Less Than 3000 Gallons Per Day Design Flow

A. A 4.21 General Permit allows for surface application of treated wastewater that is nominally free of coliform bacteria produced by the treatment works of an on-site wastewater treatment facility.

B. Performance. An applicant shall ensure that the treated wastewater distributed for surface application meets the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean;
4. Is nominally free of total coliform bacteria as indicated by a total coliform level of Log_{10} 0 colony forming units per 100 milliliters, 95th percentile.

C. Restrictions. The applicant shall not install the disposal works if weather records indicate that:
1. Average minimum temperature in any month is 20°F or less, or
2. Over 1/3 of the average annual precipitation falls in a 30-day period.

D. Design requirements. An applicant shall ensure that:
1. The land surface application rate does not exceed the lowest application rate as determined under R18-9-A312(D) minus no greater than 50 percent of the evapotranspiration that may occur during the month with the least evapotranspiration in any soil zone within the top 5 feet of soil;
2. The design incorporates sprinklers, bubbler heads, or other dispersal components that optimize wastewater loading rates and prevent ponding on the land surface;
3. The design specifies containment berms:
   a. Compacted to a minimum of 95 percent Proctor;
   b. Designed to contain the runoff of the 10-year, 24-hour storm event in addition to the daily design flow; and
   c. Designed to remain intact in the event of a more severe rainfall event; and
4. The design incorporates placement of signage on hose bibs, human ingress points to the surface disposal area, and at intervals around the perimeter of the surface disposal area to provide notification of use of treated wastewater and a warning against ingestion.

E. Installation requirements. An applicant shall ensure that installation of the wastewater dispersal components conforms to manufacturer's specifications that do not conflict with this Article and to the design documents specified in the Construction Authorization issued under R18-9-A301(D)(1)(c).

F. Operation and maintenance. In addition to the requirements specified in R18-9-A313(B), the permittee shall operate and maintain the surface disposal works to:
1. Prevent treated wastewater from coming into contact with drinking fountains, water coolers, or eating areas;
2. Contain all treated wastewater within the bermed area; and
3. Ensure that hose bibs discharging treated wastewater are secured to prevent use by the public.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (Supp. 05-3).

R18-9-E322. 4.22 General Permit: Subsurface Drip Irrigation Disposal, Less Than 3000 Gallons Per Day Design Flow

A. A 4.22 General Permit allows for the construction and use of a subsurface drip irrigation disposal works that receives high quality wastewater from an on-site wastewater treatment facility to dispense the wastewater to an irrigation system that is buried at a shallow depth in native soil. A 4.22 General Permit includes a pressure distribution system under R18-9-E304.
1. The subsurface drip irrigation disposal works is designed to disperse the treated wastewater into the soil under unsaturated conditions by pressure distribution and timed dosing. The applicant shall ensure that the pressure distribution system meets the requirements specified in R18-9-E304, and the Department shall consider whether the requirements of R18-9-E304 are met when processing the application under R18-9-A301(B).
2. A subsurface drip irrigation disposal works reduces the downward percolation of wastewater by enhancing evapotranspiration to the atmosphere.
3. An applicant may use a subsurface drip irrigation disposal works to overcome site constraints, such as high groundwater, shallow soils, slowly permeable soils, or highly permeable soils, or if water conservation is needed.
4. The subsurface drip irrigation disposal works includes pipe, pressurization and dosing components, controls, and appurtenances to reliably deliver treated wastewater to driplines using supply and return manifold lines.

B. Performance. An applicant shall ensure that:
1. Treated wastewater that meets the following criteria is delivered to a subsurface drip irrigation disposal works:
   a. Performance Category A.
      i. TSS of 20 milligrams per liter, 30-day arithmetic mean;
      ii. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
      iii. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
      iv. Total coliform level of one colony forming unit per 100 milliliters, 95th percentile; or
   b. Performance Category B.
      i. TSS of 30 milligrams per liter, 30-day arithmetic mean;
      ii. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
      iii. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
      iv. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile; and
2. The subsurface drip irrigation works is designed to meet the following performance criteria:
   a. Prevention of ponding on the land surface, and
   b. Incorporation of a fail-safe wastewater control or operational process to prevent inadequately treated wastewater from being discharged.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B), R18-9-A309(B), and R18-9-E304, the applicant shall submit:
1. Documentation of the pretreatment method proposed to achieve the wastewater criteria specified in subsection (B)(1), such as the type of pretreatment system and the manufacturer's warranty;
2. Initial filter and drip irrigation flushing settings;
3. Site evapotranspiration calculations if used to reduce the size of the disposal works; and

4. If supplemental irrigation water is introduced to the subsurface drip irrigation disposal works, an identification of the cross-connection controls, backflow controls, and supplemental water sources.

D. Design requirements. In addition to the applicable design requirements specified in R18-9-A312, an applicant shall ensure that:

1. The design requirements of R18-9-E304 are followed, except that:
   a. The requirement for quick disconnects in R18-9-E304(D)(1)(c) is not applicable, and
   b. The applicant may provide the reserve volume specified in R18-9-E304(D)(3)(a)(iv) in an oversized treatment tank or a supplemental storage tank;
2. Drip irrigation components and appurtenances are properly placed.
   a. Performance category A subsurface drip irrigation disposal works. The applicant shall ensure that:
      i. Driplines and emitters are placed to prevent ponding on the land surface, and
      ii. Cover material and placement depth follow manufacturer's requirements to prevent physical damage or ultraviolet degradation of components and appurtenances; or
   b. Performance category B subsurface drip irrigation disposal works. The applicant shall ensure that:
      i. Driplines and emitters are placed at least 6 inches below the surface of the native soil;
      ii. A cover of soil or engineered fill is placed on the surface of the native soil to achieve a total emitter burial depth of at least 12 inches;
      iii. Cover material and placement depth follow manufacturer's requirements to prevent physical damage or ultraviolet degradation of components and appurtenances; and
      iv. The drip irrigation disposal works is not used for irrigating food crops;
3. Wastewater is filtered upstream of the dripline emitters to remove particles 100 microns in size and larger;
4. A pressure regulator is provided to limit the pressure of wastewater in the drip irrigation disposal works;
5. Wastewater pipe meets the approved pressure rating in "Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Pipe, Schedules 40, 80, and 120, D1785-04a (2004)," or "Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe, Schedules 40 and 80, F441/F441M-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
6. The system design flushes the subsurface drip irrigation disposal works components with wastewater at a minimum velocity of 2 feet per second, unless the manufacturer's manual and warranty specify another flushing practice. The applicant shall ensure that piping and appurtenances allow the wastewater to be pumped in a line flushing mode of operation with discharge returned to the treatment system headworks;
7. Air vacuum release valves are installed to prevent water and soil drawback into the emitters;
8. Driplines.
   a. Driplines are placed from 12 to 24 inches apart unless other configurations are allowed by the manufacturer's specifications;
   b. Dripline installation and design requirements, including the allowable deflection, follow manufacturer's requirements;
   c. The maximum length of a single dripline follows manufacturer's specifications to provide even distribution;
   d. The dripline incorporates a herbicide to prevent root intrusion for at least 10 years;
   e. The dripline incorporates a bactericide to reduce bacterial slime buildup;
   f. Disinfection does not reduce the life of the bactericide or herbicide in the dripline;
   g. Any return flow from a drip irrigation disposal works to the treatment works does not impair the treatment performance; and
   h. When dripline installation is under subsection (E)(1)(b) or (c), backfill consists of the excavated soil or similar soil obtained from the site that is screened for removal of debris and rock larger than 1/2-inch;
9. Emitters.
   a. Emitters are spaced no more than 2 feet apart, and
   b. Emitters are designed to discharge from 0.5 to 1.5 gallons per hour;
10. A suitable backflow prevention system is installed if supplemental water for irrigation is introduced to the pumping system. The applicant shall not introduce supplemental water to the treatment works;
11. The drip irrigation disposal works is installed in soils classified as:
    a. Sandy clay loam, clay loam, silty clay loam, or finer with weak platy structure or in soil with a percolation rate from 45 to 120 minutes per inch;
    b. Sandy clay loam, clay loam, silty clay loam, or silt loam with massive structure or in soil with a percolation rate from 31 to 120 minutes per inch; and
    c. Other soils if an appropriate site-specific SAR is determined;
12. The minimum vertical separation distances are 1/2 of those specified in R18-9-A312(E)(2) if the design evapotranspiration rate during the wettest 30-day period of the year is 50 percent or more of design flow, except that the applicant shall not use a minimum vertical separation distance less than 1 foot;
13. In areas where freezing occurs, the irrigation system is protected as recommended by the manufacturer;
14. If drip irrigation components are used for a disposal works using a shaded trench constructed in native soil, the following requirements are met:
    a. The trench is between 12 and 24 inches wide;
    b. The trench bottom is between 12 and 30 inches below the original grade of native soil and level to within 2 inches per 100 feet of length;
    c. Two driplines are positioned in the bottom of the trench, not more than 4 inches from each sidewall;
    d. The trench with the positioned driplines is filled to a depth of 6 to 10 inches with decomposed granite or C-33 sand or a mixture of both, with mixture com-

position, if applicable, and placement specified on the construction drawing;

e. A minimum of 8 inches of backfill is placed over the decomposed granite or C-33 sand fill to an elevation of 1 to 3 inches above the native soil finished grade;

f. Observation ports are placed at both ends of each shaded trench to confirm the saturated wastewater level during operation; and

g. A separation distance of 24 inches or more is maintained between the nearest sidewall of an adjacent trench; and

15. The soil absorption area used for design of a drip irrigation works is calculated using:

a. For a design that uses the shaded trench method described in subsection (D)(14), the bottom and sidewall area of the shaded trench not more than 4 square feet per linear foot of trench; or

b. For all other designs, the number of emitters times an area for each emitter where the emitter area is a square centered on each emitter with the side dimension equal to the emitter separation distance selected by the designer in accordance with R18-9-E322(D)(9)(a), excluding all areas of overlap of adjacent squares.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A) and R18-9-E304, the applicant shall ensure that:

1. The dripline is installed by:
   a. A plow mechanism that cuts a furrow, dispenses pipe, and covers the dripline in one operation;
   b. A trencher that digs a trench 4 inches wide or less;
   c. Digging the trench with hand tools to minimize trench width and disruption to the native soil; or
   d. Without trenching, removing surface vegetation, scarifying the soil parallel with the contours of the land surface, placing the pipe grid, and covering with fill material, unless prohibited in subsection (D)(2)(b)(ii);
2. Drip irrigation pipe is stored to preserve the herbicidal and bactericidal characteristics of the pipe;
3. Pipe deflection conforms to the manufacturer's requirements and installation is completed without kinking to prevent flow restriction;
4. A shaded trench drip irrigation disposal works is installed as specified in the design documents used for the Construction Authorization; and
5. The pressure piping and electrical equipment are installed according to the Construction Authorization in R18-9-A301(D)(1)(c) and any local building codes.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B) and R18-9-E304, the permittee shall:

1. Test any fail-safe wastewater control or operational process quarterly to ensure proper operation to prevent discharge of inadequately treated wastewater, and
2. Maintain the herbicidal and bacteriological capability of the drip irrigation disposal works.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E323. 4.23 General Permit: 3000 to less than 24,000 Gallons Per Day Design Flow

A. A 4.23 General Permit allows for the construction and use of an on-site wastewater treatment facility with a design flow from 3000 gallons per day to less than 24,000 gallons per day or more than one on-site wastewater treatment facility on a property or on adjacent properties under common ownership with a combined design flow from 3000 to less than 24,000 gallons per day if all of the following apply:

1. Except as specified in subsection (A)(3), the treatment and disposal works consists of technologies or designs that would otherwise be covered under other general permits, but are either sized larger to accommodate increased flows or, will be located at a site that cumulatively accommodates flows between 3000 gallons per day to less than 24,000 gallons per day;
2. The on-site wastewater treatment facility complies with all applicable requirements of Articles 1, 2, and 3 of this Chapter;
3. The facility is not a system or a technology that would otherwise be covered by one of the following general permits available for a design flow of less than 3000 gallons per day:
   a. An aerobic system as described in R18-9-E315;
   b. A disinfection device described in R18-9-E320, except that an ultraviolet radiation disinfection device is allowed; or
   c. A seepage pit or pits described in R18-9-E302; and
4. The discharge of total nitrogen to groundwater is controlled.
   a. An applicant shall:
      i. Demonstrate that the nitrogen loading calculated over the property served by the on-site wastewater treatment facility, including streets, common areas, and other non-contributing areas, is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field; or
      ii. Justify a nitrogen loading that is equally protective of aquifer water quality as the nitrogen loading specified in subsection (A)(4)(a)(i) based on site-specific hydrogeological or other factors.
   b. For purposes of the demonstration in subsection (A)(4)(a)(i), the applicant may assume that 0.0333 pounds (15.0 grams) of total nitrogen per day per person is contributed to raw sewage and may determine the nitrogen concentration in the treated wastewater at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:

1. A performance assurance plan consisting of tasks, schedules, and estimated annual costs for operating, maintaining, and monitoring performance over a 20-year operational life;
2. Design documents and the performance assurance plan, signed, dated, and sealed by an Arizona-registered professional engineer;

3. Any documentation submitted under the alternative design procedure in R18-9-A312(G) that pertains to achievement of better performance levels than those specified in the general permit for the corresponding facility with a design flow of less than 3000 gallons per day, or for any other alternative design, construction, or operational change proposed by the applicant; and
4. A demonstration of total nitrogen discharge control specified in subsection (A)(4).

C. Design requirements. The applicant shall comply with the applicable requirements in R18-9-A312 and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

D. Installation requirements. The applicant shall comply with the applicable requirements in R18-9-A313(A) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

E. Operation and maintenance requirements. The applicant shall comply with the applicable requirements in R18-9-A313(B) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

F. Additional Discharge Authorization requirements. In addition to any other requirements, the applicant shall submit the following information before the Discharge Authorization is issued.
1. A signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department affirming that:
   a. The project was completed in compliance with the requirements of this Section and as described in the plans and specifications, or
   b. Any changes are reflected in as-built plans submitted with the Engineer's Certificate of Completion.
2. The name of the service provider or certified operator that is responsible for implementing the performance assurance plan.

G. Reporting requirement. The permittee shall provide the Department with the following information on the anniversary date of the Discharge Authorization:
1. A form signed by the certified operator or service provider that:
   a. Provides any data or documentation required by the performance assurance plan,
   b. Certifies compliance with the requirements of the performance assurance plan, and
   c. Describes any additions to the facility during the year that increased flows and certifies that the flow did not exceed 24,000 gallons per day during any day; and
2. Any applicable fee required by 18 A.A.C. 14.

H. Facility expansion. If an expansion of an on-site wastewater treatment facility or site operating under this Section involves the installation of a separate on-site wastewater treatment facility on the property with a design flow of less than 3000 gallons per day, the applicant shall submit the applicable Notice of Intent to Discharge and fee required under 18 A.A.C. 14 for the separate on-site wastewater treatment facility in order to add the facility to the existing site operating under this Section.
1. The applicant shall indicate in the Notice of Intent to Discharge the Department's file number and the issuance date of the Discharge Authorization previously issued by the Director under this Section for the property.
2. Upon satisfactory review, the Director shall reissue the Discharge Authorization for this Section, with the new issuance date and updated information reflecting the expansion.
3. If the expansion causes the accumulative design flow from on-site wastewater treatment facilities on the property to equal or exceed 24,000 gallons per day, the Director shall not reissue the Discharge Authorization, but shall require the applicant to submit an application for an individual permit addressing all proposed and operating facilities on the property.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

Table 1. Unit Design Flows

Wastewater Source (Add together all wastewater source line items applicable to the facility per applicable unit.)	**Applicable Unit**	**Sewage Design Flowper Applicable Unit, Gallons Per Day**
Airport		
For each passenger (average daily number), add	Passenger (average daily number)	4
For each employee, add	Employee	15
Auto Wash	Facility	Per manufacturer, if consistent with this Chapter
Bar/Lounge	Seat	30
Barber Shop	Chair	35
Beauty Parlor	Chair	100
Bowling Alley (snack bar only)	Lane	75
Camp		
Day camp, no cooking facilities	Camping unit	30
Campground, overnight, flush toilets	Camping unit	75
Campground, overnight, flush toilets and shower	Camping unit	150
Campground, luxury	Person	100-150
Camp, youth, summer, or seasonal	Person	50

Church Without kitchen With kitchen	 Person (maximum attendance) Person (maximum attendance)	 5 7
Country Club	Resident Member Nonresident Member	100 10
Dance Hall	Patron	5
Dental Office	Chair	500
Dog Kennel	Animal, maximum occupancy	15
Dwelling For determining design flow for sewage treatment facilities under R18-9-B202(A)(9)(a) and sewage collection systems under R18-9-E301(D) and R18-9-B301(K), excluding peaking factor.	Person	80
Dwelling For on-site wastewater treatment facilities per R18-9-E302 through R18-9-E323: Apartment Building 1 bedroom 2 bedroom 3 bedroom 4 bedroom Seasonal or Summer Dwelling (with recorded seasonal occupancy restriction) Single Family Dwellings (for both conventional and alternative systems) Other than Single Family Dwelling, the greater flow value based on: Bedroom count 1-2 bedrooms Each bedroom over 2 Fixture count	 Apartment Apartment Apartment Apartment Resident see R18-9-A314(4)(a) Bedroom Bedroom Fixture unit	 200 300 400 500 100 see R18-9-A314(4)(a) 300 150 25
Fire Station	Employee	45
Hospital All flows Kitchen waste only Laundry waste only	 Bed Bed Bed	 250 25 40
Hotel/motel (assuming outsourced linen laundry service) Without kitchen With kitchen	 Bed (2 person) Bed (2 person)	 50 60
Industrial facility Without showers With showers Cafeteria, add	 Employee Employee Employee	 25 35 5
Institutions Resident Nursing home Rest home	 Person Person Person	 75 125 125
Laundry Self service Commercial	 Wash cycle Washing machine	 50 Per manufacturer, if consistent with this Chapter
Office Building	Employee	20
Park (temporary use) Picnic, with showers, flush toilets Picnic, with flush toilets only Recreational vehicle, no water or sewer connections Recreational vehicle, with water and sewer connections Mobile home/Trailer	 Parking space Parking space Vehicle space Vehicle space Space	 40 20 75 100 250

Restaurant/Cafeteria For each employee, add With toilet, add Kitchen waste – full plated service, add Kitchen waste – disposable service, add Garbage disposal, add Cocktail lounge, add	 Employee Customer Meal Meal Meal Customer	 20 7 6 2 1 2
Restroom, public	Toilet	200
School Staff and office Elementary, add Middle and High, add with gym & showers, add with cafeteria, add Boarding, total flow	 Person Student Student Student Student Person	 20 15 20 5 3 100
Service Station with toilets	First bay Each additional bay	1000 500
Shopping Center, no food or laundry	Square foot of retail space	0.1
Store For each employee, add Public restroom, add	 Employee Square foot of retail space	 20 0.1
Swimming Pool, Public	Person	10
Theater Indoor Drive-in	 Seat Car space	 5 10

Note: Unit flow rates published in standard texts, literature sources, or relevant area or regional studies are considered by the Department, if appropriate to the project.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final rulemaking at 29 A.A.R. 1023 (May 12, 2023), effective June 19, 2023 (Supp. 23-2).

ARTICLE 4. NITROGEN MANAGEMENT GENERAL PERMITS

R18-9-401. Definitions

In addition to the definitions established in A.R.S. §§ 49-101 and 49-201 and A.A.C. R18-9-101, the following terms apply to this Article:

1. "Application of nitrogen fertilizer" means any use of a substance containing nitrogen for the commercial production of a crop or plant. The commercial production of a crop or plant includes commercial sod farms and nurseries.
2. "Contact stormwater" means stormwater that comes in contact with animals or animal wastes within a concentrated animal feeding operation.
3. "Crop or plant needs" means the amount of water and nitrogen required to meet the physiological demands of a crop or plant to achieve a defined yield.
4. "Crop or plant uptake" means the amount of water and nitrogen that can be physiologically absorbed by the roots and vegetative parts of a crop or plant following the application of water.
5. "Impoundment" means any structure, other than a tank or a sump, designed and maintained to contain liquids. A structure that stores or impounds only non-contact stormwater is not an impoundment under this Article.
6. "Liner" or "lining system" means any natural, amendment, or synthetic material used to reduce seepage of impounded liquids into a vadose zone or aquifer.
7. "NRCS guidelines" means the United States Department of Agriculture, Natural Resources Conservation Service, National Engineering Handbook, Part 651 Agricultural Waste Management Field Handbook, Chapter 10, 651.1080, Appendix 10D – Geotechnical, Design, and Construction Guideline (November 1997). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the United States Department of Agriculture, Natural Resources Conservation Service at ftp://ftp.wcc.nrcs.usda.gov/downloads/wastemgmt/AWMFH/awmfh-chap10-app10d.pdf.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-401 renumbered from R18-9-201 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-402. Nitrogen Management General Permits: Nitrogen Fertilizers

An owner or operator may apply a nitrogen fertilizer under this general permit without submitting a notice to the Director, if the owner or operator complies with the following best management practices:

1. Limit application of the fertilizer so that it meets projected crop or plant needs;

2. Time application of the fertilizer to coincide to maximum crop or plant uptake;
3. Apply the fertilizer by a method designed to deliver nitrogen to the area of maximum crop or plant uptake;
4. Manage and time application of irrigation water to minimize nitrogen loss by leaching and runoff; and
5. Use tillage practices that maximize water and nitrogen uptake by a crop or plant.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-402 renumbered from R18-9-202 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-403. Nitrogen Management General Permits: Concentrated Animal Feeding Operations

A. An owner or operator may discharge from a concentrated animal feeding operation without submitting a notice to the Director, if the owner or operator complies with the following best management practices:
1. Harvest, stockpile, and dispose of animal manure from a concentrated animal feeding operation to minimize discharge of any nitrogen pollutant by leaching and runoff;
2. Control and dispose of nitrogen-contaminated water resulting from an activity associated with a concentrated animal feeding operation, up to a 25-year, 24-hour storm event equivalent, to minimize the discharge of any nitrogen pollutant;
3. Following the requirements in subsection (B), construct and maintain a lining for an impoundment, used to contain process wastewater or contact stormwater from a concentrated animal feeding operation to minimize the discharge of any nitrogen pollutant; and
4. Close a facility in a manner that will minimize the discharge of any nitrogen pollutant. If a liner was used in an impoundment:
   a. Remove liquids and any solid residue on the liner and dispose appropriately;
   b. Inspect any synthetic liner for evidence of holes, tears, or defective seams that could have leaked. If evidence of leakage is discovered:
      i. Remove the liner in the area of suspected leakage,
      ii. Sample potentially impacted soil, and
      iii. Properly dispose of impacted soil or restore to background nitrogen levels;
   c. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
   d. Remove and dispose of the liner elsewhere if the impoundment is bermed;
   e. Grade the facility to prevent the impoundment of water; and
   f. Notify the Department within 60 days following closure.

B. Lining requirements for concentrated animal feeding operation impoundments.
1. New impoundments. The owner or operator shall:
   a. Follow the NRCS guidelines for any newly constructed impoundment or an impoundment first used after November 12, 2005, and
   b. Use a coefficient of permeability of 1 X 10^{-7} centimeters per second or less as acceptable liner performance. The owner or operator may include up to 1 order of magnitude reduction in permeability from manure sealing in impoundments that hold wastes having manure as a significant component.
2. Impoundments already in use.
   a. The owner or operator shall maintain the existing seal for any impoundment first used before November 12, 2005.
   b. If any of the following conditions exist at a concentrated animal feeding operation, the Director shall send a notice requiring the owner or operator to reassess the performance of the lining system:
      i. The concentrated animal feeding operation is located within a Nitrogen Management Area designated under R18-9-A317; or
      ii. Existing conditions or trends in nitrogen loading to an aquifer will cause or contribute to an exceedance of an Aquifer Water Quality Standard for a nitrogen pollutant at the point of compliance determined under A.R.S. § 49-244, based on the following information:
         (1) Existing contamination of groundwater by nitrogen species;
         (2) Existing and potential impact to groundwater by sources of nitrogen other than the concentrated animal feeding operation;
         (3) Characteristics of the soil surface, vadose zone, and aquifer;
         (4) Depth to groundwater;
         (5) The estimated operational life of the impoundment;
         (6) Location and characteristics of existing and potential drinking water supplies;
         (7) Construction material and design of existing impoundment structure; and
         (8) Any other information relevant to determining the severity of actual or potential nitrogen impact on the aquifer.
   c. The owner or operator shall, within 90 days of the Director's notice, submit either:
      i. A report to the Department demonstrating consistency with NRCS guidelines and the acceptable liner performance criteria established in subsection (B)(1)(b); or
      ii. Plans and a schedule to upgrade the liner for the impoundment to meet the NRCS guidelines and the acceptable liner performance criteria in subsection (B)(1)(b). The Director may provide additional time for the submittal of the plans and a schedule for upgrade, if the owner or operator demonstrates that technical or financial assistance to develop the plans is needed.
   d. Preliminary decision.
      i. Within 90 days from the date of receipt, the Director shall review the report or the plans submitted under subsection (B)(2)(c) and provide to the owner or operator a preliminary decision on the submittal.
      ii. The owner or operator may, within 30 days of the preliminary decision, submit written comments and supporting information to the Director on the preliminary decision.
      iii. The Director shall evaluate any comments on the preliminary decision and supporting infor-

mation and, within 90 days of receipt of the comments and information, make a final decision.

e. Final decision.

i. If the Director determines that the owner or operator has demonstrated that the lining system meets NRCS guidelines and the acceptable performance criteria in subsection (B)(1)(b), no additional action is necessary.

ii. If the Director approves the plans and schedules under subsection (B)(2)(c)(ii), the owner or operator shall implement the plans within the time-frame specified in the approved schedule.

iii. If the Director determines that the owner or operator failed to demonstrate that the lining system meets NRCS guidelines and the acceptable performance criteria in subsection (B)(1)(b) or that the schedule to upgrade the lining is not acceptable, the owner or operator shall upgrade the lining system within a time-frame specified by the Director.

iv. The owner or operator may appeal the Director's decision under A.R.S. Title 41, Chapter 6, Article 10.

3. Notification requirement. The owner or operator of any lined impoundment shall either:

a. Notify the Department of the type of liner that was used to line each impoundment by February 19 of each year following either:

i. The first use of an impoundment not used before November 12, 2005; or

ii. Completion of a liner upgrade required under this Section for an impoundment used before November 12, 2005; or

b. Include the information required in subsections (B)(3)(a)(i) and (ii) in the next annual report submitted for the AZPDES Concentrated Animal Feeding Operation General Permit, issued under 18 A.A.C. 9, Article 9, Part C.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-403 renumbered from R18-9-203 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-404. Revocation of Coverage under a Nitrogen Management General Permit

A. The Director may revoke coverage under a nitrogen management general permit and require the permittee to obtain an individual permit under 18 A.A.C. 9, Article 2, if the Director determines that the permittee failed to comply with the best management practices under R18-9-403.

B. Notification.

1. If coverage under the nitrogen management general permit is revoked under subsection (A), the Director shall notify the permittee by certified mail of the decision according to the notification and hearing procedures in A.R.S. Title 41, Chapter 6, Article 10. The notification shall include:

a. A brief statement of the reason for the decision,

b. The effective revocation date of the general permit coverage, and

c. A statement of whether the discharge shall cease immediately or whether the discharge may continue until the individual permit is issued, and

2. If the Director requires a person to obtain an individual permit, the notification shall include:

a. An individual permit application form, and

b. A deadline between 90 and 180 days after receipt of the notification for filing the application.

C. When the Director issues an individual permit to an owner or operator of a facility covered under a nitrogen management general permit, the coverage under the nitrogen management general permit is superseded by the individual permit allowing the discharge.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 5. GRAZING BEST MANAGEMENT PRACTICES

R18-9-501. Surface Water Quality General Grazing Permit

A. A person who engages in livestock grazing and applies any of the following voluntary best management practices to maintain soil cover and prevent accelerated erosion, nitrogen discharges, and bacterial impacts to surface water greater than the natural background amount is issued a Surface Water Quality General Grazing Permit:

1. Manages the location, timing, and intensity of grazing activities to help achieve Surface Water Quality Standards;
2. Installs rangeland improvements, such as fences, water developments, trails, and corrals to help achieve Surface Water Quality Standards;
3. Implements land treatments to help achieve Surface Water Quality Standards;
4. Implements supplemental feeding, salting, and parasite control measures to help achieve Surface Water Quality Standards.

B. The person to whom a permit is issued shall make the following information available to the Department, at the person's place of business, within 10 business days of Department notice:

1. The name and address of the person grazing livestock, and
2. The best management practices selected for livestock grazing.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1768, effective April 5, 2001 (Supp. 01-2).

ARTICLE 6. UNDERGROUND INJECTION CONTROL

R18-9-601. Repealed

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-602. Repealed

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section

repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-603. Repealed

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART A. GENERAL PROVISIONS

R18-9-A601. Definitions

The following terms apply to this Article:

1. "Abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.
2. "Administrator" means the Administrator of the United States Environmental Protection Agency (EPA), or an authorized representative.
3. "Application" means the ADEQ prescribed method, such as a form, for applying for a permit, including any additions, revisions or modifications thereof.
4. "Appropriate Act and regulations" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes.
5. "Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.
6. "Area of review" means the area surrounding an injection well described according to the criteria set forth in R18-9-B612 or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 of a mile or a number calculated according to the criteria set forth in R18-9-B612.
7. "Arizona UIC Memorandum of Agreement" means the agreement between the Administrator and the Director that coordinates EPA and ADEQ activities, responsibilities, and programs under the Arizona UIC Program.
8. "Arizona UIC Program" means the UIC program administered by the Director and approved by EPA according to 42 U.S.C. § 300h-1.
9. "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling to support the sides of the hole and prevent the walls from caving; to prevent loss of drilling mud into porous ground; or to prevent water, gas, or other fluid from entering or leaving the hole.
10. "Catastrophic collapse" means the sudden and utter failure of overlaying strata caused by removal of underlying materials.
11. "Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.
12. "Cesspool" means a drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.
13. "Confining zone" means a geological formation, group of formations, or parts of a formation that is capable of limiting fluid movement above an injection zone.
14. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
15. "Conventional mine" means an open pit or underground excavation for the production of minerals.
16. "Director" means the Director of the Arizona Department of Environmental Quality or the Director's designee.
17. "Disposal well" means a well that is used for the disposal of waste into a subsurface stratum.
18. "Draft permit" means a document prepared under R18-9-C618 indicating the Director's tentative decision to issue, renew, modify, revoke and reissue, or terminate a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in R18-9-C631 are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, of a permit is not a draft permit, except as discussed in R18-9-C631(B).
19. "Drilling mud" means a heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.
20. "Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.
21. "Effective date of the Arizona UIC Program" means the date that the Arizona UIC Program is approved or established by the Administrator.
22. "Emergency permit" means a UIC permit issued in accordance with R18-9-C625.
23. "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.
24. "Exempted aquifer" means an aquifer or its portion that meets the criteria in the definition of underground source of drinking water (USDW) but has been exempted according to the procedures in R18-9-A605.
25. "Existing injection well" means an injection well other than a new injection well.
26. "Experimental technology" means a technology which has not been proven feasible under the conditions in which it is being tested.
27. "Facility" or "activity" means any UIC injection well subject to regulation under this Article.
28. "Fault" means a surface or zone of rock fracture along which there has been displacement.
29. "Final permit decision" means the Director's decision to issue, renew, modify, revoke and reissue, deny or terminate a permit as described in R18-9-C627.
30. "Flow rate" means the volume per time unit given the flow of gases or other fluid substance which emerges from an orifice, pump, turbine, or passes along a conduit or channel.
31. "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.
32. "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.
33. "Formation fluid" means fluid present in a formation under natural conditions as opposed to introduced fluids, such as drilling mud.
34. "Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in A.A.C. Title 18, Chapter 8 (Hazardous Waste Management).

35. "Geologic sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.
36. "Ground water" means water below the land surface in a zone of saturation.
37. "Hazardous waste" means a hazardous waste as defined in A.R.S. § 49-921.
38. "Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.
39. "Indian lands" means Indian country as defined in 18 U.S.C. 1151.
40. "Indian Tribe" means any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.
41. "Injection well" means a well into which fluids are being injected.
42. "Injection zone" means a geological formation group of formations, or part of a formation receiving fluids through a well.
43. "Lithology" means the description of rocks on the basis of their physical and chemical characteristics.
44. "Major facility" means any UIC facility or activity classified as such by the Administrator in conjunction with the Director.
45. "New injection wells" means an injection well which began injection after the effective date of the Arizona UIC Program.
46. "Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the Arizona UIC program.
47. "Packer" means a device lowered into a well to produce a fluid-tight seal.
48. "Permit" means an authorization issued by the Director pursuant to this Article. 'Permit' includes an area permit under R18-9-C624 and an emergency permit under R18-9-C625. 'Permit' does not include UIC authorization by rule or any permit which has not yet been subject to a final permit decision, such as a 'draft permit.'"
49. "Person" means an individual, employee, officer, managing body, trust, firm, joint-stock company, consortium, public or private corporation, Partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body, Tribal agency, or other entity.
50. "Plugging" means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.
51. "Plugging record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.
52. "Pressure" means the total load or force per unit area acting on a surface.
53. "Project" means a group of wells in a single operation.
54. "Radioactive Waste" means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR part 20, appendix B, table II column 2.
55. "RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, Pub. L. 96-510, 42 U.S.C. 6901 et seq.).
56. "Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.
57. "Schedule of compliance" means a schedule of remedial measures included in a permit including an enforceable sequence of interim requirements leading to compliance with this Article.
58. "SDWA" or "Safe Drinking Water Act" means the Safe Drinking Water Act (Pub. L. 93-523, as amended; 42 U.S.C. 300f et seq.).
59. "Septic system" means a well that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.
60. "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.
61. "Stratum" means a single sedimentary bed or layer, or series of layers that consists of generally the same kind of rock material regardless of thickness. The plural of stratum is strata.
62. "Subsidence" means the lowering of the natural land surface in response to earth movements; lowering fluid pressures; removal of underlying support material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting; oxidation of organic matter in soils; or added load on the land surface.
63. "Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.
64. "Surface casing" means the first string of well casing to be installed in the well.
65. "Total dissolved solids" or "TDS" means the total dissolved (filterable) solids as determined by use of the method specified in A.A.C. R9-14-610 or R9-14-611.
66. "Transferee" means the owner or operator receiving ownership and/or operational control of the well.
67. "Transferor" means the owner or operator transferring ownership and/or operational control of the well.
68. "Underground injection" means a well injection; which excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

69. "Underground Injection Control" or "UIC" means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including the Arizona UIC Program.
70. "USDW," "USDWs," or "Underground source of drinking water" means an aquifer or aquifers or its portion that:
    a. Supplies any public water system; or
    b. Contains a sufficient quantity of ground water to supply a public water system; and
        i. Currently supplies drinking water for human consumption; or
        ii. Contains fewer than 10,000 mg/l total dissolved solids; and
    c. Is not an exempted aquifer.
71. "Well" means a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system.
72. "Well injection" means the subsurface emplacement of fluids through a well.
73. "Well plug" means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.
74. "Well monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.
75. "Well stimulation" means several processes used to clean the well bore, enlarge channels and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation and includes surging, jetting, blasting, acidizing, or hydraulic fracturing.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A602. Applicability

A. This Article becomes effective upon the date of the Environmental Protection Agency's approval of the Arizona UIC Program. Upon that date, the Department shall, under A.R.S. Title 49, Chapter 2, Articles 3.3, 4 and Article 6 of this Chapter, administer and enforce any permit which has been previously authorized or issued in this state under the Federal UIC program.

B. This Article and 40 CFR Part 145, Subpart C provide the minimum requirements of the State of Arizona's Underground Injection Control (UIC) program under A.R.S. Title 49, Chapter 2, Article 3.3 (Underground Injection Control Permit Program) and pursuant to Part C of the Safe Drinking Water Act (SDWA) (Pub. L. 93-523, as amended; 42 U.S.C. 300h et seq.).

C. Underground injection is prohibited in lands under the jurisdiction of the State of Arizona unless:
1. Authorized by permit or rule under this Article in accordance with 42 U.S.C. 300h et seq., or
2. Authorized by OGCC pursuant to regulations approved by EPA.

D. Any injection activity authorized by permit or rule under this Article shall prohibit the movement of fluid containing any contaminant into underground sources of drinking water (USDWs), where the presence of that contaminant may cause a violation of this Article or may adversely affect the health of persons.

E. Injection wells regulated under this Article are categorized into six classes based on characteristics of the injection well activity. Owners or operators of injection wells regulated under all six classes must be authorized by permit (all classes) or rule (Class V only if no permit is required) pursuant to the requirements of this Article.

F. Specific inclusions. The following wells are included among those types of injection activities which are covered by the UIC regulations in this Article. (This list is not intended to be exclusive but is for clarification only.)
1. Any injection well located on a drilling platform inside the State's territorial waters.
2. Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.
3. Any well used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste. This includes the disposal of hazardous waste into what would otherwise be septic systems and cesspools, regardless of their capacity.
4. Any septic tank, cesspool, or other well used by a multiple dwelling, or community, or other large system for the injection of wastes.

G. Specific exclusions. The following are not covered by these regulations:
1. Septic systems or similar waste disposal systems if such systems:
    a. Are used solely for the disposal of sanitary waste, and
    b. Have a design capacity of less than 3,000 gallons per day.
2. Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.
3. Any dug hole, drilled hole, or bored shaft which is not used for the subsurface emplacement of fluids.
4. Injection wells authorized by OGCC pursuant to regulations approved by EPA, in accordance with 42 U.S.C. 300h et seq.

H. Safe Drinking Water Act exemptions. The following activities are exempt from the Arizona UIC Program:
1. The underground injection of natural gas for purposes of storage.
2. The underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.

I. The Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water, to assist in carrying out the Director's duty pursuant to this Article. Any aquifer meeting the criteria under R18-9-A601(70) shall be protected as an USDW, even if it has not been explicitly identified pursuant to this Section.

J. The Director may also designate aquifers or portions of aquifers as exempt from the program using the criteria in R18-9-A605 and R18-9-A606, subject to EPA approval. Any aquifer or portion thereof within the State that has previously been designated exempt by EPA pursuant to 40 CFR § 144.7 shall be part of the Arizona UIC program upon the effective date of the Arizona UIC program.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A603. Confidentiality of Information

A. In accordance with A.R.S. § 49-205, any information submitted to the Director pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in A.R.S. § 49-205 (Availability of information to the public).

B. Claims of confidentiality for the following information will be denied:
1. The name and address of any permit applicant or permittee.
2. Information which deals with the existence, absence, or level of contaminants in drinking water.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A604. Classification of Wells

A. Class I wells are:
1. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.
2. Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.
3. Radioactive waste disposal wells which inject fluids beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.

B. Class II wells are injection wells that inject fluids:
1. That are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.
2. For enhanced recovery of oil or natural gas.
3. For storage of hydrocarbons which are liquid at standard temperatures and pressure.

C. Class III wells are injection wells used for the extraction of minerals, including:
1. Sulfur mining by the Frasch process.
2. In-situ production of uranium or other metals from those ore bodies not conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.
3. Solution mining of salts or potash.

D. Class IV wells are injection wells that either:
1. Inject hazardous or radioactive wastes into or above a formation with an USDW located within one-quarter mile of the well bore, or
2. Inject hazardous wastes and cannot be classified under subsection (A)(1), or (D)(1) (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been previously exempted or exempted pursuant to R18-9-A606).

E. Class V wells are injection wells not included in Class I, II, III, IV, or VI.
1. Class V wells include but are not limited to:
   a. Air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump.
   b. Cesspools including multiple dwelling, community or regional cesspools, or other devices that receive wastes which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.
   c. Cooling water return flow wells used to inject water previously used for cooling.
   d. Drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation.
   e. Dry wells used for the injection of wastes into a subsurface formation.
   f. Recharge wells used to replenish the water in an aquifer.
   g. Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water.
   h. Sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines, except for radioactive wastes.
   i. Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank.
   j. Subsidence control wells, other than those used in oil or natural gas production, that inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with freshwater overdraft.
   k. Injection wells associated with the recovery of geothermal energy for heating, aquaculture, and production of electric power.
   l. Wells used for solution mining of conventional mines such as stopes leaching.
   m. Wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts.
   n. Injection wells used in experimental technologies.
   o. Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.
2. Class V wells do not include single-family residential septic system wells or non-residential septic system wells used solely for the disposal of sanitary waste with a design capacity of less than 3,000 gallons per day.

F. Class VI wells are:
1. Not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW;
2. Wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at R18-9-J670; or

3. Wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to R18-9-A605 of this Chapter and R18-9-A604.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A605. Identification of Underground Sources of Drinking Water and Exempt Aquifers

A. The Director may identify, by narrative description, illustration, maps, or other means, and shall protect as USDWs, all aquifers and parts of aquifers that meet the definition of USDW in R18-9-A601(70) except to the extent there is an applicable aquifer exemption under subsection (B) or an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration under subsection (D). Other than EPA-approved aquifer exemption expansions that meet the criteria set forth in R18-9-A606(4), new aquifer exemptions shall not be issued for Class VI injection wells. Even if an aquifer has not been specifically identified by the Director, it is an USDW if it meets the definition in R18-9-A601(70).

B. Aquifer exemptions procedure:

1. The Director may identify, by narrative description, illustrations, maps, or other means, and describe in geographic and/or geometric terms, such as vertical and lateral limits and gradient, that are clear and definite, all aquifers or parts thereof that the Director proposes to designate as exempted aquifers using the criteria in R18-9-A606.
2. No designation of an exempted aquifer submitted as part of Arizona's UIC program shall be final until approved by EPA as part of the Arizona UIC Program. No designation of an expansion to the areal extent of a Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration shall be final until approved by the EPA as a substantial revision of the Arizona UIC Program in accordance with 40 CFR 145.32.
3. Subsequent to the program approval or promulgation, the Director may, after notice and opportunity for public hearing, identify additional exempted aquifers.
4. Exemption of aquifers identified:
   a. Under R18-9-A606(2) shall be treated as a program revision under 40 CFR 145.32;
   b. Under R18-9-A606(3) shall become final if the Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days.

C. Additional aquifer exemption requirements:

1. For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer exemption under R18-9-A606(2)(a) to furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone shall be considered by the Director in addition to the information required by R18-9-C616(D).
2. For Class II wells, a demonstration of commercial producibility shall be made as follows:
   a. For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field.
   b. For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.

D. Owners or operators of Class II enhanced oil recovery or enhanced gas recovery wells may request that the Director approve an expansion to the areal extent of an aquifer exemption already in place for a Class II enhanced oil recovery or enhanced gas recovery well for the exclusive purpose of Class VI injection for geologic sequestration. Such requests must be treated as a substantial program revision to the Arizona UIC program under 40 CFR 145.32 and will not be final until approved by EPA.

1. The owner or operator of a Class II enhanced oil recovery or enhanced gas recovery well that requests an expansion of the areal extent of an existing aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration must define, by narrative description, illustrations, maps or other means, and describe in geographic and/or geometric terms, such as vertical and lateral limits and gradient, that are clear and definite, all aquifers or parts thereof that are requested to be designated as exempted using the criteria in R18-9-A606.
2. In evaluating a request to expand the areal extent of an aquifer exemption of a Class II enhanced oil recovery or enhanced gas recovery well for the purpose of Class VI injection, the Director must determine that the request meets the criteria for exemptions in R18-9-A606. In making the determination, the Director shall consider:
   a. Current and potential future use of the USDWs to be exempted as drinking water resources;
   b. The predicted extent of the injected carbon dioxide plume, and any mobilized fluids that may result in degradation of water quality, over the lifetime of the geologic sequestration project, as informed by computational modeling performed pursuant to R18-9-J659(C)(1), in order to ensure that the proposed injection operation will not at any time endanger USDWs including non-exempted portions of the injection formation;
   c. Whether the areal extent of the expanded aquifer exemption is of sufficient size to account for any possible revisions to the computational model during reevaluation of the area of review, pursuant to R18-9-J659(E); and
   d. Any information submitted to support a waiver request made by the owner or operator under R18-9-J670 if appropriate.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A606. Criteria for Exempted Aquifers
An aquifer or a portion thereof which meets the criteria for an "USDW" in R18-9-A601(70) may be determined under R18-9-A605 to be an "exempted aquifer" for Class I-V wells if it meets the criteria in subsections (A)(1) through (A)(3). Class VI wells must meet the criteria under subsection (A)(4).

1. It does not currently serve as a source of drinking water; and
2. It cannot now and will not in the future serve as a source of drinking water because:
   a. It is mineral hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or Class III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible;
   b. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technically impractical;
   c. It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or
   d. It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or
3. The total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.
4. The areal extent of an aquifer exemption for a Class II enhanced oil recovery or enhanced gas recovery well may be expanded for the exclusive purpose of Class VI injection for geologic sequestration under R18-9-A605(D) if it meets the following criteria:
   a. It does not currently serve as a source of drinking water; and
   b. The total dissolved solids content of the ground water is more than 3,000 mg/l and less than 10,000 mg/l; and
   c. It is not reasonably expected to supply a public water system.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART B. GENERAL PROGRAM REQUIREMENTS

R18-9-B607. Prohibition of Unauthorized Injection
Any underground injection, except into a well authorized by rule or authorized by permit under the Arizona UIC program, is prohibited. The construction of any well required to have a permit is prohibited until the permit has been issued.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B608. Prohibition of Movement of Fluid into Underground Sources of Drinking Water

A. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under this Article, as shown in Table 1, or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this subsection are met.

B. For Class I, II, III, and VI wells, if any water quality monitoring of an USDW indicates the movement of any contaminant into the USDW, except as authorized under this Article, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with R18-9-C632 or the permit may be terminated under R18-9-C634 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of Class V wells authorized by rule see R18-9-I650 through R18-9-I655 in Part I of this Article.

C. For Class V wells, if at any time the Director learns that a Class V well may cause a violation of primary drinking water regulations under this Article, they shall:

1. Require the injector to obtain an individual permit;
2. Order the injector to take such actions (including, where required, closure of the injection well) as may be necessary to prevent the violation; or
3. Take enforcement action.

D. Whenever the Director learns that a Class V well may be otherwise adversely affecting the health of persons, they may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under subsection (C).

E. Notwithstanding any other provision of this Section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or USDW may present an imminent and substantial endangerment to the health of persons.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B609. Prohibition of Hazardous Waste Injection and Class IV Wells

A. Hazardous Waste Injection.

1. The following are prohibited, except as provided in subsection (B)(3):
   a. The construction of any well for the purpose of hazardous waste injection.
   b. The operation of any well for the purpose of hazardous waste injection.
2. The owner or operator of a well for the purpose of hazardous waste injection shall close the well in accordance with this subsection.
3. The owner or operator of a well for the purpose of hazardous waste injection shall comply with the following requirements regarding closure of the well.
   a. Prior to abandoning any well for the purpose of hazardous waste injection, the owner or operator shall plug or otherwise close the well in a manner acceptable to the Director.
   b. The owner or operator of a well for the purpose of hazardous waste injection must notify the Director

of intent to abandon the well at least 30 days prior to abandonment.

B. Class IV.

1. The following are prohibited, except as provided in subsection (B)(3):
   a. The construction of any Class IV well.
   b. The operation or maintenance of any Class IV well.
2. The owner or operator of a Class IV well shall comply with the requirements of R18-9-H649 regarding closure of Class IV wells.
3. Wells used to inject contaminated groundwater that has been treated and is being reinjected into the same formation that it was drawn are not prohibited by this Section if such injection is approved by the Administrator or the Director pursuant to subsections (B)(3)(a), (b) or (c):
   a. Provisions for cleanup of releases under CERCLA, or
   b. The requirements and provisions under RCRA, or
   c. The requirements and provisions under other applicable state laws for corrective and remedial action.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B610. Waiver of Requirement by Director

A. When injection does not occur into, through, or above an USDW, the Director may authorize a well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required under this Article or R18-9-D636 to the extent that reduction in requirements will not result in an increased risk of movement of fluids into an USDW.

B. When injection occurs through or above an USDW, but the radius of endangering influence when computed under R18-9-B612(A) is smaller or equal to the radius of the well, the Director may authorize a well or project with less stringent requirements for operation, monitoring, and reporting than required under R18-9-D636 to the extent that a reduction in requirements will not result in an increased risk of movement of fluids into an USDW.

C. When reducing requirements under this Section, the Director shall prepare a fact sheet under R18-9-C619 explaining the reasons for the action.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B611. Records

The Director may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with this Article and Part C of the SDWA or its implementing regulations.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B612. Area of Review

A. The area of review for each injection well or each field, project or area of the State shall be determined according to this Section. The Director may solicit input from the owners or operators of injection wells within the State as to which method is most appropriate for each geographic area or field.

B. Where the area of review is determined according to the zone of endangering influence:

1. The zone of endangering influence shall be:
   a. In the case of application or applications for well permit or permits under R18-9-C616 that area the radius of which is the lateral distance in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an USDW; or
   b. In the case of an application for an area permit under R18-9-C624, the project area plus a circumscribing area the width of which is the lateral distance from the perimeter of the project area, in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an USDW.
2. Computation of the zone of endangering influence may be based upon the parameters listed in the following equation and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified Theis equation illustrates one form which the mathematical model may take.
   a.

$$r = \left(\frac{2.25KHt}{S10^{X}}\right)^{1/2}$$

where:

$$X = \frac{4\pi KH\left(h_w - h_{bo} \times S_p G_b\right)}{2.3Q}$$

r = Radius of endangering influence from injection well (length)
K = Hydraulic conductivity of the injection zone (length/time)
H = Thickness of the injection zone (length)
t = Time of injection (time)
S = Storage coefficient (dimensionless)
Q = Injection rate (volume/time)
h_{bo} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost USDW
h_w = Hydrostatic head of USDW (length) measured from the base of the lowest USDW
$S_p G_b$ = Specific gravity of fluid in the injection zone (dimensionless)
π = 3.142 (dimensionless)

   b. The equation in subsection (B)(2)(a) is based on the following assumptions:
      1. The injection zone is homogeneous and isotropic;
      2. The injection zone has infinite area extent;
      3. The injection well penetrates the entire thickness of the injection zone;
      4. The well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and
      5. The emplacement of fluid into the injection zone creates instantaneous increase in pressure.

C. Where Fixed Radius is used, the following shall apply:

1. In the case of application of applications for well permit or permits under R18-9-C616 a fixed radius around the well of not less than one-quarter mile may be used.
2. In the case of an application for an area permit under R18-9-C624, a fixed radius width of not less than one-quarter mile for circumscribing area may be used.
3. In determining the fixed radius, the following factors shall be taken into consideration: Chemistry of injected and formation fluids; hydrogeology; population and ground-water use and dependence; and historical practices in the area.

D. If the area of review is determined by a mathematical model according to subsection (B), the permissible radius is the result of such calculation even if it is less than one-fourth mile.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B613. Mechanical Integrity

A. An injection well has mechanical integrity if:
1. There is no significant leak in the casing, tubing or packer; and
2. There is no significant fluid movement into an USDW through vertical channels adjacent to the injection well bore.

B. One of the following methods must be used to evaluate the absence of significant leaks under subsection (A)(1):
1. Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the Director, while maintaining an annulus pressure different from atmospheric pressure measured at the surface;
2. Pressure test with liquid or gas; or
3. Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate for the following Class II enhanced recovery wells:
   a. Existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further that one pressure test shall be performed at a time when the well is shut down and if the running of such a test will not cause further loss of significant amounts of oil or gas; or
   b. Existing wells constructed without a long string casing, but with surface casing which terminates at the base of fresh water provided that local geological and hydrological features allow such construction and provided further that the annular space shall be visually inspected. For these wells, the Director shall prescribe a monitoring program which will verify the absence of significant fluid movement from the injection zone into an USDW.

C. One of the following methods must be used to determine the absence of significant fluid movement under subsection (A)(2):
1. The results of a temperature or noise log;
2. For Class II only, cementing records demonstrating the presence of adequate cement to prevent such migration;
3. For Class III wells where the nature of the casing precludes the use of the logging techniques prescribed at subsection (C)(1), cementing records demonstrating the presence of adequate cement to prevent such migration; or
4. For Class III wells where the Director elects to rely on cementing records to demonstrate the absence of significant fluid movement, the monitoring program prescribed by R18-9-G647(B) shall be designed to verify the absence of significant fluid movement.

D. The Director may allow the use of a test to demonstrate mechanical integrity other than those listed in subsections (B) and (C)(2) with the written approval of the Administrator.

E. In conducting and evaluating the tests enumerated in this Section or others to be allowed by the Director, the owner or operator and the Director shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, they shall include a description of the test or tests and the method or methods used. In making the evaluation, the Director shall review monitoring and other test data submitted since the previous evaluation.

F. The Director may require additional or alternative tests if the results presented by the owner or operator under subsection (E) are not satisfactory to the Director to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B614. Plugging and Abandoning Class I, II, III, IV, and V Wells

A. Requirements for Class I, II and III wells.
1. Prior to abandoning Class I, II and III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between USDWs. The Director may allow Class III wells to use other plugging materials if the Director is satisfied that such materials will prevent movement of fluids into or between USDWs.
2. Placement of the cement plugs shall be accomplished by one of the following:
   a. The Balance method;
   b. The Dump Bailer method;
   c. The Two-Plug method; or
   d. An alternative method approved by the Director, which will reliably provide a comparable level of protection to USDWs.
3. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug or plugs.
4. The plugging and abandonment plan required under R18-9-D635(15) and R18-9-D636(A)(5) shall, in the case of a Class III project which underlies or is in an aquifer which has been exempted under R18-9-A606, also demonstrate adequate protection of USDWs. The Director shall prescribe aquifer cleanup and monitoring where it is deemed necessary and feasible to insure adequate protection of USDWs.

B. Requirements for Class IV wells. Prior to abandoning a Class IV well, the owner or operator shall close the well in accordance with R18-9-H649.

C. Requirements for Class V wells.

1. Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an USDW, if the presence of that contaminant may cause a violation of any primary drinking water regulation under Table 1 of this Article or may otherwise adversely affect the health of persons.
2. The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B615. Transitioning from Class II to Class VI Injection Well

A. Owners and operators that are injecting carbon dioxide for the primary purpose of long-term storage into an oil and gas reservoir must apply for and obtain a Class VI geologic sequestration permit when there is an increased risk to the USDWs compared to Class II operations. In determining if there is an increased risk to USDWs, the owner or operator must consider the factors specified in subsection (B).

B. The Director shall determine when there is an increased risk to USDWs compared to Class II operations and a Class VI permit is required. In order to make this determination the Director shall consider the following:
1. Increase in reservoir pressure within the injection zone or zones;
2. Increase in carbon dioxide injection rates;
3. Decrease in reservoir production rates;
4. Distance between the injection zone or zones and USDWs;
5. Suitability of the Class II area of review delineation;
6. Quality of abandoned well plugs within the area of review;
7. The owner's or operator's plan for recovery of carbon dioxide at the cessation of injection;
8. The source and properties of injected carbon dioxide; and
9. Any additional site-specific factors as determined by the Director.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

R18-9-C616. Individual Permits; Application for Individual Permits

A. Unless an underground injection well is authorized by rule under R18-9-I650, all injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit. Authorization by rule for a well or project that has submitted a permit application terminates for the well or project upon the effective date of the permit. Procedures for applications, issuance, and administration of emergency permits are found exclusively under R18-9-C625.

B. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Director in accordance with the Arizona UIC program as follows:
1. For existing wells, as expeditiously as practicable.
2. For new injection wells, except new wells authorized by an existing area permit under R18-9-C624(C), at a reasonable time before construction is expected to begin.

D. All applicants for Class I, II, III, and V permits shall provide the following information to the Director, using the application form provided by the Director. Applicants for Class VI permits shall follow the criteria provided in R18-9-J657.
1. Activities conducted by the applicant which require a permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four NAICS codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity;
5. A listing of all state and federal environmental permits or construction approvals received or applied for and other relevant environmental permits;
6. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary;
7. A brief description of the nature of the business;
8. A plugging and abandonment plan that meets the requirements of R18-9-B614 and is acceptable to the Director;
9. A listing of any historic property or potential historic property as defined by R12-8-301.

E. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this Section for a period of at least three years from the date the application is signed.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C617. Signatories

A. All permit applications, except those submitted for Class II wells, shall be signed as follows:
1. For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means:
   a. A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or
   b. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million, if authority to sign docu-

ments has been assigned or delegated to the manager in accordance with corporate procedures.
2. For a Partnership or sole proprietorship: by a general Partner or the proprietor, respectively; or
3. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this Section, a principal executive officer of a Federal agency includes:
   a. The chief executive officer of the agency; or
   b. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

B. All reports required by permits, other information requested by the Director, and all permit applications submitted for Class II wells under R18-9-C616 shall be signed by a person described in subsection (A), or by a duly authorized representative of that person. A person is a duly authorized representative only if:
1. The authorization is made in writing by a person described in subsection (A);
2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; and
3. The written authorization is submitted to the Director.

C. If an authorization under subsection (B) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (B) must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

D. Any person signing a document under subsection (A) or (B) shall make the following certification: *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C618. Draft Permits

A. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

B. If the Director tentatively decides to deny the permit application, they shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this Section. If the Director's final decision is that the tentative decision to deny the permit application was incorrect, they shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (D).

C. If the Director decides to prepare a draft permit, it shall contain the following information, to the extent applicable:
1. All conditions under R18-9-D635;
2. All compliance schedules under R18-9-D637;
3. All monitoring requirements under R18-9-D638; and
4. Permit conditions under R18-9-D636.

D. All draft permits prepared under this Section shall be accompanied by a brief summary of the basis for the draft permit conditions or the intent to deny, including references to applicable statutory or regulatory provisions and a fact sheet pursuant to R18-9-C619. The Director shall provide the applicant with the draft permit and the fact sheet and allow reasonable time for informal comment by the applicant prior to publicly noticing the draft permit and fact sheet. The Director shall give notice of opportunity for a public hearing and public comment, issue a final permit decision, and respond to comments.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C619. Fact Sheet

A. A fact sheet shall be prepared for every draft permit for a UIC facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The Director shall send the fact sheet to the applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:
1. A brief description of the type of facility or activity that is the subject of the draft permit.
2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being injected.
3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record.
4. Reasons why any requested variance or alternatives to required standards do or do not appear justified.
5. A description of the procedures for reaching a final decision on the draft permit, including:
   a. The beginning and ending dates of the comment period under R18-9-C620 and the address where comments will be received;
   b. Procedures for requesting a hearing and the nature of that hearing; and
   c. Any other procedures by which the public may Participate in the final decision.
6. The name and telephone number of a person to contact for additional information.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C620. Public Notice of Permit Actions and Public Comment Period

A. The Director shall give public notice that the following actions have occurred:
1. A draft permit that has been prepared under R18-9-C618, and
2. A hearing has been scheduled under R18-9-C622.

B. Public notices may describe more than one permit or permit action.

C. Public notice of the preparation of a draft permit required under subsection (A):

1. Shall allow at least 30 days for public comment; and
2. Shall be given at least 30 days before the hearing date.

D. Public notice of activities described in subsection (A) shall be given by the following methods:
1. Delivery of a copy of the notice to:
   a. The applicant;
   b. Any affected federal, state, tribal, or local agency, or council of government;
   c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, and the State Historic Preservation Office;
   d. Any person who requested, in writing, notification of the activity;
   e. Any persons on a contact list developed from past permit proceedings and public outreach; and
   f. For Class VI injection well UIC permits, mailing or e-mailing a notice to State and local oil and gas regulatory agencies and State agencies regulating mineral exploration and recovery and all agencies that oversee injection wells in the State.
2. For Major Facilities only, newspaper publication in accordance with A.A.C. R18-1-401(A)(1).

E. All public notices issued under this Part shall contain the following information:
1. Name and address of the Department;
2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;
4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, fact sheet, and the application;
5. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures that the public may use to participate in the final permit decision; and
6. Any additional information considered necessary to the permit decision.

F. In addition to the general public notice described in subsection (E), the public notice of hearing under R18-9-C622 shall contain the following information:
1. Reference to the date of previous public notices relating to the permit;
2. Date, time, and place of the hearing; and
3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

G. In addition to the general public notice described in subsection (E), the Director shall deliver a copy of the fact sheet, permit application, and draft permit to all persons identified in subsections (D)(1)(a), (b), and (c).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C621. Public Comments and Requests for Public Hearings

During the public comment period provided under R18-9-C620, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in R18-9-C623.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C622. Public Hearings

A. The Director shall hold a public hearing whenever they find, on the basis of a request, a significant degree of public interest in a draft permit or permits.

B. The Director may also hold a public hearing at their discretion such as when a hearing might clarify one or more issues involved in the permit decision. The Director may designate a presiding officer if a hearing is held.

C. Public notice of the hearing shall be given as specified in R18-9-C620.

D. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R18-9-C620 shall automatically be extended to the close of any public hearing under this Section. The hearing officer may also extend the comment period by so stating at the hearing.

E. An audio recording or written transcript of the hearing shall be made available to the public upon request.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C623. Response to Comments

A. At the time that any final permit is issued under R18-9-C627, the Director shall issue a response to comments. This response shall:
1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

B. The response to comments shall be available to the public.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C624. Area Permits

A. The Director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:
1. Described and identified by location in permit application or applications if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;
2. Within the same well field, facility site, reservoir, project, or similar unit located in Arizona;
3. Operated by a single owner or operator;
4. Used to inject fluids other than hazardous waste; and
5. Other than Class VI wells.

B. Area permits shall specify:

1. The area within which underground injections are authorized; and
2. The requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

C. The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:
1. The permittee notifies the Director at such time as the permit requires;
2. The additional well satisfies the criteria in subsection (A) and meets the requirements specified in the permit under subsection (B); and
3. The cumulative effects of drilling and operation of additional injection wells are considered by the Director during evaluation of the area permit application and are acceptable to the Director.

D. If the Director determines any well that is constructed pursuant to subsection (C) does not satisfy any of the requirements of subsections (C)(1) and (2) the Director may modify the permit under R18-9-C632, terminate under R18-9-C634, or take enforcement action. If the Director determines that cumulative effects are unacceptable, the permit may be modified under R18-9-C632.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C625. Emergency Permits

A. Notwithstanding any other provision of this Article, the Director may temporarily permit a specific underground injection if:
1. An imminent and substantial endangerment to the health of persons will result unless a temporary emergency permit is granted; or
2. A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit is granted to a Class II well; and
   a. Timely application for a permit could not practicably have been made; and
   b. The injection will not result in the movement of fluids into USDWs; or
3. A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an USDW.

B. Requirements for issuance.
1. Any temporary permit under subsection (A)(1) shall be for no longer term than required to prevent the hazard.
2. Any temporary permit under subsection (A)(2) shall be for no longer than 90 days, except that if a permit application has been submitted prior to the expiration of the 90-day period, the Director may extend the temporary permit until final action on the application.
3. Any temporary permit under subsection (A)(3) shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application.
4. Notice of any temporary permit under this Section shall be published in accordance with R18-9-C621 within 10 days of the issuance of the permit.
5. The temporary permit under this Section may be either oral or written. If oral, it must be followed within five calendar days by a written temporary emergency permit.
6. The Director shall condition the temporary permit in any manner they determine is necessary to ensure that the injection will not result in the movement of fluids into an USDW.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C626. Effect of a Permit

A. Except for Class II and III wells, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with this Article and Part C of the SDWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R18-9-C632 and R18-9-C634.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C627. Final Permit Decision and Notification

A. Issuance of a final permit decision by the Director shall be accompanied by the permit and an updated fact sheet per R18-9-C619, if applicable, and a notification to the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice and hearing procedures are subject to either A.R.S. Title 41, Chapter 6, Article 10, or A.R.S. Title 49, Chapter 2, Article 7.

B. The notice shall include:
1. If applicable, the reasons for the denial, revocation or termination, including reference to the statutes or rules on which the decision is based.
2. A description of the party's right to request a hearing and a reference to the procedures for appealing the final permit decision, including the number of days within which an appeal may be filed and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.
3. A reference to the applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06.

C. If the final permit decision is based on a determination by the Director that the applicable criteria under R18-9-A606 are not satisfied, then that determination may be included as part of the appeal.

D. The final permit decision shall take effect 30 days after its issuance in accordance with the notification requirements of subsection A unless stayed pursuant to A.R.S. Title 41, Chapter 6, Article 10, or A.R.S. Title 49, Chapter 2, Article 7.

E. If, under this Article, the issuance, modification, or revocation and reissuance of a permit necessitates a new aquifer exemption or enlargement of a previously approved aquifer exemption, then the issuance, modification, or revocation and reissuance of the permit is appealable, but shall not become effective unless the new aquifer exemption or enlargement of

the previously approved aquifer exemption has been approved by the Administrator.

F. If, under this Article, the issuance, modification, or revocation and reissuance of a permit necessitates an injection depth waiver pursuant to R18-9-J670 of this Article then the issuance, modification, or revocation and reissuance of the permit is appealable, but shall not become effective until the Director is in receipt of written concurrence from the Administrator.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C628. Permit Duration

A. Permits for Class I and Class V wells shall be effective for a fixed term not to exceed 10 years. UIC permits for Class II and III wells shall be issued for a period up to the operating life of the facility. UIC permits for Class VI wells shall be issued for the operating life of the facility and the post-injection site care period. The Director shall review each issued Class II, III, and VI well UIC permit at least once every five years to determine whether it should be modified, revoked and reissued, terminated, or a minor modification made as provided in R18-9-C632.

B. Except as provided in R18-9-C629, the term of a permit shall not be extended by modification beyond the maximum duration specified in this Section.

C. The Director may issue any permit for a duration that is less than the full allowable term under this Section.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C629. Continuation of Expiring Permits

A. The conditions of an expiring permit continue in force under A.R.S. § 41-1092.11(A) until the effective date of a new permit if:

1. The permittee has submitted a timely application that is a complete application for a new permit; and
2. The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the prior permit.

B. Permits continued under this Section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired permits the Director may choose to do any or all of the following:

1. Initiate enforcement action based upon the permit that has been continued;
2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;
3. Issue a new permit under this Article with appropriate conditions; or
4. Take other action as authorized under this Article.

D. Upon the effective date of EPA's approval of Arizona's UIC program, the Department shall administer any permit authorized or issued under the EPA UIC program in the state of Arizona, excluding Indian lands. The Director may continue expired or expiring EPA-issued UIC permits until the effective date of a new state-issued UIC permit.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C630. Permit Transfer

A. Except as provided in subsection (B), a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under R18-9-C632(F)(2), or a minor modification made under R18-9-C633(4), to identify the new permittee and incorporate such other requirements as may be necessary under this Article the Safe Drinking Water Act.

B. As an alternative to transfers under subsection (A), any UIC permit for a well not injecting hazardous waste or injecting carbon dioxide for geological sequestration may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date referred to in subsection (B)(2);
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer or permit responsibility, coverage, and liability between them, and the notice demonstrates that the financial responsibility requirements of R18-9-D636(A)(6) will be met by the new permittee; and
3. The Director does not notify the existing permittee and the proposed new permittee of the Director's intent to modify or revoke and reissue the permit. A modification under this Section may also be a minor modification under R18-9-C633. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subsection (B)(2).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C631. Modification; Revocation and Reissuance; or Termination of Permits

A. Permits may only be modified or revoked and reissued pursuant to R18-9-C632 or terminated pursuant to R18-9-C634 either at the request of any interested person, including the permittee, or upon the Director's initiative. All requests shall be made in writing and shall contain facts or reasons supporting the request.

B. If the Director decides a request to modify, revoke and reissue, or terminate is not justified, they shall send the requestor a brief written response giving a reason for the decision. Denial of a request to terminate does not require a notice of intent to deny. Denial of a request for modification or revocation and reissuance requires a notice of intent to deny only when the request is made by the permittee, the scope of the request has not previously been requested and denied and the request is not for a minor modification. A notice of intent to deny is a type of draft permit which shall follow the same procedures as any draft permit prepared pursuant to R18-9-C618.

C. If the Director preliminarily decides to modify or revoke and reissue a permit under R18-9-C632, they shall prepare a draft permit under R18-9-C618 incorporating the proposed changes and notify the permittee in writing of the reason for the preliminary decision to modify or revoke and reissue a permit with reference to the statute or rule on which the decision is based. The Director may request additional information and, in the case of a modified permit, may require the submission of an

updated application. The Director shall require the submission of a new application in the case of revoked and reissued permits.

D. In a permit modification under this Section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this Section, the entire permit is reopened just as if the permit had expired and was being reissued. During any modification or revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

E. Minor modifications pursuant to R18-9-C633 are not subject to the requirements of this Section.

F. If the Director preliminarily decides to terminate under R18-9-C634(A)(1), (2) or (3), the Director shall issue a notice of intent to terminate that identifies the reason for the preliminary decision to terminate with reference to the statute or rule on which the decision is based. A notice of intent to terminate is not required when a permittee requests termination under R18-9-C634(A)(4). A notice of intent to terminate is a type of draft permit which shall follow the same procedures as any draft permit prepared pursuant to R18-9-C618.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C632. Modification; Revocation and Reissuance of Permits

A. When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under R18-9-C631, or conducts a review of the permit file) they may determine whether or not one or more of the causes listed in subsections (E) and (F) for modification or revocation and reissuance or both exist.

B. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection (G), and may request an updated application if necessary.

C. If cause does not exist under this Section or R18-9-C633, the Director shall not modify or revoke and reissue the permit.

D. If a permit modification satisfies the criteria in R18-9-C633 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures under this Article must be followed.

E. For Class II, Class III or Class VI wells the following may be causes for revocation and reissuance as well as modification; and for all other wells the following may be cause for revocation or reissuance as well as modification when the permittee requests or agrees:

1. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
2. Permits other than for Class II and III wells may be modified during their terms for this cause only if the information was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and would have justified the application of different permit conditions at the time of issuance. For UIC area permits under R18-9-C624, this cause shall include any information indicating that cumulative effects on the environment are unacceptable.
3. The standards or regulations on which the permit was based have been changed by promulgation of new regulations or by judicial decision after the permit was issued. Permits other than those for Class II, Class III or Class VI wells may be modified during their permit terms for this cause only as follows:
   a. For promulgation of amended standards or regulations, when:
      i. The permit condition requested to be modified was based on a regulation promulgated under this Article;
      ii. ADEQ has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; and
      iii. A permittee requests modification in accordance with R18-9-C631 within 90 days after *Arizona Administrative Register* notice of the ADEQ action on which the request is based.
   b. For judicial decisions, a court of competent jurisdiction has remanded and stayed ADEQ promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee in accordance with R18-9-C631 within 90 days of judicial remand.
4. The Director determines if good cause exists for modification of a compliance schedule. Good cause includes unforeseen circumstances, like a strike, a flood, a materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. See also R18-9-C633 (minor modifications).
5. Additionally, for Class VI wells, whenever the Director determines that permit changes are necessary based on:
   a. Area of review reevaluations under R18-9-J659(E)(1);
   b. Any amendments to the testing and monitoring plan under R18-9-J665(10);
   c. Any amendments to the injection well plugging plan under R18-9-J667(C);
   d. Any amendments to the post-injection site care and site closure plan under R18-9-J668(A)(3);
   e. Any amendments to the emergency and remedial response plan under R18-9-J669(D); or
   f. A review of monitoring and/or testing results conducted in accordance with permit requirements.

F. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under R18-9-C634, and the Director determines that modification or revocation and reissuance is appropriate.
2. The Director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer under R18-9-C630(B) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.
3. A determination that the waste being injected is a hazardous waste as defined in A.R.S. § 49-921 either because the definition has been revised, or because a previous determination has been changed.

G. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C633. Minor Modifications of Permits

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this Section, without following the procedures of this Article. Any permit modification not processed as a minor modification under this Section must be made for cause and with a draft permit and public notice as required by R18-9-C632. Minor modifications may only:

1. Correct typographical errors;
2. Require more frequent monitoring or reporting by the permittee;
3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
4. Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
5. Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;
6. Change construction requirements approved by the Director pursuant to R18-9-D636(A)(1), provided that any such alteration shall comply with the requirements of this Article;
7. Amend a plugging and abandonment plan that has been updated under R18-9-D636(A)(5); or
8. Amend a Class VI injection well testing and monitoring plan, plugging plan, post-injection site care and site closure plan, or emergency and remedial response plan where the modifications merely clarify or correct the plan, as determined by the Director.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C634. Termination of Permits

A. The Director may terminate a permit during its term, or deny a permit renewal application for the following causes:

1. Noncompliance by the permittee with any condition of the permit;
2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
4. The permittee has requested termination of their permit due to the completion of the terms and conditions therein, including proper abandonment or plugging pursuant to R18-9-B614.

B. The Director shall follow the applicable procedures as required under R18-9-C631(F) in terminating any permit under this Section.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION

R18-9-D635. Conditions Applicable to All Permits

The following conditions apply to all UIC permits. All conditions applicable to all permits shall be incorporated into the permits issued under this Article, either expressly or referenced by specific citation. If incorporated by reference, a specific citation to this Section must be given in the permit.

1. The permittee must comply with all conditions of any permit issued under this Article. Any permit noncompliance constitutes a violation of this Article and is grounds for enforcement action; for permit modification, revocation and reissuance, or termination; or for denial of a permit renewal application unless otherwise authorized in an emergency permit under R18-9-C625.
2. If the permittee wishes to continue any activity regulated by permit under this Article after the expiration date of this permit, the permittee must apply for and obtain a new permit.
3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
4. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.
5. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.
6. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
7. This permit does not convey property rights of any sort, or any exclusive privilege.
8. The permittee shall furnish to the Director, within a time specified, any information which the Director may

request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

9. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
   a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
   b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
   c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
   d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by this Article the SDWA, any substances or parameters at any location.
10. Monitoring and records.
   a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
   b. The permittee shall retain records of all monitoring information, including the following:
      i. Calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time; and
      ii. The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under R18-9-D636(A)(5), or under this Article as appropriate. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period.
   c. Records of monitoring information shall include:
      i. The date, exact place, and time of sampling or measurements;
      ii. The individual or individuals who performed the sampling or measurements;
      iii. The date or dates analyses were performed;
      iv. The individual or individuals who performed the analyses;
      v. The analytical techniques or methods used; and
      vi. The results of such analyses.
   d. Owners or operators of Class VI wells shall retain records as specified in Part J of this Article, including R18-9-J659(G), R18-9-J666(6), R18-9-J667(D), R18-9-J668(F), and R18-9-J668(H).
11. All applications, reports, or information submitted to the Director shall be signed and certified as required under R18-9-C617.
12. Reporting requirements.
   a. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.
   b. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
   c. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under this Article.
   d. Monitoring results shall be reported at the intervals specified in this permit.
   e. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.
   f. The permittee shall report any noncompliance that may endanger health or the environment within 24 hours, including:
      i. Any monitoring or other information that indicates any contaminant may cause an endangerment to a USDW; or
      ii. Any noncompliance with a permit condition or malfunction of the injection system that may cause fluid migration into or between USDWs. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
   g. The permittee shall report all instances of noncompliance not reported under subsections (A)(12)(a), (d), (e), and (f), at the time monitoring reports are submitted. The reports shall contain the information listed in subsection (A)(12)(f).
   h. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.
13. Except for all new wells authorized by an area permit under R18-9-C624(C), a new injection well may not commence injection until construction is complete; and:
   a. The permittee has submitted notice of completion of construction to the Director; and
   b. Either of the following apply:
      i. The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or
      ii. The permittee has not received notice from the Director of the intent to inspect or otherwise

review the new injection well within 13 days of the date of the notice under subsection (A)(13)(a), in which case prior inspection or review is waived and the permittee may commence injection. The Director shall include in the notice a reasonable time period in which the well shall be inspected.

14. The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.
15. A Class I, II, or III permit shall include, and a Class V permit may include, conditions that meet the requirements of R18-9-B614 to ensure that plugging and abandonment of the well will not allow the movement of fluids into or between USDWs. Where the plan meets the requirements of R18-9-B614, the Director shall incorporate the plan into the permit as a permit condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director may require the applicant to revise the plan, prescribe conditions meeting the requirements of this subsection, or deny the permit. A Class VI permit shall include conditions that meet the requirements set forth in R18-9-J667. Where the plan meets the requirements of R18-9-J667, the Director shall incorporate it into the permit as a permit condition. For purposes of this subsection, temporary or intermittent cessation of injection operations is not abandonment.
16. Within 60 days after plugging a well or at the time of the next quarterly report, whichever is less, the owner or operator shall submit a report to the Director. If the quarterly report is due less than 15 days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of either:
    a. A statement that the well was plugged in accordance with the plan previously submitted to the Director; or
    b. Where actual plugging differed from the plan previously submitted, an updated version of the plan on the form supplied by the Director, specifying the differences.
17. Duty to establish and maintain mechanical integrity.
    a. The owner or operator of a Class I, II, III or VI well permitted under this Article shall establish mechanical integrity prior to commencing injection or on a schedule determined by the Director. Thereafter the owner or operator of Class I, II, and III wells must maintain mechanical integrity as defined in R18-9-B613 and the owner or operator of Class VI wells must maintain mechanical integrity as defined in R18-9-J664.
    b. When the Director determines that a Class I, II, III or VI well lacks mechanical integrity pursuant to R18-9-B613 or R18-9-J664 for Class VI, written notice of the determination will be given to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well pursuant to the requirements of R18-9-B614 or require the permittee to perform such additional construction, operation, monitoring, reporting, and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to R18-9-B613.
    c. The Director may allow the owner or operator of a well that lacks mechanical integrity pursuant to R18-9-B613(A)(1) to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D636. Establishing Permit Conditions

A. In addition to conditions required in R18-9-D635, the Director shall establish conditions, as required on a case-by-case basis under R18-9-C628 (Permit Duration), R18-9-D637 (Schedules of Compliance), and R18-9-D638 (Requirements for Recording and Reporting Monitoring Results). Permits for owners or operators of Class VI injection wells shall include conditions meeting the requirements of Part J of this Article. Permits for other wells shall contain the following requirements, when applicable.

1. Construction requirements as set forth in this Article. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. Except as authorized by an area permit, no construction may commence until a permit has been issued containing construction requirements. New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Director as minor modifications as defined under R18-9-C633. No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Director.
2. Corrective action as set forth in R18-9-D639 and R18-9-J659.
3. Operation requirements as set forth in this Article; the permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any USDW, that formation fluids are not displaced into any USDW, and to assure compliance with the operating requirements under this Article.
4. Monitoring and reporting requirements as set forth in this Article. The permittee shall be required to identify types of tests and methods used to generate the monitoring data. Monitoring of the nature of injected fluids shall comply with an analytical method prescribed in A.A.C. R9-14-610, or an alternative analytical method approved under A.A.C. R9-14-610(C), or as approved by the Director. A test result from a sample taken to determine compliance with a national primary drinking water standard is valid only if the sample is analyzed by a laboratory that is licensed by the Arizona Department of Health Services,

an out-of-state laboratory licensed under A.R.S. § 36-495.14, or a laboratory exempted under A.R.S. § 36-495.02, for the analysis performed.

5. After a cessation of operations for two years the owner or operator shall plug and abandon the well in accordance with the plan unless they:
   a. Provide notice to the Director; and
   b. Describe actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director.
6. Financial responsibility.
   a. The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director until:
      i. The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to R18-9-D635(15), R18-9-B614, and R18-9-J667, and submitted a plugging and abandonment report pursuant to R18-9-D635(16); or
      ii. The well has been converted in compliance with the requirements of R18-9-D635(14); or
      iii. The transferor of a permit has received notice from the Director that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well.
   b. The permittee shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the Director. For Class VI wells, the permittee shall show evidence of such financial responsibility to the Director by the submission of a qualifying instrument, such as a financial statement or other materials acceptable to the Director. The owner or operator of a Class VI well must comply with the financial responsibility requirements set forth in R18-9-J660.
7. A permit for any Class I, II, III or VI well or injection project that lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the Director under R18-9-B613 or R18-9-J664 for Class VI, that the well has mechanical integrity.
8. The Director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into USDWs.

B. In addition to conditions required in all permits, the Director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of this Article. Applicable requirements include, but are not limited to:
1. State statutory or regulatory requirements in effect prior to final administrative disposition of a permit; or
2. Any requirement in effect prior to the modification or revocation and reissuance of a permit, to the extent allowed under R18-9-C632.

C. New or reissued permits, and to the extent allowed under R18-9-C632 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this Section.

D. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

E. Permits shall provide language on duration, expiration and termination.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D637. Compliance Schedule

A. A permit may, when appropriate, specify a schedule for compliance with this Article.
1. Any compliance schedules shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.
2. Except as provided in subsection (B)(1)(b), if a permit establishes a compliance schedule that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
   a. The time between interim dates shall not exceed one year.
   b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.
3. The permit shall be written to require that if subsection (A)(1) is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

B. A permit applicant or permittee may cease conducting regulated activities at a given time by plugging and abandonment rather than continue to operate and meet permit requirements as follows:
1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:
   a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
   b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.
2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination that will ensure timely compliance with the applicable requirements.
3. If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:
   a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with

applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements;

c. The second schedule shall lead to cessation of the regulated activities by a date that ensures timely compliance with applicable requirements; and

d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subsection (B)(3)(a) it shall follow the schedule leading to compliance if the decision is to continue conducting the regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

4. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of Directors of a corporation.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D638. Requirements for Recording and Reporting Monitoring Results

All permits shall specify:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;
2. Required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including when appropriate, continuous monitoring; and
3. Applicable reporting requirements based upon the impact of the regulated activity and as specified under this Article. Reporting shall be no less frequent than specified in the above rules.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D639. Corrective Action

A. Applicants for Class I, II, or III injection well permits shall identify the location of all known wells within the injection well's area of review that penetrates the injection zone, or in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review penetrating formations affected by the increase in pressure. For such wells that are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into USDWs. Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit under subsection (B) through (E), or deny the application. The Director may disregard the provisions of R18-9-B612 and this Section when reviewing an application to permit an existing Class II well.

B. Any permit issued for an existing injection well, other than Class II wells, requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under subsection (A) to be completed as soon as possible.

C. No owner or operator of a new injection well may begin injection until all required corrective action has been taken.

D. The Director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken.

E. When setting corrective action requirements for Class III wells, the Director shall consider the overall effect of the project on the hydraulic gradient in potentially affected USDWs, and the corresponding changes in potentiometric surface or surfaces and flow direction or directions rather than the discrete effect of each well. If a decision is made that corrective action is not necessary based on the determinations above, the monitoring program required in R18-9-G647(B) shall be designed to verify the validity of such determinations.

F. In determining the adequacy of corrective action proposed by the applicant under this Section and in determining the additional steps needed to prevent fluid movement into USDWs, the following criteria and factors shall be considered by the Director:

1. Nature and volume of injected fluid;
2. Nature of native fluids or by-products of injection;
3. Potentially affected population;
4. Geology;
5. Hydrology;
6. History of the injection operation;
7. Completion and plugging records;
8. Abandonment procedures in effect at the time the well was abandoned; and
9. Hydraulic connections with USDWs.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART E. CLASS I INJECTION WELL REQUIREMENTS

R18-9-E640. Class I; Construction Requirements

A. All Class I wells shall be sited in such a fashion that they inject into a formation which is beneath the lowermost formation containing, within one-quarter mile of the well bore, an USDW.

B. All Class I wells shall be cased and cemented to prevent the movement of fluids into or between USDWs. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

1. Depth to the injection zone;
2. Injection pressure, external pressure, internal pressure, and axial loading;
3. Hole size;
4. Size and grade of all casing strings, such as wall thickness, diameter, nominal weight, length, joint Specification, and construction material;

5. Corrosiveness of injected fluid, formation fluids, and temperatures;
6. Lithology of injection and confining intervals; and
7. Type or grade of cement.

C. All Class I injection wells, except those municipal wells injecting non-corrosive wastes, shall inject fluids through tubing with a packer set immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected service.
1. The use of other alternatives to a packer may be allowed with the written approval of the Director. To obtain approval, the operator shall submit a written request to the Director, which shall set forth the proposed alternative and all technical data supporting its use. The Director shall approve the request if the alternative method will reliably provide a comparable level of protection to USDWs. The Director may approve an alternative method solely for an individual well or for general use.
2. In determining and specifying requirements for tubing, packer, or alternatives the following factors shall be considered:
   a. Depth of setting;
   b. Characteristics of injection fluid such as chemical content, corrosiveness, and density;
   c. Injection pressure;
   d. Annular pressure;
   e. Rate, temperature and volume of injected fluid; and
   f. Size of casing.

D. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class I wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, such logs and tests shall include:
1. Deviation checks on all holes constructed by first drilling a pilot hole, and then enlarging the pilot hole by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.
2. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required, the following logs shall be considered for use in the following situations:
   a. For surface casing intended to protect USDWs:
      i. Resistivity, spontaneous potential, and caliper logs before the casing is installed; and
      ii. A cement bond, temperature, or density log after the casing is set and cemented.
   b. For intermediate and long strings of casing intended to facilitate injection:
      i. Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;
      ii. Fracture finder logs; and
      iii. A cement bond, temperature, or density log after the casing is set and cemented.

E. At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class I wells:
1. Fluid pressure;
2. Temperature;
3. Fracture pressure;
4. Other physical and chemical characteristics of the injection matrix; and
5. Physical and chemical characteristics of the formation fluids.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-E641. Class I; Operating, Monitoring, and Reporting Requirements

A. Operating requirements shall, at a minimum, specify that:
1. Except during stimulation injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an USDW.
2. Injection between the outermost casing protecting USDWs and the well bore is prohibited.
3. Unless an alternative to a packer has been approved under R18-9-E640(C), the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Director and a pressure, also approved by the Director, shall be maintained on the annulus.

B. Monitoring requirements shall, at a minimum, include:
1. The analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;
2. Installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing;
3. A demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the well; and
4. The type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the USDWs, the parameters to be measured and the frequency of monitoring.

C. Reporting requirements shall, at a minimum, include:
1. Quarterly reports to the Director on:
   a. The physical, chemical and other relevant characteristics of injection fluids;
   b. Monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and
   c. The results of monitoring prescribed under subsection (B)(4).
2. Reporting the results, with the first quarterly report after the completion, of:
   a. Periodic tests of mechanical integrity;
   b. Any other test of the injection well conducted by the permittee if required by the Director; and
   c. Any well work over.

D. Ambient monitoring.
1. Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect such movement, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the

Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

2. When prescribing a monitoring system the Director may also require:
   a. Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;
   b. The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;
   c. Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;
   d. Periodic monitoring of the ground water quality in the lowermost USDW; and
   e. Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-E642. Class I; Information to be Considered by the Director

A. This Section sets forth the information which must be considered by the Director in authorizing Class I wells.
   1. For an existing or converted new Class I well the Director may rely on the existing permit file for those items of information listed in subsections (B), (C) and (D) which are current and accurate in the file.
   2. For a newly drilled Class I well, the Director shall require the submission of all the information listed in subsections (B), (C) and (D) which are current and accurate in the file.
   3. For both existing and new Class I wells certain maps, cross sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for an existing Class I well to operate or the construction or conversion of a new Class I well the Director shall consider the following:
   1. Information required in R18-9-C616;
   2. A map showing the injection well or wells for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines, quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;
   3. A tabulation of data on all wells within the area of review which penetrate into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require;
   4. Maps and cross sections indicating the general vertical and lateral limits of all USDWs within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each USDW which may be affected by the proposed injection;
   5. Maps and cross sections detailing the geologic structure of the local area;
   6. Generalized maps and cross sections illustrating the regional geologic setting;
   7. Proposed operating data:
      a. Average and maximum daily rate and volume of the fluid to be injected;
      b. Average and maximum injection pressure; and
      c. Source and an analysis of the chemical, physical, radiological and biological characteristics of injection fluids;
   8. Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;
   9. Proposed stimulation program;
   10. Proposed injection procedure;
   11. Schematic or other appropriate drawings of the surface and subsurface construction details of the well.
   12. Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any USDW;
   13. Plans, including maps, for meeting the monitoring requirements in R18-9-E641(B);
   14. For wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken under R18-9-D639;
   15. Construction procedures including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program; and
   16. A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).

C. Prior to granting approval for the operation of a Class I well the Director shall consider the following information:
   1. All available logging and testing program data on the well;
   2. A demonstration of mechanical integrity pursuant to R18-9-B613;
   3. The anticipated maximum pressure and flow rate at which the permittee will operate;
   4. The results of the formation testing program;
   5. The actual injection procedure;
   6. The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone; and
   7. The status of corrective action on defective wells in the area of review.

D. Prior to granting approval for the plugging and abandonment of a Class I well the Director shall consider the following information:
   1. The type and number of plugs to be used;
   2. The placement of each plug including the elevation of the top and bottom;
   3. The type and grade and quantity of cement to be used;
   4. The method for placement of the plugs; and
   5. The procedure to be used to meet the requirements of R18-9-B614(C).

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART F. CLASS II INJECTION WELL REQUIREMENTS

R18-9-F643. Class II; Construction Requirements

A. All new Class II wells shall be sited in such a fashion that they inject into a formation which is separated from any USDW by a confining zone that is free of known open faults or fractures within the area of review.

B. All Class II injection wells:
1. Shall be cased and cemented to prevent movement of fluids into or between USDWs. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:
   a. Depth to the injection zone;
   b. Depth to the bottom of all USDWs; and
   c. Estimated maximum and average injection pressures.
2. In addition the Director may consider information on:
   a. Nature of formation fluids;
   b. Lithology of injection and confining zones;
   c. External pressure, internal pressure, and axial loading;
   d. Hole size;
   e. Size and grade of all casing strings; and
   f. Class of cement.

C. The requirements in subsection (B) need not apply to existing or newly converted Class II wells located in existing fields if:
1. Regulatory controls for casing and cementing existed for those wells at the time of drilling and those wells are in compliance with those controls; and
2. Well injection will not result in the movement of fluids into an USDW so as to create a significant risk to the health of persons.

D. The requirements in subsection (B) need not apply to newly drilled wells in existing fields if:
1. They meet the requirements of the State for casing and cementing applicable to that field at the time of submission of the State program to the Administrator; and
2. Well injection will not result in the movement of fluids into an USDW so as to create a significant risk to the health of persons.

E. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class II wells. A descriptive report interpreting the results of that portion of those logs and tests which specifically relate to (1) an USDW and the confining zone adjacent to it, and (2) the injection and adjacent formations shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, these logs and tests shall include:
1. Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole, by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.
2. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required the following shall be considered by the Director in setting logging and testing requirements:
   a. For surface casing intended to protect USDWs in areas where the lithology has not been determined:
      i. Electric and caliper logs before casing is installed; and
      ii. A cement bond, temperature, or density log after the casing is set and cemented.
   b. For intermediate and long strings of casing intended to facilitate injection:
      i. Electric, porosity and gamma ray logs before the casing is installed;
      ii. Fracture finder logs; and
      iii. A cement bond, temperature, or density log after the casing is set and cemented.

F. At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells or projects:
1. Fluid pressure;
2. Estimated fracture pressure; and
3. Physical and chemical characteristics of the injection zone.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-F644. Class II; Operating, Monitoring, and Reporting Requirements

A. Operating requirements shall, at a minimum, specify that:
1. Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDWs. In no case shall injection pressure cause the movement of injection or formation fluids into an USDW.
2. Injection between the outermost casing protecting USDWs and the well bore shall be prohibited.

B. Monitoring requirements shall, at a minimum, include:
1. Monitoring of the nature of injected fluids at time intervals sufficiently frequent to yield data representative of their characteristics;
2. Observation of injection pressure, flow rate, and cumulative volume at least with the following frequencies:
   a. Weekly for produced fluid disposal operations;
   b. Monthly for enhanced recovery operations;
   c. Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and
   d. Daily during the injection phase of cyclic steam operations; and
   e. Record one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than 30 days;
3. A demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the injection well;
4. Maintenance of the results of all monitoring until the next permit review; and
5. Hydrocarbon storage and enhanced recovery may be monitored on a field or project basis rather than on an

individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

C. Reporting requirements.

1. Reporting requirements shall at a minimum include an annual report to the Director summarizing the results of monitoring required under subsection (B). Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluid. Previously submitted information may be included by reference.
2. Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than an individual well basis where manifold monitoring is used.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-F645. Class II; Information to be Considered by the Director

A. This Section sets forth the information which must be considered by the Director in authorizing Class II wells. Certain maps, cross sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well the Director shall consider the following:

1. Information required in R18-9-C616.
2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, and water wells. The map may also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or suspended. Only information of public record and pertinent information known to the applicant is required to be included on this map. This requirement does not apply to existing Class II wells.
3. A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under subsection (B)(2) which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells. This requirement does not apply to existing Class II wells.
4. Proposed operating data:
   a. Average and maximum daily rate and volume of fluids to be injected;
   b. Average and maximum injection pressure; and
   c. Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.
5. Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth.
6. Geologic name and depth to bottom of all USDWs which may be affected by the injection.
7. Schematic or other appropriate drawings of the surface and subsurface construction details of the well.
8. In the case of new injection wells the corrective action proposed to be taken by the applicant under R18-9-D639.
9. A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).

C. In addition the Director may consider the following:

1. Proposed formation testing program to obtain the information required by R18-9-F643(F);
2. Proposed stimulation program;
3. Proposed injection procedure;
4. Proposed contingency plans, if any, to cope with well failures so as to prevent migration of contaminating fluids into an USDW;
5. Plans for meeting the monitoring requirements of R18-9-F644(B).

D. Prior to granting approval for the operation of a Class II well the Director shall consider the following information:

1. All available logging and testing program data on the well;
2. A demonstration of mechanical integrity pursuant to R18-9-B613;
3. The anticipated maximum pressure and flow rate at which the permittee will operate;
4. The results of the formation testing program;
5. The actual injection procedure; and
6. For new wells the status of corrective action on defective wells in the area of review.

E. Prior to granting approval for the plugging and abandonment of a Class II well the Director shall consider the following information:

1. The type, and number of plugs to be used;
2. The placement of each plug including the elevation of top and bottom;
3. The type, grade, and quantity of cement to be used;
4. The method of placement of the plugs; and
5. The procedure to be used to meet the requirements of R18-9-B614(A).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART G. CLASS III INJECTION WELL REQUIREMENTS

R18-9-G646. Class III; Construction Requirements

A. All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between USDWs. The Director may waive the cementing requirement for new wells in existing projects or portions of existing projects where they have substantial evidence that no contamination of USDWs would result. The casing and cement used in the construction of each

newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:
1. Depth to the injection zone;
2. Injection pressure, external pressure, internal pressure, axial loading, etc.;
3. Hole size;
4. Size and grade of all casing strings, such as wall thickness, diameter, nominal weight, length, joint specification, and construction material;
5. Corrosiveness of injected fluids and formation fluids;
6. Lithology of injection and confining zones; and
7. Type and grade of cement.

B. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

C. Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:
1. Fluid pressure;
2. Fracture pressure; and
3. Physical and chemical characteristics of the formation fluids.

D. Where the injection formation is not a water-bearing formation, the information in subsection (C)(2) must be submitted.

E. Where injection is into a formation which contains water with less than 10,000 mg/l TDS monitoring wells shall be completed into the injection zone and into any USDWs above the injection zone which could be affected by the mining operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse the monitoring wells shall be located so that they will not be physically affected.

F. Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

G. Where the injection wells penetrate an USDW in an area subject to subsidence or catastrophic collapse an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

H. In determining the number, location, construction and frequency of monitoring of the monitoring wells the following criteria shall be considered:
1. The population relying on the USDW affected or potentially affected by the injection operation;
2. The proximity of the injection operation to points of withdrawal of drinking water;
3. The local geology and hydrology;
4. The operating pressures and whether a negative pressure gradient is being maintained;
5. The nature and volume of the injected fluid, the formation water, and the process by-products; and
6. The injection well density.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-G647. Class III; Operating, Monitoring, and Reporting Requirements

A. Operating requirements prescribed shall, at a minimum, specify that:
1. Except during well stimulation, injection pressure at the wellhead shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case, shall injection pressure initiate fractures in the confining zone or cause the migration of injection or formation fluids into an USDW.
2. Injection between the outermost casing protecting USDWs and the well bore is prohibited.

B. Monitoring requirements shall, at a minimum, specify:
1. Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis required by R18-9-G648(B)(7)(c) is incorrect or incomplete, a new analysis as required by R18-9-G648(B)(7)(c) shall be provided to the Director.
2. Monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate.
3. Demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the well for salt solution mining.
4. Monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by R18-9-G646(E), semi-monthly.
5. Quarterly monitoring of wells required by R18-9-G646(G).
6. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

C. Reporting requirements shall, at a minimum, include:
1. Quarterly reporting to the Director on required monitoring;
2. Results of mechanical integrity and any other periodic test required by the Director reported with the first regular quarterly report after the completion of the test; and
3. Monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-G648. Class III; Information to be Considered by the Director

A. This Section sets forth the information which must be considered by the Director in authorizing Class III wells. Certain maps, cross sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for an existing Class III well or area to operate or the construction of a new Class III well the Director shall consider the following:
1. Information required in R18-9-C616;
2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, public water systems and water wells. The map may also show surface bodies of waters, mines (surface and subsurface) quarries and other pertinent surface features including residences and roads, and faults if known or suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map;
3. A tabulation of data reasonably available from public records or otherwise known to the applicant on wells within the area of review included on the map required under subsection (B)(2) which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells;
4. Maps and cross sections indicating the vertical limits of all USDWs within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every USDW which may be affected by the proposed injection;
5. Maps and cross sections detailing the geologic structure of the local area;
6. Generalized map and cross sections illustrating the regional geologic setting;
7. Proposed operating data:
   a. Average and maximum daily rate and volume of fluid to be injected;
   b. Average and maximum injection pressure; and
   c. Qualitative analysis and ranges in concentrations of all constituents of injected fluids. If the information is confidential pursuant to R18-9-A603 an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a case the applicant shall retain records of the undisclosed concentrations and provide them upon request to the Director as part of any enforcement investigation.
8. Proposed formation testing program to obtain the information required by R18-9-G646(C);
9. Proposed stimulation program;
10. Proposed injection procedure;
11. Schematic or other appropriate drawings of the surface and subsurface construction details of the well;
12. Plans (including maps) for meeting the monitoring requirements of R18-9-G647(B);
13. Expected changes in pressure, native fluid displacement, direction of movement of injection fluid;
14. Contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into USDWs;
15. A certificate that the applicant has assured, through a performance bond, or other appropriate means, the resources necessary to close, plug, or abandon the well as required by R18-9-D636(A)(5); and
16. The corrective action proposed to be taken under R18-9-D639.

C. Prior to granting approval for the operation of a Class III well the Director shall consider the following information:
1. All available logging and testing data on the well;
2. A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution wells pursuant to R18-9-B613;
3. The anticipated maximum pressure and flow rate at which the permittee will operate;
4. The results of the formation testing program;
5. The actual injection procedures; and
6. The status of corrective action on defective wells in the area of review.

D. Prior to granting approval for the plugging and abandonment of a Class III well the Director shall consider the following information:
1. The type and number of plugs to be used;
2. The placement of each plug including the elevation of the top and bottom;
3. The type, grade and quantity of cement to be used;
4. The method of placement of the plugs; and
5. The procedure to be used to meet the requirements of R18-9-B614(A).

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART H. CLASS IV INJECTION WELL REQUIREMENTS

R18-9-H649. Class IV; Closure Requirements and Remediation

A. Closure.
1. Prior to abandoning any Class IV well, the owner or operator shall plug or otherwise close the well in a manner acceptable to the Director.
2. The owner or operator of a Class IV well must notify the Director of intent to abandon the well at least 30 days prior to abandonment.

B. Remediation. Injection wells used to inject contaminated groundwater that has been treated and is being injected into the same formation from which it was drawn are authorized by rule for the life of the well if such subsurface emplacement of fluids is approved by the Administrator or the Director pursuant to subsections (B)(1), (2) or (3):
1. Provisions for cleanup of releases under CERCLA, or
2. The requirements and provisions under RCRA, or
3. The requirements and provisions under other applicable state laws for corrective and remedial action.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART I. CLASS V INJECTION WELL REQUIREMENTS

R18-9-I650. Class V; General Requirements

A. The following requirements apply to Class V Wells authorized by rule:
1. A Class V Injection well is authorized by rule subject to the conditions under this Section.
2. Well authorization under this Section expires upon the effective date of a permit issued pursuant to R18-9-I651, R18-9-C616, R18-9-C624, R18-9-C625, or upon proper closure of the well.
3. An owner or operator of a well that is authorized by rule pursuant to this Section is prohibited from injecting into the well:
   a. Upon the effective date of an applicable permit denial;
   b. Upon failure to submit a permit application in a timely manner pursuant to R18-9-I651 or R18-9-C616;
   c. Upon failure to submit inventory information in a timely manner pursuant to R18-9-I652; or
   d. Upon failure to comply with a request for information in a timely manner pursuant to R18-9-I653.
4. Submission of the following is required in order to transfer ownership of a well that is authorized by rule pursuant to this Section:
   a. An inventory, and
   b. Class V authorized by rule transfer fee pursuant to R18-14-111(3).

B. The following requirements apply for all Class V Wells:
1. With certain exceptions listed in subsection (B)(2), Class V injection activity is "authorized by rule," meaning owners and operators must comply with all the requirements of this Article but do not have to get an individual permit. Well authorization expires once the injection well has been properly closed.
2. A Class V well requires a permit and shall no longer be authorized by rule upon any of the following:
   a. Failure to comply with the prohibition of movement standard in R18-9-B608(A).
   b. The Director specifically requires a Class V permit for the well to operate pursuant to R18-9-I651. In which case rule authorization expires upon the effective date of the permit issued, or you are prohibited from injecting into your well upon:
      i. Failure to submit a permit application in a timely manner as specified in a notice from the Director; or
      ii. Upon the effective date of permit denial.
   c. Failure to submit inventory information as required under R18-9-I652.
   d. Failure to comply with the Director's request for additional information under R18-9-I653 in a timely manner.
3. Prior to abandoning a Class V well, the owner or operator shall meet the plugging requirements in R18-9-B614(C).
4. In limited cases, the Director may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. Motor vehicle wells may only be converted if: all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well; and, injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal. The use of a semi-permanent plug as the means to segregate waste is not sufficient to convert a motor vehicle waste disposal well to another type of Class V well.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I651. Class V; Requiring a Permit

A. The Director may require the owner or operator of any Class V injection well authorized by rule under this Article to apply for and obtain an individual or area UIC permit. Cases where individual or area UIC permits may be required include:
1. The injection well is not in compliance with any requirement under this Article or A.R.S. Title 49, Chapter 2, Article 3.3;
2. The injection well is not or no longer is within the category of wells and types of well operations authorized in the rule; or
3. The protection of USDWs requires that the injection operation be regulated by requirements, such as for corrective action, monitoring and reporting, or operation, which are not contained in the rule.

B. If an individual or area UIC permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:
1. A brief statement of the reasons for the decision,
2. An application form,
3. A statement setting a deadline to file the application,
4. A statement that on the effective date of issuance or denial of the individual or area UIC permit, coverage by rule will automatically terminate.
5. The applicant's right to appeal the individual permit requirement under A.R.S. § 49-323 and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.

C. An owner or operator of a well authorized by rule may request to be excluded from the coverage of this Section by applying for an individual or area UIC permit. The owner or operator shall submit an application under R18-9-C616 with reasons supporting the request to the Director. The Director may grant any such requests.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I652. Class V; Inventory Requirements for Class V Wells Authorized by Rule

A. The owner or operator of an injection well authorized by rule under R18-9-I650 shall submit inventory information to the Director. Such an owner or operator is prohibited from injecting into the well upon failure to submit inventory information for the well within the timeframe specified in subsection (D).

B. As part of the inventory, the Director shall require and the owner/operator shall provide at least the following information:
1. Facility name and location;
2. Name and address of legal contact;
3. Ownership of facility;

4. Nature and type of injection well; and
5. Operating status of injection well.

C. Upon approval of the Arizona UIC Program, the Director shall notify all known owners or operators of injection wells of their duty to submit inventory information in the manner specified by the Director.

D. The owner or operator of an injection well shall submit inventory information no later than one year after the effective date of the Arizona UIC program. The Director need not require inventory information from any facility with interim status under RCRA.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I653. Class V; Requiring Other Information

A. In addition to the inventory requirements under R18-9-I652, the Director may require the owner or operator of any well authorized by rule under this Article to submit information as deemed necessary by the Director to determine whether a well may be endangering an USDW in violation of R18-9-B608 of this Part.

B. Such information requirements may include, but are not limited to:
1. Performance of ground-water monitoring and the periodic submission of reports of such monitoring;
2. An analysis of injected fluids, including periodic submission of such analyses; and
3. A description of the geologic strata through and into which injection is taking place.

C. Any request for information under this Section shall be made in writing, and include a brief statement of the reasons for requiring the information. An owner and operator shall submit the information within the time period or time periods provided in the notice.

D. An owner or operator of an injection well authorized by rule under this Part is prohibited from injecting into the well upon failure of the owner or operator to comply with a request for information within the time period or time periods specified by the Director pursuant to subsection (C). An owner or operator of a well prohibited from injection under this Section shall not resume injection except under a permit issued pursuant to R18-9-I651; R18-9-C616, R18-9-C624, or R18-9-C625.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I654. Class V; Prohibition of Class V Cesspools and Motor Vehicle Waste Disposal Wells

The construction and operation of cesspools and motor vehicle waste disposal wells are prohibited.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I655. Class V; Prohibition of Non-Experimental Class V Wells for Geologic Sequestration

The construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART J. CLASS VI INJECTION WELL REQUIREMENTS

R18-9-J656. Class VI; Applicability

A. This Part establishes criteria and standards for underground injection control programs to regulate any Class VI carbon dioxide geologic sequestration injection wells.

B. This Part applies to any well used to inject carbon dioxide specifically for the purpose of geologic sequestration.

C. This Part also applies to owners or operators of permit- or rule-authorized Class V experimental carbon dioxide injection projects who seek to apply for Class VI geologic sequestration permit for their well or wells. Owners or operators seeking to convert existing Class I, Class II, or Class V experimental wells to Class VI geologic sequestration wells must demonstrate to the Director that the wells were engineered and constructed to meet the requirements of R18-9-J661 and ensure protection of USDWs, in lieu of requirements at R18-9-J661 and R18-9-J662. A converted well must still meet all other requirements under Part F of this Article.

D. The following definitions apply to this Part and govern for Class VI wells to the extent that these definitions conflict with those in R18-9-A601:
1. "Area of review" means the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and displaced fluids, and is based on available site characterization, monitoring, and operational data as set forth in R18-9-J659.
2. "Carbon dioxide plume" means the extent underground, in three dimensions, of an injected carbon dioxide stream.
3. "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This Part does not apply to any carbon dioxide stream that meets the definition of a hazardous waste under A.R.S. § 49-921.
4. "Confining zone" means a geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone or zones that acts as barrier to fluid movement. For Class VI wells operating under an injection depth waiver, confining zone means a geologic formation, group of formations, or part of a formation stratigraphically overlying and underlying the injection zone or zones.
5. "Corrective action" means the use of Director-approved methods to ensure that wells within the area of review do not serve as conduits for the movement of fluids into USDWs.
6. "Geologic sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.
7. "Geologic sequestration project" means an injection well or wells used to emplace a carbon dioxide stream beneath the lowermost formation containing a USDW; or, wells used for geologic sequestration of carbon dioxide that

have been granted a waiver of the injection depth requirements pursuant to requirements at R18-9-J670; or, wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to R18-9-A605 and R18-9-A606. It includes the subsurface three-dimensional extent of the carbon dioxide plume, associated area of elevated pressure, and displaced fluids, as well as the surface area above that delineated region.

8. "Injection zone" means a geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive carbon dioxide through a well or wells associated with a geologic sequestration project.
9. "Post-injection site care" means appropriate monitoring and other actions, including corrective action, needed following cessation of injection to ensure that USDWs are not endangered, as required under R18-9-J668.
10. "Pressure front" means the zone of elevated pressure that is created by the injection of carbon dioxide into the subsurface. For the purposes of this Part, the pressure front of a carbon dioxide plume refers to a zone where there is a pressure differential sufficient to cause the movement of injected fluids or formation fluids into a USDW.
11. "Site closure" means the point/time, as determined by the Director following the requirements under R18-9-J668, at which the owner or operator of a geologic sequestration site is released from post-injection site care responsibilities.
12. "Transmissive fault" or "fracture" means a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J657. Class VI; Required Permit Information

A. This Section sets forth the information which must be considered by the Director in authorizing Class VI wells. For converted Class I, Class II, or Class V experimental wells, certain maps, cross sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director, and sufficiently identified to be retrieved.

B. Prior to the issuance of a permit for the construction of a new Class VI well or the conversion of an existing Class I, Class II, or Class V well to a Class VI well, the owner or operator shall submit, pursuant to R18-9-J666, and the Director shall consider the following:

1. Information required in R18-9-C616(D)(1) through (9);
2. A map showing the injection well for which a permit is sought and the applicable area of review consistent with R18-9-J659. Within the area of review, the map must show the number or name, and location of all injection wells, producing wells, abandoned wells, plugged wells or dry holes, deep stratigraphic boreholes, State- or EPA-approved subsurface cleanup sites, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells, other pertinent surface features including structures intended for human occupancy, State, Tribal, and Territory boundaries, and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;
3. Information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, including:
   a. Maps and cross sections of the area of review;
   b. The location, orientation, and properties of known or suspected faults and fractures that may transect the confining zone or zones in the area of review and a determination that they would not interfere with containment;
   c. Data on the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of the injection and confining zone or zones; including geology/facies changes based on field data which may include geologic cores, outcrop data, seismic surveys, well logs, and names and lithologic descriptions;
   d. Geomechanical information on fractures, stress, ductility, rock strength, and in situ fluid pressures within the confining zone or zones;
   e. Information on the seismic history including the presence and depth of seismic sources and a determination that the seismicity would not interfere with containment; and
   f. Geologic and topographic maps and cross sections illustrating regional geology, hydrogeology, and the geologic structure of the local area.
4. A tabulation of all wells within the area of review which penetrate the injection or confining zone or zones. Such data must include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require;
5. Maps and stratigraphic cross sections indicating the general vertical and lateral limits of all USDWs, water wells and springs within the area of review, their positions relative to the injection zone or zones, and the direction of water movement, where known;
6. Baseline geochemical data on subsurface formations, including all USDWs in the area of review;
7. Proposed operating data for the proposed geologic sequestration site:
   a. Average and maximum daily rate and volume and/or mass and total anticipated volume and/or mass of the carbon dioxide stream;
   b. Average and maximum injection pressure;
   c. The source or sources of the carbon dioxide stream; and
   d. An analysis of the chemical and physical characteristics of the carbon dioxide stream.
8. Proposed pre-operational formation testing program to obtain an analysis of the chemical and physical characteristics of the injection zone or zones and confining zone or zones and that meets the requirements at R18-9-J662;
9. Proposed stimulation program, a description of stimulation fluids to be used and a determination that stimulation will not interfere with containment;
10. Proposed procedure to outline steps necessary to conduct injection operation;
11. Schematics or other appropriate drawings of the surface and subsurface construction details of the well;
12. Injection well construction procedures that meet the requirements of R18-9-J661;

13. Proposed area of review and corrective action plan that meets the requirements under R18-9-J659;
14. A demonstration, satisfactory to the Director, that the applicant has met the financial responsibility requirements under R18-9-J660;
15. Proposed testing and monitoring plan required by R18-9-J665;
16. Proposed injection well plugging plan required by R18-9-J667(B);
17. Proposed post-injection site care and site closure plan required by R18-9-J668(A);
18. At the Director's discretion, a demonstration of an alternative post-injection site care timeframe required by R18-9-J668(C);
19. Proposed emergency and remedial response plan required by R18-9-J669;
20. A list of contacts, submitted to the Director, for those States, Tribes, and Territories identified to be within the area of review of the Class VI project based on information provided in subsection (B)(2);
21. A listing of any historic property or potential historic property as defined by R12-8-301; and
22. Any other information requested by the Director.

C. The Director shall notify, in writing, any States, Tribes, or Territories within the area of review of the Class VI project based on information provided in subsections (B)(2) and (B)(20) of the permit application.

D. Prior to granting approval for the operation of a Class VI well, the Director shall consider the following information:

1. The final area of review based on modeling, using data obtained during logging and testing of the well and the formation as required by subsections (D)(2), (3), (4), (6), (7), and (10);
2. Any relevant updates, based on data obtained during logging and testing of the well and the formation as required by subsections (D)(3), (4), (6), (7), and (10), to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, submitted to satisfy the requirements of subsection (B)(3);
3. Information on the compatibility of the carbon dioxide stream with fluids in the injection zone or zones and minerals in both the injection and the confining zone or zones, based on the results of the formation testing program, and with the materials used to construct the well;
4. The results of the formation testing program required at subsection (B)(8);
5. Final injection well construction procedures that meet the requirements of R18-9-J661;
6. The status of corrective action on wells in the area of review;
7. All available logging and testing program data on the well required by R18-9-J662;
8. A demonstration of mechanical integrity pursuant to R18-9-J664;
9. Any updates to the proposed area of review and corrective action plan, testing and monitoring plan, injection well plugging plan, post-injection site care and site closure plan, or the emergency and remedial response plan submitted under subsection (B), which are necessary to address new information collected during logging and testing of the well and the formation as required by all subsections of this Section, and any updates to the alternative post-injection site care timeframe demonstration submitted under subsection (B), which are necessary to address new information collected during the logging and testing of the well and the formation as required by this Section; and
10. Any other information requested by the Director.

E. Owners or operators seeking a waiver of the requirement to inject below the lowermost USDW must also refer to R18-9-J670 and submit a supplemental report, as required at R18-9-J670. The supplemental report is not part of the permit application.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J658. Class VI; Minimum Criteria for Siting

A. Owners or operators of Class VI wells must demonstrate to the satisfaction of the Director that the wells will be sited in areas with a suitable geologic system. The owners or operators must demonstrate that the geologic system comprises:

1. An injection zone or zones of sufficient areal extent, thickness, porosity, and permeability to receive the total anticipated volume of the carbon dioxide stream.
2. Confining zone or zones free of transmissive faults or fractures and of sufficient areal extent and integrity to contain the injected carbon dioxide stream and displaced formation fluids and allow injection at proposed maximum pressures and volumes without initiating or propagating fractures in the confining zone or zones.

B. The Director may require owners or operators of Class VI wells to identify and characterize additional zones that will impede vertical fluid movement, are free of faults and fractures that may interfere with containment, allow for pressure dissipation, and provide additional opportunities for monitoring, mitigation, and remediation.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J659. Class VI; Area of Review and Corrective Action

A. The area of review is the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and is based on available site characterization, monitoring, and operational data.

B. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan to delineate the area of review for a proposed geologic sequestration project, periodically reevaluate the delineation, and perform corrective action that meets the requirements of this Section and is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. As a part of the permit application for approval by the Director, the owner or operator must submit an area of review and corrective action plan that includes the following information:

1. The method for delineating the area of review that meets the requirements of subsection (C), including the model to be used, assumptions that will be made, and the site characterization data on which the model will be based.

2. A description of:
   a. The minimum fixed frequency, not to exceed five years, at which the owner or operator proposes to reevaluate the area of review;
   b. The monitoring and operational conditions that would warrant a reevaluation of the area of review prior to the next scheduled reevaluation as determined by the minimum fixed frequency established in subsection (B)(2)(a);
   c. How monitoring and operational data will be used to inform an area of review reevaluation; and
   d. How corrective action will be conducted to meet the requirements of subsection (D), including what corrective action will be performed prior to injection and what, if any, portions of the area of review will have corrective action addressed on a phased basis and how the phasing will be determined; how corrective action will be adjusted if there are changes in the area of review; and how site access will be guaranteed for future corrective action.

C. Owners or operators of Class VI wells must perform the following actions to delineate the area of review and identify all wells that require corrective action:
1. Predict, using existing site characterization, monitoring and operational data, and computational modeling, the projected lateral and vertical migration of the carbon dioxide plume and formation fluids in the subsurface from the commencement of injection activities until the plume movement ceases, until pressure differentials sufficient to cause the movement of injected fluids or formation fluids into a USDW are no longer present, or until the end of a fixed time period as determined by the Director. The model must:
   a. Be based on detailed geologic data collected to characterize the injection zone zones, confining zone or zones and any additional zones; and anticipated operating data, including injection pressures, rates, and total volumes over the proposed life of the geologic sequestration project;
   b. Take into account any geologic heterogeneities, other discontinuities, data quality, and their possible impact on model predictions; and
   c. Consider potential migration through faults, fractures, and artificial penetrations.
2. Using methods approved by the Director, identify all penetrations, including active and abandoned wells and underground mines, in the area of review that may penetrate the confining zone or zones. Provide a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require; and
3. Determine which abandoned wells in the area of review have been plugged in a manner that prevents the movement of carbon dioxide or other fluids that may endanger USDWs, including use of materials compatible with the carbon dioxide stream.

D. Owners or operators of Class VI wells must perform corrective action on all wells in the area of review that are determined to need corrective action, using methods designed to prevent the movement of fluid into or between USDWs, including use of materials compatible with the carbon dioxide stream, where appropriate.

E. At the minimum fixed frequency, not to exceed five years, as specified in the area of review and corrective action plan, or when monitoring and operational conditions warrant, owners or operators must:
1. Reevaluate the area of review in the same manner specified in subsection (C)(1);
2. Identify all wells in the reevaluated area of review that require corrective action in the same manner specified in subsection (C);
3. Perform corrective action on wells requiring corrective action in the reevaluated area of review in the same manner specified in subsection (C); and
4. Submit an amended area of review and corrective action plan or demonstrate to the Director through monitoring data and modeling results that no amendment to the area of review and corrective action plan is needed. Any amendments to the area of review and corrective action plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements under R18-9-C632 or R18-9-C633, as appropriate.

F. The emergency and remedial response plan and the demonstration of financial responsibility must account for the area of review delineated as specified in subsection (C)(1) or the most recently evaluated area of review delineated under subsection (E), regardless of whether or not corrective action in the area of review is phased.

G. All modeling inputs and data used to support area of review reevaluations under subsection (E) shall be retained for 10 years.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J660. Class VI; Financial Responsibility

A. The owner or operator must demonstrate and maintain financial responsibility as determined by the Director that meets the following conditions:
1. The financial responsibility instrument or instruments used must be from the following list of qualifying instruments:
   a. Trust Funds;
   b. Surety Bonds;
   c. Letter of Credit;
   d. Insurance;
   e. Self Insurance (i.e., Financial Test and Corporate Guarantee);
   f. Escrow Account;
   g. Any other instrument or instruments satisfactory to the Director.
2. The qualifying instrument or instruments must be sufficient to cover the cost of:
   a. Corrective action under R18-9-J659;
   b. Injection well plugging under R18-9-J667;
   c. Post injection site care and site closure under R18-9-J668; and
   d. Emergency and remedial response under R18-9-J669.
3. The financial responsibility instrument or instruments must be sufficient to address endangerment of USDWs.
4. The qualifying financial responsibility instrument or instruments must comprise protective conditions of coverage.
   a. Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation

provisions, specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument, and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

i. Cancellation – for purposes of this Part, an owner or operator must provide that their financial mechanism may not cancel, terminate or fail to renew except for failure to pay such financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Director. The cancellation must not be final for 120 days after receipt of cancellation notice. The owner or operator must provide an alternate financial responsibility demonstration within 60 days of notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable (or possible), any funds from the instrument being cancelled must be released within 60 days of notification by the Director.

ii. Renewal – for purposes of this Part, owners or operators must renew all financial instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument may be automatically renewed as long as the owner or operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of the instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.

iii. Cancellation, termination, or failure to renew may not occur and the financial instrument will remain in full force and effect in the event that on or before the date of expiration: The Director deems the facility abandoned; or the permit is terminated or revoked or a new permit is denied; or closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or the amount due is paid.

5. The qualifying financial responsibility instrument or instruments must be approved by the Director.
   a. The Director shall consider and approve the financial responsibility demonstration for all the phases of the geologic sequestration project prior to issue a Class VI permit under R18-9-J657.
   b. The owner or operator must provide any updated information related to their financial responsibility instrument or instruments on an annual basis and if there are any changes, the Director must evaluate, within a reasonable time, the financial responsibility demonstration to confirm that the instrument or instruments used remain adequate for use. The owner or operator must maintain financial responsibility requirements regardless of the status of the Director's review of the financial responsibility demonstration.
   c. The Director may disapprove the use of a financial instrument if they determine that it is not sufficient to meet the requirements of this Section.
6. The owner or operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments for specific phases of the geologic sequestration project.
   a. In the event that the owner or operator combines more than one instrument for a specific geologic sequestration phase such combination must be limited to instruments that are not based on financial strength or performance, for example trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, and insurance. In this case, it is the combination of mechanisms, rather than the single mechanism, which must provide financial responsibility for an amount at least equal to the current cost estimate.
   b. When using a third-party instrument to demonstrate financial responsibility, the owner or operator must provide a proof that the third-party providers either have passed financial strength requirements based on credit ratings; or has met a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.
   c. An owner or operator using certain types of third-party instruments must establish a standby trust to enable ADEQ to be party to the financial responsibility agreement without ADEQ being the beneficiary of any funds. The standby trust fund must be used along with other financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.
   d. An owner or operator may deposit money to an escrow account to cover financial responsibility requirements; this account must segregate funds sufficient to cover estimated costs for Class VI (geologic sequestration) financial responsibility from other accounts and uses.
   e. An owner or operator or its guarantor may use self insurance to demonstrate financial responsibility for geologic sequestration projects. In order to satisfy this requirement the owner or operator must meet a Tangible Net Worth of an amount approved by the Director, have a Net working capital and tangible net worth each at least six times the sum of the current well plugging, post injection site care and site closure cost, have assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current well plugging, post injection site care and site closure cost, and must submit a report of its bond rating and financial information annually. In addition the owner or operator must either: Have a bond rating test of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or meet all of the following five financial ratio thresholds: A ratio of total liabilities to net worth less than 2.0; a ratio of current assets to current liabilities greater than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabili-

ties greater than 0.1; A ratio of current assets minus current liabilities to total assets greater than -0.1; and a net profit (revenues minus expenses) greater than 0.

f. An owner or operator who is not able to meet corporate financial test criteria may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The parent's demonstration that it meets the financial test requirement is insufficient if it has not also guaranteed to fulfill the obligations for the owner or operator.

g. An owner or operator may obtain an insurance policy to cover the estimated costs of geologic sequestration activities requiring financial responsibility. This insurance policy must be obtained from a third party provider.

B. The requirement to maintain adequate financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.

1. The owner or operator must maintain financial responsibility and resources until:
   a. The Director receives and approves the completed post-injection site care and site closure plan; and
   b. The Director approves site closure.
2. The owner or operator may be released from a financial instrument in the following circumstances:
   a. The owner or operator has completed the phase of the geologic sequestration project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the Director, including obtaining financial responsibility for the next phase of the geologic sequestration project, if required; or
   b. The owner or operator has submitted a replacement financial instrument and received written approval from the Director accepting the new financial instrument and releasing the owner or operator from the previous financial instrument.

C. The owner or operator must have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection well or wells, post-injection site care and site closure, and emergency and remedial response.

1. The cost estimate must be performed for each phase separately and must be based on the costs to the regulatory agency of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator.
2. During the active life of the geologic sequestration project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument or instruments used to comply with subsection (A) and provide this adjustment to the Director. The owner or operator must also provide to the Director written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan as required under R18-9-J659, the injection well plugging plan under R18-9-J667, the post-injection site care and site closure plan as required under R18-9-J668, and the emergency and remedial response plan as required under R18-9-J669.
3. The Director must approve any decrease or increase to the initial cost estimate. During the active life of the geologic sequestration project, the owner or operator must revise the cost estimate no later than 60 days after the Director has approved the request to modify the area of review and corrective action plan as required under R18-9-J659, the injection well plugging plan under R18-9-J667, the post-injection site care and site closure plan as required under R18-9-J668, and the emergency and response plan as required under R18-9-J669, if the change in the plan increases the cost. If the change to the plans decreases the cost, any withdrawal of funds must be approved by the Director. Any decrease to the value of the financial assurance instrument must first be approved by the Director. The revised cost estimate must be adjusted for inflation as specified at subsection (C)(2).
4. Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Director, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the owner or operator has received written approval from the Director.

D. The owner or operator must notify the Director by certified mail of adverse financial conditions such as bankruptcy that may affect the ability to carry out injection well plugging and post-injection site care and site closure.

1. In the event that the owner or operator or the third party provider of a financial responsibility instrument is going through a bankruptcy, the owner or operator must notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding.
2. A guarantor of a corporate guarantee must make such a notification to the Director if they are named as debtor, as required under the terms of the corporate guarantee.
3. An owner or operator who fulfills the requirements of subsection (A) by obtaining a trust fund, surety bond, letter of credit, escrow account, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the trust fund, surety bond, letter of credit, escrow account, or insurance policy. The owner or operator must establish other financial assurance within 60 days after such an event.

E. The owner or operator must provide an adjustment of the cost estimate to the Director within 60 days of notification by the Director, if the Director determines during the annual evaluation of the qualifying financial responsibility instrument or instruments that the most recent demonstration is no longer adequate to cover the cost of corrective action as required under R18-9-J659, injection well plugging under R18-9-J667, post-injection site care and site closure as required under R18-9-J668, and emergency and remedial response as required under R18-9-J669.

F. The Director must approve the use and length of pay-in-periods for trust funds or escrow accounts.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J661. Class VI; Injection Well Construction Requirements

A. The owner or operator must ensure that all Class VI wells are constructed and completed to:
1. Prevent the movement of fluids into or between USDWs or into any unauthorized zones;
2. Permit the use of appropriate testing devices and workover tools; and
3. Permit continuous monitoring of the annulus space between the injection tubing and long string casing.

B. Casing and Cementing of Class VI Wells.
1. Casing and cement or other materials used in the construction of each Class VI well must have sufficient structural strength and be designed for the life of the geologic sequestration project. All well materials must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Director. The casing and cementing program must be designed to prevent the movement of fluids into or between USDWs. In order to allow the Director to determine and specify casing and cementing requirements, the owner or operator must provide the following information:
   a. Depth to the injection zone or zones;
   b. Injection pressure, external pressure, internal pressure, and axial loading;
   c. Hole size;
   d. Size and grade of all casing strings (wall thickness, external diameter, nominal weight, length, joint specification, and construction material);
   e. Corrosiveness of the carbon dioxide stream and formation fluids;
   f. Down-hole temperatures;
   g. Lithology of injection and confining zone or zones;
   h. Type or grade of cement and cement additives; and
   i. Quantity, chemical composition, and temperature of the carbon dioxide stream.
2. Surface casing must extend through the base of the lowermost USDW and be cemented to the surface through the use of a single or multiple strings of casing and cement.
3. At least one long string casing, using a sufficient number of centralizers, must extend to the injection zone and must be cemented by circulating cement to the surface in one or more stages.
4. Circulation of cement may be accomplished by staging. The Director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement does not allow fluid movement behind the well bore.
5. Cement and cement additives must be compatible with the carbon dioxide stream and formation fluids and of sufficient quality and quantity to maintain integrity over the design life of the geologic sequestration project. The integrity and location of the cement shall be verified using technology capable of evaluating cement quality radially and identifying the location of channels to ensure that USDWs are not endangered.

C. Tubing and packer.
1. Tubing and packer materials used in the construction of each Class VI well must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Director.
2. All owners or operators of Class VI wells must inject fluids through tubing with a packer set at a depth opposite a cemented interval at the location approved by the Director.
3. In order for the Director to determine and specify requirements for tubing and packer, the owner or operator must submit the following information:
   a. Depth of setting;
   b. Characteristics of the carbon dioxide stream (chemical content, corrosiveness, temperature, and density) and formation fluids;
   c. Maximum proposed injection pressure;
   d. Maximum proposed annular pressure;
   e. Proposed injection rate (intermittent or continuous) and volume and/or mass of the carbon dioxide stream;
   f. Size of tubing and casing; and
   g. Tubing tensile, burst, and collapse strengths.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J662. Class VI; Logging, Sampling, and Testing Prior to Well Operation

A. During the drilling and construction of a Class VI injection well, the owner or operator must run appropriate logs, surveys and tests to determine or verify the depth, thickness, porosity, permeability, and lithology of, and the salinity of any formation fluids in all relevant geologic formations to ensure conformance with the injection well construction requirements under R18-9-J661 and to establish accurate baseline data against which future measurements may be compared. The owner or operator must submit to the Director a descriptive report prepared by a knowledgeable log analyst that includes an interpretation of the results of such logs and tests. At a minimum, such logs and tests must include:
1. Deviation checks during drilling on all holes constructed by drilling a pilot hole which is enlarged by reaming or another method. Such checks must be at sufficiently frequent intervals to determine the location of the borehole and to ensure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and
2. Before and upon installation of the surface casing:
   a. Resistivity, spontaneous potential, and caliper logs before the casing is installed; and
   b. A cement bond and variable density log to evaluate cement quality radially, and a temperature log after the casing is set and cemented.
3. Before and upon installation of the long string casing:
   a. Resistivity, spontaneous potential, porosity, caliper, gamma ray, fracture finder logs, and any other logs

the Director requires for the given geology before the casing is installed; and
b. A cement bond and variable density log, and a temperature log after the casing is set and cemented.
4. A series of tests designed to demonstrate the internal and external mechanical integrity of injection wells, which may include:
a. A pressure test with liquid or gas;
b. A tracer survey such as oxygen-activation logging;
c. A temperature or noise log;
d. A casing inspection log; and
5. Any alternative methods that provide equivalent or better information and that are required by and/or approved of by the Director.

B. The owner or operator must take whole cores or sidewall cores of the injection zone and confining system and formation fluid samples from the injection zone or zones, and must submit to the Director a detailed report prepared by a log analyst that includes: Well log analyses (including well logs), core analyses, and formation fluid sample information. The Director may accept information on cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The Director may require the owner or operator to core other formations in the borehole.

C. The owner or operator must record the fluid temperature, pH, conductivity, reservoir pressure, and static fluid level of the injection zone or zones.

D. At a minimum, the owner or operator must determine or calculate the following information concerning the injection and confining zone or zones:
1. Fracture pressure;
2. Other physical and chemical characteristics of the injection and confining zone or zones; and
3. Physical and chemical characteristics of the formation fluids in the injection zone or zones.

E. Upon completion, but prior to operation, the owner or operator must conduct the following tests to verify hydrogeologic characteristics of the injection zone or zones:
1. A pressure fall-off test; and,
2. A pump test; or
3. Injectivity tests.

F. The owner or operator must provide the Director with the opportunity to witness all logging and testing by this Part. The owner or operator must submit a schedule of such activities to the Director 30 days prior to conducting the first test and submit any changes to the schedule 30 days prior to the next scheduled test.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J663. Class VI; Injection Well Operating Requirements

A. Except during stimulation, the owner or operator must ensure that injection pressure does not exceed 90 percent of the fracture pressure of the injection zone or zones so as to ensure that the injection does not initiate new fractures or propagate existing fractures in the injection zone or zones. In no case may injection pressure initiate fractures in the confining zone or zones or cause the movement of injection or formation fluids that endangers a USDW. Pursuant to requirements at R18-9-J657(B)(9), all stimulation programs must be approved by the Director as part of the permit application and incorporated into the permit.

B. Injection between the outermost casing protecting USDWs and the well bore is prohibited.

C. The owner or operator must fill the annulus between the tubing and the long string casing with a non-corrosive fluid approved by the Director. The owner or operator must maintain on the annulus a pressure that exceeds the operating injection pressure, unless the Director determines that such requirement might harm the integrity of the well or endanger USDWs.

D. Other than during periods of well workover (maintenance) approved by the Director in which the sealed tubing-casing annulus is disassembled for maintenance or corrective procedures, the owner or operator must maintain mechanical integrity of the injection well at all times.

E. The owner or operator must install and use:
1. Continuous recording devices to monitor: The injection pressure; the rate, volume and/or mass, and temperature of the carbon dioxide stream; and the pressure on the annulus between the tubing and the long string casing and annulus fluid volume; and
2. Alarms and automatic surface shut-off systems or, at the discretion of the Director, down-hole shut-off systems for onshore wells or, other mechanical devices that provide equivalent protection.

F. If a shutdown (such as down-hole or at the surface) is triggered or a loss of mechanical integrity is discovered, the owner or operator must immediately investigate and identify as expeditiously as possible the cause of the shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under subsection (E) otherwise indicates that the well may be lacking mechanical integrity, the owner or operator must:
1. Immediately cease injection;
2. Take all steps reasonably necessary to determine whether there may have been a release of the injected carbon dioxide stream or formation fluids into any unauthorized zone;
3. Notify the Director within 24 hours;
4. Restore and demonstrate mechanical integrity to the satisfaction of the Director prior to resuming injection; and
5. Notify the Director when injection can be expected to resume.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J664. Class VI; Mechanical Integrity

A. A Class VI well has mechanical integrity if:
1. There is no significant leak in the casing, tubing, or packer; and
2. There is no significant fluid movement into a USDW through channels adjacent to the injection well bore.

B. To evaluate the absence of significant leaks under subsection (A)(1), owners or operators must, following an initial annulus pressure test, continuously monitor injection pressure, rate, injected volumes; pressure on the annulus between tubing and long-string casing; and annulus fluid volume as specified in R18-9-J663;

C. At least once per year, the owner or operator must use one of the following methods to determine the absence of significant fluid movement under subsection (A)(2):

1. An approved tracer survey such as an oxygen-activation log; or
2. A temperature or noise log.

D. If required by the Director, at a frequency specified in the testing and monitoring plan required at R18-9-J665, the owner or operator must run a casing inspection log to determine the presence or absence of corrosion in the long-string casing.

E. The Director may require any other test to evaluate mechanical integrity under subsections (A)(1) or (2). Also, the Director may allow the use of a test to demonstrate mechanical integrity other than those listed above with the written approval of the Administrator. To obtain approval for a new mechanical integrity test, the Director must submit a written request to the Administrator setting forth the proposed test and all technical data supporting its use.

F. In conducting and evaluating the tests enumerated in this Section or others to be allowed by the Director, the owner or operator and the Director must apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, they shall include a description of the test or tests and the method or methods used. In making his or her evaluation, the Director must review monitoring and other test data submitted since the previous evaluation.

G. The Director may require additional or alternative tests if the results presented by the owner or operator under subsections (A) through (F) are not satisfactory to the Director to demonstrate that there is no significant leak in the casing, tubing, or packer, or to demonstrate that there is no significant movement of fluid into a USDW resulting from the injection activity as stated in subsections (A)(1) and (2).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J665. Class VI; Testing and Monitoring Requirements

The owner or operator of a Class VI well must prepare, maintain, and comply with a testing and monitoring plan to verify that the geologic sequestration project is operating as permitted and is not endangering USDWs. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The testing and monitoring plan must be submitted with the permit application, for Director approval, and must include a description of how the owner or operator will meet the requirements of this Section, including accessing sites for all necessary monitoring and testing during the life of the project. Testing and monitoring associated with geologic sequestration projects must, at a minimum, include:

1. Analysis of the carbon dioxide stream with sufficient frequency to yield data representative of its chemical and physical characteristics;
2. Installation and use, except during well workovers as defined in R18-9-J663, of continuous recording devices to monitor injection pressure, rate, and volume; the pressure on the annulus between the tubing and the long string casing; and the annulus fluid volume added;
3. Corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of corrosion, which must be performed on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in R18-9-J661, by:
   a. Analyzing coupons of the well construction materials placed in contact with the carbon dioxide stream; or
   b. Routing the carbon dioxide stream through a loop constructed with the material used in the well and inspecting the materials in the loop; or
   c. Using an alternative method approved by the Director;
4. Periodic monitoring of the ground water quality and geochemical changes above the confining zone or zones that may be a result of carbon dioxide movement through the confining zone or zones or additional identified zones including:
   a. The location and number of monitoring wells based on specific information about the geologic sequestration project, including injection rate and volume, geology, the presence of artificial penetrations, and other factors; and
   b. The monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data that has been collected under R18-9-J657 and on any modeling results in the area of review evaluation required by R18-9-J659(C).
5. A demonstration of external mechanical integrity pursuant to R18-9-J664(C) at least once per year until the injection well is plugged; and, if required by the Director, a casing inspection log pursuant to requirements under R18-9-J664(D) at a frequency established in the testing and monitoring plan;
6. A pressure fall-off test at least once every five years unless more frequent testing is required by the Director based on site-specific information;
7. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (e.g., the pressure front) by using:
   a. Direct methods in the injection zone or zones; and,
   b. Indirect methods (e.g., seismic, electrical, gravity, or electromagnetic surveys and/or down-hole carbon dioxide detection tools), unless the Director determines, based on site-specific geology, that such methods are not appropriate;
8. The Director may require surface air monitoring and/or soil gas monitoring to detect movement of carbon dioxide that could endanger a USDW.
   a. Design of Class VI surface air and/or soil gas monitoring must be based on potential risks to USDWs within the area of review;
   b. The monitoring frequency and spatial distribution of surface air monitoring and/or soil gas monitoring must be decided using baseline data, and the monitoring plan must describe how the proposed monitoring will yield useful information on the area of review delineation and/or compliance with standards under R18-9-B608;
   c. If an owner or operator demonstrates that monitoring employed under 40 CFR §§ 98.440 to 98.449 (Clean Air Act, 42 U.S.C. 7401 et seq.) accomplishes the goals of subsections (A)(8)(a) and (b), and meets the requirements pursuant to R18-9-J666(3)(e), a Director that requires surface air/soil gas monitoring must approve the use of monitoring employed under 40 CFR §§ 98.440 to 98.449. Compliance with 40 CFR §§ 98.440 to 98.449 pursuant

to this provision is considered a condition of the Class VI permit;

9. Any additional monitoring, as required by the Director, necessary to support, upgrade, and improve computational modeling of the area of review evaluation required under R18-9-J659(C) and to determine compliance with standards under R18-9-B608;
10. The owner or operator shall periodically review the testing and monitoring plan to incorporate monitoring data collected under this Part, operational data collected under R18-9-J663, and the most recent area of review reevaluation performed under R18-9-J659(E). In no case shall the owner or operator review the testing and monitoring plan less often than once every five years. Based on this review, the owner or operator shall submit an amended testing and monitoring plan or demonstrate to the Director that no amendment to the testing and monitoring plan is needed. Any amendments to the testing and monitoring plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements under R18-9-C632 or R18-9-C633, as appropriate. Amended plans or demonstrations shall be submitted to the Director as follows:
    a. Within one year of an area of review reevaluation;
    b. Following any significant changes to the facility, such as addition of monitoring wells or newly permitted injection wells within the area of review, on a schedule determined by the Director; or
    c. When required by the Director.
11. A quality assurance and surveillance plan for all testing and monitoring requirements.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J666. Class VI; Reporting Requirements
The owner or operator must provide at a minimum, the following reports to the Director, and as specified in subsection (5) to EPA, for each permitted Class VI well:

1. Semi-annual reports containing:
    a. Any changes to the physical, chemical, and other relevant characteristics of the carbon dioxide stream from the proposed operating data;
    b. Monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure;
    c. A description of any event that exceeds operating parameters for annulus pressure or injection pressure specified in the permit;
    d. A description of any event which triggers a shut-off device required pursuant to R18-9-J663(E) and the response taken;
    e. The monthly volume and/or mass of the carbon dioxide stream injected over the reporting period and the volume injected cumulatively over the life of the project;
    f. Monthly annulus fluid volume added; and
    g. The results of monitoring prescribed under R18-9-J665.
2. Report, within 30 days, the results of:
    a. Periodic tests of mechanical integrity;
    b. Any well workover; and,
    c. Any other test of the injection well conducted by the permittee if required by the Director.
3. Report, within 24 hours:
    a. Any evidence that the injected carbon dioxide stream or associated pressure front may cause an endangerment to a USDW;
    b. Any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs;
    c. Any triggering of a shut-off system (i.e., down-hole or at the surface);
    d. Any failure to maintain mechanical integrity; or
    e. Pursuant to compliance with the requirement at R18-9-J665(8) for surface air/soil gas monitoring or other monitoring technologies, if required by the Director, any release of carbon dioxide to the atmosphere or biosphere.
4. Owners or operators must notify the Director in writing 30 days in advance of:
    a. Any planned well workover;
    b. Any planned stimulation activities, other than stimulation for formation testing conducted under R18-9-J657; and
    c. Any other planned test of the injection well conducted by the permittee.
5. Owners or operators must submit all required reports, submittals, and notifications under Part J of this Article to EPA in an electronic format approved by EPA.
6. Records shall be retained by the owner or operator as follows:
    a. All data collected under R18-9-J657 for Class VI permit applications shall be retained throughout the life of the geologic sequestration project and for 10 years following site closure.
    b. Data on the nature and composition of all injected fluids collected pursuant to R18-9-J665(1) shall be retained until 10 years after site closure. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period.
    c. Monitoring data collected pursuant to R18-9-J665(2) through (9) shall be retained for 10 years after it is collected.
    d. Well plugging reports, post-injection site care data, including, if appropriate, data and information used to develop the demonstration of the alternative post-injection site care timeframe, and the site closure report collected pursuant to requirements at R18-9-J668(F) and (H) shall be retained for 10 years following site closure.
    e. The Director has authority to require the owner or operator to retain any records required in this Part for longer than 10 years after site closure.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J667. Class VI; Injection Well Plugging

A. Prior to the well plugging, the owner or operator must flush each Class VI injection well with a buffer fluid, determine bottomhole reservoir pressure, and perform a final external mechanical integrity test.

B. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan that is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The well plugging plan must be submitted as part of the permit application and must include the following information:
1. Appropriate tests or measures for determining bottomhole reservoir pressure;
2. Appropriate testing methods to ensure external mechanical integrity as specified in R18-9-J664;
3. The type and number of plugs to be used;
4. The placement of each plug, including the elevation of the top and bottom of each plug;
5. The type, grade, and quantity of material to be used in plugging. The material must be compatible with the carbon dioxide stream; and
6. The method of placement of the plugs.

C. The owner or operator must notify the Director in writing pursuant to R18-9-J666(5), at least 60 days before plugging of a well. At this time, if any changes have been made to the original well plugging plan, the owner or operator must also provide the revised well plugging plan. The Director may allow for a shorter notice period. Any amendments to the injection well plugging plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate.

D. Within 60 days after plugging, the owner or operator must submit, pursuant to R18-9-J666(5), a plugging report to the Director. The report must be certified as accurate by the owner or operator and by the person who performed the plugging operation, if other than the owner or operator. The owner or operator shall retain the well plugging report for 10 years following site closure.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J668. Class VI; Post-Injection Site Care and Site Closure

A. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan for post-injection site care and site closure that meets the requirements of subsection (A)(2) and is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.
1. The owner or operator must submit the post-injection site care and site closure plan as a part of the permit application to be approved by the Director.
2. The post-injection site care and site closure plan must include the following information:
   a. The pressure differential between pre-injection and predicted post-injection pressures in the injection zone or zones;
   b. The predicted position of the carbon dioxide plume and associated pressure front at site closure as demonstrated in the area of review evaluation required under R18-9-J659(C)(1);
   c. A description of post-injection monitoring location, methods, and proposed frequency;
   d. A proposed schedule for submitting post-injection site care monitoring results to the Director pursuant to R18-9-J666(5); and
   e. The duration of the post-injection site care timeframe and, if approved by the Director, the demonstration of the alternative post-injection site care timeframe that ensures non-endangerment of USDWs.
3. Upon cessation of injection, owners or operators of Class VI wells must either submit an amended post-injection site care and site closure plan or demonstrate to the Director through monitoring data and modeling results that no amendment to the plan is needed. Any amendments to the post-injection site care and site closure plan must be approved by the Director, be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate.
4. At any time during the life of the geologic sequestration project, the owner or operator may modify and resubmit the post-injection site care and site closure plan for the Director's approval within 30 days of such change.

B. The owner or operator shall monitor the site following the cessation of injection to show the position of the carbon dioxide plume and pressure front and demonstrate that USDWs are not being endangered.
1. Following the cessation of injection, the owner or operator shall continue to conduct monitoring as specified in the Director-approved post-injection site care and site closure plan for at least 50 years or for the duration of the alternative timeframe approved by the Director pursuant to requirements in subsection (C), unless they make a demonstration under subsection (B)(2). The monitoring must continue until the geologic sequestration project no longer poses an endangerment to USDWs and the demonstration under subsection (B)(2) is submitted and approved by the Director.
2. If the owner or operator can demonstrate to the satisfaction of the Director before 50 years or prior to the end of the approved alternative timeframe based on monitoring and other site-specific data, that the geologic sequestration project no longer poses an endangerment to USDWs, the Director may approve an amendment to the post-injection site care and site closure plan to reduce the frequency of monitoring or may authorize site closure before the end of the 50-year period or prior to the end of the approved alternative timeframe, where they have substantial evidence that the geologic sequestration project no longer poses a risk of endangerment to USDWs.
3. Prior to authorization for site closure, the owner or operator must submit to the Director for review and approval a demonstration, based on monitoring and other site-specific data, that no additional monitoring is needed to ensure that the geologic sequestration project does not pose an endangerment to USDWs.
4. If the demonstration in subsection (B)(3) cannot be made at the end of the 50-year period or at the end of the approved alternative timeframe, or if the Director does not approve the demonstration, the owner or operator must submit to the Director a plan to continue post-injection site care until a demonstration can be made and approved by the Director.

C. At the Director's discretion, the Director may approve, in consultation with EPA, an alternative post-injection site care timeframe other than the 50-year default, if an owner or operator

can demonstrate during the permitting process that an alternative post-injection site care timeframe is appropriate and ensures non-endangerment of USDWs. The demonstration must be based on significant, site-specific data and information including all data and information collected pursuant to R18-9-J657 or R18-9-J658, and must contain substantial evidence that the geologic sequestration project will no longer pose a risk of endangerment to USDWs at the end of the alternative post-injection site care timeframe.

1. A demonstration of an alternative post-injection site care timeframe must include consideration and documentation of:
   a. The results of computational modeling performed pursuant to delineation of the area of review under R18-9-J659;
   b. The predicted timeframe for pressure decline within the injection zone, and any other zones, such that formation fluids may not be forced into any USDWs; and/or the timeframe for pressure decline to pre-injection pressures;
   c. The predicted rate of carbon dioxide plume migration within the injection zone, and the predicted timeframe for the cessation of migration;
   d. A description of the site-specific processes that will result in carbon dioxide trapping including immobilization by capillary trapping, dissolution, and mineralization at the site;
   e. The predicted rate of carbon dioxide trapping in the immobile capillary phase, dissolved phase, and/or mineral phase;
   f. The results of laboratory analyses, research studies, and/or field or site-specific studies to verify the information required in subsection (C)(1)(d) and (C)(1)(e);
   g. A characterization of the confining zone or zones including a demonstration that it is free of transmissive faults, fractures, and micro-fractures and of appropriate thickness, permeability, and integrity to impede fluid movement, such as carbon dioxide and formation fluids;
   h. The presence of potential conduits for fluid movement including planned injection wells and project monitoring wells associated with the proposed geologic sequestration project or any other projects in proximity to the predicted/modeled, final extent of the carbon dioxide plume and area of elevated pressure;
   i. A description of the well construction and an assessment of the quality of plugs of all abandoned wells within the area of review;
   j. The distance between the injection zone and the nearest USDWs above and/or below the injection zone; and
   k. Any additional site-specific factors required by the Director.
2. Information submitted to support the demonstration in subsection (C)(1) must meet the following criteria:
   a. All analyses and tests performed to support the demonstration must be accurate, reproducible, and performed in accordance with the established quality assurance standards;
   b. Estimation techniques must be appropriate and EPA-certified test protocols must be used where available;
   c. Predictive models must be appropriate and tailored to the site conditions, composition of the carbon dioxide stream and injection and site conditions over the life of the geologic sequestration project;
   d. Predictive models must be calibrated using existing information where sufficient data are available;
   e. Reasonably conservative values and modeling assumptions must be used and disclosed to the Director whenever values are estimated on the basis of known, historical information instead of site-specific measurements;
   f. An analysis must be performed to identify and assess aspects of the alternative post-injection site care timeframe demonstration that contribute significantly to uncertainty. The owner or operator must conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration;
   g. An approved quality assurance and quality control plan must address all aspects of the demonstration; and
   h. Any additional criteria required by the Director.

D. The owner or operator must notify the Director in writing at least 120 days before site closure. At this time, if any changes have been made to the original post-injection site care and site closure plan, the owner or operator must also provide the revised plan. The Director may allow for a shorter notice period.

E. After the Director has authorized site closure, the owner or operator must plug all monitoring wells in a manner which will not allow movement of injection or formation fluids that endangers a USDW.

F. The owner or operator must submit a site closure report to the Director within 90 days of site closure, which must thereafter be retained at a location designated by the Director for 10 years. The report must include:
1. Documentation of appropriate injection and monitoring well plugging as specified in R18-9-J667 and subsection (E). The owner or operator must provide a copy of a survey plat which has been submitted to the local zoning authority designated by the Director. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks. The owner or operator must also submit a copy of the plat to the Administrator of EPA Region 9;
2. Documentation of appropriate notification and information to such State, local and Tribal authorities that have authority over drilling activities to enable such State, local, and Tribal authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zone or zones; and
3. Records reflecting the nature, composition, and volume of the carbon dioxide stream.

G. Each owner or operator of a Class VI injection well must record a notation on the deed to the facility property or any other document that is normally examined during Title search that will in perpetuity provide any potential purchaser of the property the following information:
1. The fact that land has been used to sequester carbon dioxide;
2. The name of the State agency, local authority, and/or Tribe with which the survey plat was filed, as well as the address of the Environmental Protection Agency Regional Office to which it was submitted; and

3. The volume of fluid injected, the injection zone or zones into which it was injected, and the period over which injection occurred.

H. The owner or operator must retain for 10 years following site closure, records collected during the post-injection site care period. The owner or operator must deliver the records to the Director at the conclusion of the retention period, and the records must thereafter be retained at a location designated by the Director for that purpose.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J669. Class VI; Emergency and Remedial Response

A. As part of the permit application, the owner or operator must provide the Director with an emergency and remedial response plan that describes actions the owner or operator must take to address movement of the injection or formation fluids that may cause an endangerment to a USDW during construction, operation, and post-injection site care periods. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

B. If the owner or operator obtains evidence that the injected carbon dioxide stream and associated pressure front may cause an endangerment to a USDW, the owner or operator must:
1. Immediately cease injection;
2. Take all steps reasonably necessary to identify and characterize any release;
3. Notify the Director within 24 hours; and
4. Implement the emergency and remedial response plan approved by the Director.

C. The Director may allow the operator to resume injection prior to remediation if the owner or operator demonstrates that the injection operation will not endanger USDWs.

D. The owner or operator shall periodically review the emergency and remedial response plan developed under subsection (A). In no case shall the owner or operator review the emergency and remedial response plan less often than once every five years. Based on this review, the owner or operator shall submit an amended emergency and remedial response plan or demonstrate to the Director that no amendment to the emergency and remedial response plan is needed. Any amendments to the emergency and remedial response plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate. Amended plans or demonstrations shall be submitted to the Director as follows:
1. Within one year of an area of review reevaluation;
2. Following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the Director; or
3. When required by the Director.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J670. Class VI; Injection Depth Waiver Requirements

A. This Section sets forth information which an owner or operator seeking a waiver of the Class VI injection depth requirements must submit to the Director; information the Director must consider in consultation with all affected Public Water System Supervision Directors; the procedure for Director-- Administrator communication and waiver issuance; and the additional requirements that apply to owners or operators of Class VI wells granted a waiver of the injection depth requirements.

B. In seeking a waiver of the requirement to inject below the lowermost USDW, the owner or operator must submit a supplemental report concurrent with permit application. The supplemental report must include the following:
1. A demonstration that the injection zone or zones is/are laterally continuous, is not a USDW, and is not hydraulically connected to USDWs; does not outcrop; has adequate injectivity, volume, and sufficient porosity to safely contain the injected carbon dioxide and formation fluids; and has appropriate geochemistry.
2. A demonstration that the injection zone or zones is/are bounded by laterally continuous, impermeable confining units above and below the injection zone or zones adequate to prevent fluid movement and pressure buildup outside of the injection zone or zones; and that the confining unit or units is/are free of transmissive faults and fractures. The report shall further characterize the regional fracture properties and contain a demonstration that such fractures will not interfere with injection, serve as conduits, or endanger USDWs.
3. A demonstration, using computational modeling, that USDWs above and below the injection zone will not be endangered as a result of fluid movement. This modeling should be conducted in conjunction with the area of review determination, as described in R18-9-J659, and is subject to requirements, as described in R18-9-J659(C), and periodic reevaluation, as described in R18-9-J659(E).
4. A demonstration that well design and construction, in conjunction with the waiver, will ensure isolation of the injectate in lieu of requirements at R18-9-J661(A)(1) and will meet well construction requirements in subsection (G).
5. A description of how the monitoring and testing and any additional plans will be tailored to the geologic sequestration project to ensure protection of USDWs above and below the injection zone or zones, if a waiver is granted.
6. Information on the location of all the public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review.
7. Any other information requested by the Director to inform the Administrator's decision to issue a waiver.

C. To inform the Administrator's decision on whether to grant a waiver of the injection depth requirements at R18-9-A604 and R18-9-J661(A)(1), the Director must submit, to the Administrator, documentation of the following:
1. An evaluation of the following information as it relates to siting, construction, and operation of a geologic sequestration project with a waiver:
   a. The integrity of the upper and lower confining units;
   b. The suitability of the injection zone or zones, such as lateral continuity, lack of transmissive faults and fractures, knowledge of current or planned artificial penetrations into the injection zone or zones, or formations below the injection zone;
   c. The potential capacity of the geologic formation or formations to sequester carbon dioxide, accounting for the availability of alternative injection sites;

d. All other site characterization data, the proposed emergency and remedial response plan, and a demonstration of financial responsibility;
e. Community needs, demands, and supply from drinking water resources;
f. Planned needs, potential and/or future use of USDWs and non-USDWs in the area;
g. Planned or permitted water, hydrocarbon, or mineral resource exploitation potential of the proposed injection formation or formations and other formations both above and below the injection zone to determine if there are any plans to drill through the formation to access resources in or beneath the proposed injection zone or zones/formation or formations;
h. The proposed plan for securing alternative resources or treating USDW formation waters in the event of contamination related to the Class VI injection activity; and,
i. Any other applicable considerations or information requested by the Director.

2. Consultation with the Public Water System Supervision Directors of all States and Tribes having jurisdiction over lands within the area of review of a well for which a waiver is sought.
3. Any written waiver-related information submitted by the Public Water System Supervision Director or Directors to the (UIC) Director.

D. Pursuant to requirements at R18-9-C620 and concurrent with the Class VI permit application notice process, the Director shall give public notice that a waiver application has been submitted. The notice shall clearly state:
1. The depth of the proposed injection zone or zones;
2. The location of the injection well or wells;
3. The name and depth of all USDWs within the area of review;
4. A map of the area of review;
5. The names of any public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review; and,
6. The results of UIC-Public Water System Supervision consultation required under subsection (C)(2).

E. Following public notice, the Director shall provide all information received through the waiver application process to the Administrator. Based on the information provided, the Administrator shall provide written concurrence or non-concurrence regarding waiver issuance.
1. If the Administrator determines that additional information is required to support a decision, the Director shall provide the information. At the Administrator's discretion, they may require that public notice of the new information be initiated.
2. In no case shall a Director of a State-approved program issue a waiver without receipt of written concurrence from the Administrator.

F. If a waiver is issued, within 30 days of waiver issuance, EPA shall post the following information on the Office of Water's Web site:
1. The depth of the proposed injection zone or zones;
2. The location of the injection well or wells;
3. The name and depth of all USDWs within the area of review;
4. A map of the area of review;
5. The names of any public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review; and
6. The date of waiver issuance.

G. Upon receipt of a waiver of the requirement to inject below the lowermost USDW for geologic sequestration, the owner or operator of the Class VI well must comply with:
1. All requirements at R18-9-J659, R18-9-J660, R18-9-J662, R18-9-J663, R18-9-J664, R18-9-J666, R18-9-J667, and R18-9-J669;
2. All requirements at R18-9-J661 with the following modified requirements:
a. The owner or operator must ensure that Class VI wells with a waiver are constructed and completed to prevent movement of fluids into any unauthorized zones including USDWs, in lieu of requirements at R18-9-J661(A)(1).
b. The casing and cementing program must be designed to prevent the movement of fluids into any unauthorized zones including USDWs in lieu of requirements at R18-9-J661(B)(1).
c. The surface casing must extend through the base of the nearest USDW directly above the injection zone and be cemented to the surface; or, at the Director's discretion, another formation above the injection zone and below the nearest USDW above the injection zone.
3. All requirements at R18-9-J665 with the following modified requirements:
a. The owner or operator shall monitor the groundwater quality, geochemical changes, and pressure in the first USDWs immediately above and below the injection zone or zones; and in any other formations at the discretion of the Director.
b. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure by using direct methods to monitor for pressure changes in the injection zone or zones; and, indirect methods (such as seismic, electrical, gravity, or electromagnetic surveys and/or downhole carbon dioxide detection tools), unless the Director determines, based on site-specific geology, that such methods are not appropriate.
4. All requirements at R18-9-J668 with the following, modified post-injection site care monitoring requirements:
a. The owner or operator shall monitor the groundwater quality, geochemical changes and pressure in the first USDWs immediately above and below the injection zone; and in any other formations at the discretion of the Director.
b. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure by using direct methods in the injection zone or zones; and indirect methods, unless the Director determines based on site-specific geology, that such methods are not appropriate.
5. Any additional requirements requested by the Director designed to ensure protection of USDWs above and below the injection zone or zones.

Historical Note
New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

Table 1: Applicable Standards National Primary Drinking Water Regulations

Contaminant	MCL[1] (mg/L)[2]
Alachlor	0.002
Alpha/photon emitters	15 picocuries per Liter (pCi/L)
Antimony	0.006
Arsenic	0.010
Asbestos (fibers>10 micrometers)	7 million fibers per Liter (MFL)
Atrazine	0.003
Barium	2
Benzene	0.005
Benzo(a)pyrene (PAHs)	0.0002
Beryllium	0.004
Beta photon emitters	4 millirems per year
Bromate	0.010
Cadmium	0.005
Carbofuran	0.04
Carbon tetrachloride	0.005
Chlordane	0.002
Chlorite	1.0
Chlorobenzene	0.1
Chromium (total)	0.1
Cyanide (as free cyanided)	0.2
2,4-D	0.07
Dalapon	0.2
1,2-Dibromo-3-chloropropane (DBCP)	0.0002
o-Dichlorobenzene	0.6
P-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Cis-1,2-Dichloroethylene	0.07
Trans-1,2-Dichloroethylene	0.1
Dichloromethane	0.005
1,2-Dichloropropane	0.005
Di(2-ethylhexyl) adipate	0.4
DI(2-ethylhexyl) phthalate	0.006
Dinoseb	0.007
Dioxin (2,3,7,8-TCDD)	0.00000003
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylbenzene	0.7
Ethylene dibromide	0.00005
Fecal coliform and *E.coli*	MCL[3]
Fluoride	4.0
Glyphosate	0.7
Haloacetic acids (HAA5)	0.060
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lindane	0.0002
Mercury (inorganic)	0.002
Methoxychlor	0.04
Nitrate (measured as Nitrogen)	10
Nitrite (measured as Nitrogen)	1
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated biphenyls (PCBs)	0.0005
Radium 226 and Radium 228 (combined)	5 pCi/L
Selenium	0.05
Simazine	0.004
Styrene	0.1
Tetrachloroethylene	0.005
Thallium	0.002
Toluene	1
Total Coliforms	5.0 percent[4]
Total Trihalomethanes (TTHMs)	0.080
Toxaphene	0.003
2,4,5-TP (Silvex)	0.05
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.2
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Uranium	30µg/L
Vinyl chloride	0.002
Xylenes (total)	10

NOTES

[1] Maximum Contaminant Level (MCL) – The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to MCLGs as feasible using the best available treatment technology and taking cost into consideration. MCLs are enforceable standards.

[2] Units are in milligrams per liter (mg/L) unless otherwise noted. Milligrams per liter are equivalent to parts per million (ppm).

[3] A routine sample that is fecal coliform-positive or E. coli-positive triggers repeat samples-if any repeat sample is total coliform-positive, the system has an acute MCL violation. A routine sample that is total coliform-positive, and fecal coliform-negative or E. coli-negative triggers repeat samples – if any repeat sample is fecal coliform-positive or E. coli-positive, the system has an acute MCL violation. See also Total Coliforms.

[4] No more than 5.0 percent samples total coliform-positive in a month. (For water systems that collect fewer than 40 routine sam-

ples per month, no more than one sample can be total coliform-positive per month.) Every sample that has total coliform must be analyzed for either fecal coliforms or E. coli. If two consecutive TC-positive samples, and one is also positive for E. coli or fecal coliforms, system has an acute MCL violation.

Historical Note
New Table 1, under Article 6, Part J made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

ARTICLE 7. USE OF RECYCLED WATER

R18-9-701. Renumbered

Historical Note
Former Section R9-20-401 repealed, new Section R9-20-401 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-401 renumbered without change as Section R18-9-701 (Supp. 87-3). Amended by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-701 renumbered to R18-9-A701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-702. Renumbered

Historical Note
Former Section R9-20-402 repealed, new Section R9-20-402 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-402 renumbered without change as Section R18-9-702 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-702 renumbered to R18-9-A702 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-703. Renumbered

Historical Note
Former Section R9-20-403 repealed, new Section R9-20-403 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-403 renumbered without change as Section R18-9-703 (Supp. 87-3). Editorial change to labels in subsection (c)(8) (Supp. 89-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-703 renumbered to R18-9-B701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-704. Renumbered

Historical Note
Former Section R9-20-404 repealed, new Section R9-20-404 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-404 renumbered without change as Section R18-9-704 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-704 amended by final rulemaking at 22 A.A.R. 1696, effective August 12, 2016 (Supp. 16-2). Section R18-9-704 and Table 1 renumbered to R18-9-B702 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-705. Renumbered

Historical Note
Former Section R9-20-405 repealed, new Section R9-20-405 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-405 renumbered without change as Section R18-9-705 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-705 renumbered to R18-9-A703 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-706. Renumbered

Historical Note
Former Section R9-20-406 repealed, new Section R9-20-406 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-406 renumbered without change as Section R18-9-706 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-706 renumbered to R18-9-B703 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-707. Renumbered

Historical Note
Former Section R9-20-407 repealed, new Section R9-30-407 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-407 renumbered without change as Section R18-9-707 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-707 renumbered to R18-9-C701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-708. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-708 renumbered to R18-9-A704 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-709. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-709 renumbered to R18-9-A705 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-710. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-710 renumbered to R18-9-A706 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-711. Renumbered

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-711 renumbered to R18-9-D701 by final rulemak-

ing at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-712. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-712 renumbered to R18-9-B704 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-713. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-713 renumbered to R18-9-B705 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-714. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-714 renumbered to R18-9-B706 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-715. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-715 renumbered to R18-9-B707 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-716. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-716 renumbered to R18-9-B708 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-717. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-717 renumbered to R18-9-B709 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-718. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-718 renumbered to R18-9-B710 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-719. Renumbered

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-719 renumbered to R18-9-D702 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-720. Repealed

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART A. GENERAL PROVISIONS

R18-9-A701. Definitions

Unless provided otherwise, the definitions provided in A.R.S. § 49-201, A.A.C. R18-9-101, R18-9-601, R18-11-301, and the following terms apply to this Article:

1. "Advanced reclaimed water treatment facility" means a facility that treats and purifies Class A+ or Class B+ reclaimed water to produce potable water suitable for distribution for human consumption. R18-9-B702(B) does not apply to an advanced reclaimed water treatment facility. Potable water produced by an advanced reclaimed water treatment facility is not reclaimed water.
2. "Direct reuse" means the beneficial use of reclaimed water for a purpose allowed by this Article. The following is not a direct reuse of reclaimed water:
   a. The use of water subsequent to its discharge under the conditions of a National or Arizona Pollutant Discharge Elimination System permit;
   b. The use of water subsequent to discharge under the conditions of an Aquifer Protection Permit issued under 18 A.A.C. 9, Articles 1 through 3;
   c. The use of industrial wastewater, reclaimed water, or both, in a workplace subject to a federal program that protects workers from workplace exposures; or
   d. The use of potable water produced by an advanced reclaimed water treatment facility.
3. "Direct reuse site" means an area permitted for the application or impoundment of reclaimed water. An impoundment operated for disposal under an Aquifer Protection Permit is not a direct reuse site.
4. "End user" means a person who directly reuses reclaimed water meeting the standards for Classes A+, A, B+, B, and C, established under 18 A.A.C. 11, Article 3.
5. *"Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet.* A.R.S. § 49-201(18).
6. "Industrial wastewater" means wastewater generated from an industrial process.
7. "Irrigation" means the beneficial use of water or reclaimed water, or both, for growing crops, turf, or silviculture, or for landscaping.
8. "Open access" means access to reclaimed water by the general public is uncontrolled.
9. "Open water conveyance" means any constructed open waterway, including canals and laterals, that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use. An open water conveyance does not include waters of the United States.
10. "Pipeline conveyance" means any system of pipelines that transports reclaimed water from a sewage treatment

facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use.

11. *"Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility.* A.R.S. § 49-201(32).
12. "Reclaimed water agent" means a person who holds a permit to distribute reclaimed water to more than one end user.
13. "Reclaimed water blending facility" means an installation or method of operation that receives reclaimed water from a sewage treatment facility or other reclaimed water blending facility classified to produce Class C or better reclaimed water and blends it with other water so that the produced water may be used for a higher-class purpose listed in 18 A.A.C. 11, Article 3, Table A.
14. "Recycled water" means a processed water that originated as a waste or discarded water, including reclaimed water and gray water, for which the Department has designated water quality specifications to allow the water to be used as a supply.
15. "Restricted access" means that access to reclaimed water by the general public is controlled.
16. "Sewage Treatment Facility" means a sewage treatment facility as defined in 18 A.A.C. 9, Article 1.

Historical Note
New Section R18-9-A701 renumbered from R18-9-701 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A702. Applicability and Standards for Recycled Water

A. This Article applies to:
1. An owner or operator of a sewage treatment facility that generates reclaimed water for direct reuse,
2. An owner or operator of a reclaimed water blending facility,
3. A reclaimed water agent,
4. An end user of reclaimed water,
5. A person who uses recycled water regulated under this Article,
6. A person who directly reuses reclaimed water from a sewage treatment facility combined with industrial wastewater or combined with water from an industrial wastewater treatment facility, and
7. A person who directly reuses reclaimed water from an industrial wastewater treatment facility in the production or processing of a crop or substance that may be used as human or animal food.

B. Reclaimed water classes A+, A, B+, B, and C specified in this Article shall meet the standards established in 18 A.A.C. 11, Article 3.

C. Nothing in this Article exempts the disposal of reclaimed water from the Aquifer Protection Permit requirements under A.R.S. Title 49, Chapter 2, Articles 1, 2, and 3.

Historical Note
New Section R18-9-A702 renumbered from R18-9-702 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A703. Recycled Water Individual Permit Application

A. To apply for a Recycled Water Individual Permit, a person shall provide the Department with:
1. The applicable permit fee specified under 18 A.A.C. 14; and
2. The following information on a form provided by the Department:
   a. The name, e-mail address, telephone number, and mailing address of the owner or operator of the facility or, if applicable, the reclaimed water agent;
   b. The latitude and longitude coordinates; township range, and section; site address, if applicable; and a map showing the facility or site location;
   c. Any other federal or state environmental permits issued to the applicant;
   d. Source of recycled water to be used;
   e. The applicant may propose for approval, and the Department may issue, a single permit that includes more than one type of recycled water allowed by this article, including for multiple classes of reclaimed water, if the applicant demonstrates the waters will be treated appropriately for the end use;
   f. The applicant may propose, and the Department may permit, the inclusion of kitchen sink and dishwasher wastewater with gray water under a Recycled Water Individual Permit, if the applicant demonstrates such waters will be treated appropriately for the end use;
   g. Estimated volume of recycled water to be used on an annual basis;
   h. Class of reclaimed water to be directly reused, if applicable;
   i. Description of the use activity;
   j. Any treatment measures utilized to meet or maintain reclaimed water quality standards or otherwise ensure the quality of the recycled water is fit for the intended use; and
   k. The applicant's certification that the information submitted in the application is true and accurate to the best of the applicant's knowledge.

B. Public participation.
1. Notice of Preliminary Decision.
   a. The Department shall publish the Notice of Preliminary Decision regarding the issuance or denial of a final permit determination on the Department's website.
   b. The Department shall accept written comments from the public before a Recycled Water Individual Permit is issued or denied.
   c. The written public comment period begins on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.
2. After publishing the notice specified in subsection (B)(1)(a), the Department shall hold a public hearing to address the Notice of Preliminary Decision if the Department determines that:
   a. Significant public interest in a public hearing exists, or
   b. Significant issues or information have been brought to the attention of the Department that are relevant to the permitting decision and have not been considered previously in the permitting process.
3. If the Department determines a public hearing is necessary and a public hearing has not already been noticed under subsection (B)(1)(a), the Department shall schedule a public hearing and republish the Notice of Prelimi-

nary Decision and notice of the public hearing on the Department's website.

4. The Department shall accept written public comment until the close of the hearing record as specified by the person presiding at the public hearing.

C. Final permit issuance or denial.

1. The Department may deny a Recycled Water Individual Permit if the Department determines upon completion of the application process the applicant has:
   a. Failed or refused to correct a deficiency in the permit application;
   b. Failed to demonstrate the facility and the operation will protect public health and water quality. This determination shall be based on:
      i. The information submitted in the permit application,
      ii. Any information submitted to the Department as written public comment or following a public hearing; or
      iii. Any information relevant to the demonstration developed or acquired by the Department, or
   c. Provided false or misleading information.
2. If the Department denies a Recycled Water Individual Permit the Department shall provide the applicant with written notification explaining the following:
   a. The reasons for the denial with references to the statutes or rules on which the denial is based.
   b. The applicant's right to appeal the denial, including the number of days the applicant has to file a notice of appeal, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.
   c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section R18-9-A703 renumbered from R18-9-705 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A704. Recycled Water General Permit

A. Type 1 Recycled Water General Permit for Gray Water. A person may use recycled water without notice to the Department if the use:

1. Is specifically authorized by and meets the requirements of this Article, and
2. Complies with the requirements of the Type 1 Recycled Water General Permit under this Article.

B. Type 2 Recycled Water General Permit for Reclaimed Water.

1. A person may use recycled water under a Type 2 Recycled Water General Permit if:
   a. The use is authorized by and meets the requirements of this Article;
   b. The use meets all the conditions of the applicable Type 2 Recycled Water General Permit under this Article;
   c. The person files a Notice of Intent to Use Recycled Water under subsection (B)(2); and
   d. The person submits the applicable fee established in 18 A.A.C. 14.
2. Notice of Intent to Use Recycled Water.
   a. A person shall submit, by mail, in person, or by another method approved by the Department, the Notice of Intent to Use Recycled Water on a form provided by the Department.
   b. The Notice of Intent to Use Recycled Water shall include;
      i. The name, address, e-mail address, and telephone number of the applicant;
      ii. The name, address, and telephone number of the contact person;
      iii. The source, estimated volume, and, if applicable, class of recycled water to be used;
      iv. The latitude and longitude coordinates of the approximate center point of the use site;
      v. The description of the use activity; and
      vi. The applicant's certification that the applicant agrees to comply with all requirements of this Article, including specific terms of the applicable Recycled Water General Permit.
   c. For a Type 2 Recycled Water General Permit for Direct Reuse of Reclaimed Water, the Notice of Intent to Use Recycled Water must include the description of the direct reuse activity, including a description of acreage and the type of vegetation to be irrigated, if applicable to the type of direct reuse activity.
3. The Department shall notify the applicant that the Department received the Notice of Intent to Use Recycled Water and that the applicant is authorized to use the recycled water according to Type 2 permit conditions.

C. Type 3 Recycled Water General Permit for Reclaimed Water and Type 3 Recycled Water General Permit for Gray Water. A person shall not operate under a Type 3 Recycled Water General Permit until the Department issues a written Recycled Water Authorization.

1. Application submittal. The applicant shall submit, either by mail, in person at the Department, or by another method approved by the Department:
   a. The Notice of Intent to Use Recycled Water on a form provided by the Department containing the information specified in the applicable Type 3 Recycled Water General Permit under this Article, and
   b. The applicable fee established in 18 A.A.C. 14.
2. Issuance of Recycled Water Authorization. If, after reviewing the Notice of Intent to Use Recycled Water, the Department determines the direct reuse conforms with the conditions of a Type 3 Recycled Water General Permit and all other applicable requirements of this Article, the Department shall issue the Recycled Water Authorization.
3. Denial of Recycled Water Authorization.
   a. If the Department determines on the basis of its review or an inspection the use does not conform to the conditions of the applicable Type 3 Recycled Water General Permit or other applicable requirements of this Article, the Department shall notify the applicant of its decision not to issue the Recycled Water Authorization.
   b. The applicant may appeal the decision not to issue a Recycled Water Authorization under A.R.S. §§ 41-1092 through 41-1092.12.

Historical Note
New Section R18-9-A704 renumbered from R18-9-708 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A705. Recycled Water Permit Term, Information Changes, and Renewal

A. A recycled water general permit is valid as follows:
1. A Type 1 Recycled Water General Permit is valid as long as the conditions of the general permit and the requirements of this Article are met. No renewal is required.
2. A Type 2 Recycled Water General Permit is valid for five years from the date the Department receives the Notice of Intent to Use Recycled Water;
3. A Type 3 Recycled Water General Permit is valid for five years from the date the Recycled Water Authorization is issued.

B. If any change in the following information occurs, a permittee operating under any individual, or Type 2 or Type 3 recycled water general permit shall update the Department with such changes at least once annually by January 31:
1. Permittee,
2. Ownership,
3. Contact person,
4. Phone number, address, email address, or telephone number, or any combination of any of the above, for permittee or contact person,
5. Name of the use site,
6. For a Type 2 Recycled Water General Permit for Direct Reuse of Class A + or B + Reclaimed Water remaining under the same ownership:
   a. Expansion of the reuse area,
   b. Addition of another allowable use if it is located within the same property boundary as the boundary identified in the Notice of Intent to Use Recycled Water submitted to the Department.
7. An increase in Class A, B, or C reclaimed water use of more than ten percent but less than twenty percent above the volume of reclaimed water currently permitted for use at the reuse site, if applicable.

C. To renew any Type 2 or Type 3 Recycled Water General Permit, a permittee must submit a Notice of Renewal at least 30 days before the permit expires and include the applicable fee established in 18 A.A.C. 14. A permittee may update or change any information as described in subsection (B) in a Notice of Renewal.

D. For changes not described in subsections (B) or (C), the permittee must submit a new Notice of Intent to Use Recycled Water or a Recycled Water Individual Permit application, as applicable.

Historical Note
New Section R18-9-A705 renumbered from R18-9-709 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A706. Recycled Water Permit Revocation

A. After notice and opportunity for a hearing, the Director may revoke coverage under a Recycled Water General Permit and require the permittee to obtain an individual permit in order to operate for any of the following:
1. The permittee failed to comply with any applicable provision of A.R.S. Title 49, Chapter 2; Article 7 of this Chapter; or any permit condition;
2. The permittee misrepresented or omitted a fact, information, or data related to an application or permit condition;
3. The Director determines a permitted activity is causing or will cause a violation of a water quality standard established under A.R.S. § 49-221;
4. A permitted activity is causing or will cause imminent and substantial endangerment to public health or the environment.

B. The Director may revoke coverage under a general permit for any or all facilities within a specific geographic area, if, due to geologic or hydrologic conditions, the cumulative effect of the facilities subject to the Recycled Water General Permit has violated or will violate a water quality standard established under A.R.S. § 49-221.

C. If an individual permit is issued to replace general permit coverage, the coverage under the general permit is automatically revoked upon issuance of the individual permit.

D. The Director may, after notice and opportunity for hearing, suspend or revoke a Recycled Water Individual Permit for any of the reasons listed in subsections (A)(1) through (A)(4) of this Section.

Historical Note
New Section R18-9-A706 renumbered from R18-9-710 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-A707. Recycled Water Permit Transition

The terms and conditions of Type 2, Type 3, and individual reclaimed water permits issued before January 1, 2018, including permits issued for gray water, shall remain in effect according to the language of this Article effective as of the date the permit was issued.

Historical Note
New Section R18-9-A707 made by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART B. RECLAIMED WATER

R18-9-B701. Transition of Aquifer Protection Permits and Permits for the Reuse of Reclaimed Wastewater

A. A person may directly reuse reclaimed water under an individual Aquifer Protection Permit or a Permit for the Reuse of Reclaimed Wastewater issued by the Department before January 1, 2001 if the person meets the conditions of the permit and the permit does not expire.

B. A person meeting the requirements of subsection (A) may apply for a new reclaimed water permit under this Article.
1. To obtain a reclaimed water permit, a person shall submit a Recycled Water Individual Permit application, required under R18-9-A703(A), or a Notice of Intent to Use Recycled Water, required under R18-9-A704(B)(2) or R18-9-A704(B)(3), to the Department at least 120 days before the current permit expires.
2. The Department shall continue the terms of the individual Aquifer Protection Permit or the Permit for the Reuse of Reclaimed Wastewater beyond the stated date of expiration if:
   a. The permitted direct reuse is of a continuing nature; and
   b. The permittee submits a timely and complete application for a new permit.

C. Sewage treatment facility generating reclaimed water.
1. At the request of a permittee holding an individual Aquifer Protection Permit, the Department shall amend an individual Aquifer Protection Permit if the permittee adequately demonstrates that the applicable quality of

reclaimed water produced for direct reuse is achieved. The Department shall review:

a. The information in the individual Aquifer Protection Permit, any applicable supporting documentation, and the water quality test results from the previous two years to determine the classification of reclaimed water generated by the sewage treatment facility; and

b. The available water quality data if the sewage treatment facility has operated for less than two years.

2. The Department shall issue an amended individual Aquifer Protection Permit under procedures specified under 18 A.A.C. 9, Article 2 containing:

a. Identification of the class of reclaimed water generated by the facility;

b. Requirements for monitoring reclaimed water quality and flow at a frequency appropriate to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;

c. Requirements for quarterly reporting of the following data to the Department, any reclaimed water agent who has contracted for delivery of reclaimed water from the facility, and any end user who has not waived interest in receiving this information:

i. Water quality test results demonstrating reclaimed water produced by the facility meets the applicable standards for the class of water identified in subsection (C)(2)(a), and

ii. The total volume of reclaimed water generated for direct reuse.

d. Provision for cessation of delivery, if necessary, and storage or disposal if reclaimed water cannot be delivered for direct reuse.

Historical Note

New Section R18-9-B701 renumbered from R18-9-703 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B702. General Requirements for Reclaimed Water

A. Sewage treatment facility. A sewage treatment facility owner or operator shall provide reclaimed water for direct reuse only as authorized under an individual Aquifer Protection Permit.

B. Additional treatment. If an owner or operator of a facility accepts reclaimed water and provides additional treatment for a higher quality direct reuse, the facility is considered a sewage treatment facility and shall provide reclaimed water for direct reuse only as authorized under an individual Aquifer Protection Permit.

C. Reclaimed water blending facility. An owner or operator of a reclaimed water blending facility shall conduct blending operations only as authorized under a Recycled Water Individual Permit or a Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility.

D. Reclaimed water agent. A person shall operate as a reclaimed water agent only as authorized under a Recycled Water Individual Permit or a Type 3 Recycled Water General Permit for a Reclaimed Water Agent.

E. End user. A person shall not directly reuse reclaimed water unless permitted under this Article.

F. Irrigating with reclaimed water. A permittee applying reclaimed water for an irrigation use allowed in 18 A.A.C. 11, Article 3, Table A shall:

1. Use application methods that reasonably preclude human contact with reclaimed water;

2. Prevent reclaimed water from standing on open access areas during normal periods of use; and

3. Prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas.

G. Hose bibbs. A permittee directly reusing reclaimed water shall secure hose bibbs discharging reclaimed water to prevent use by the public.

H. Prohibited activities.

1. Irrigating with untreated sewage;

2. Providing water for human consumption from a reclaimed water source except as allowed in Part E of this Article.

3. Providing or using reclaimed water for any of the following activities:

a. Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; or

b. Direct reuse for evaporative cooling or misting.

4. Misapplying reclaimed water for any of the following reasons:

a. Application of a stated class of reclaimed water of lesser quality than allowed by this Article for the type of direct reuse application;

b. Application of reclaimed water to any area other than a direct reuse site; or

c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for:

i. agricultural return flow directed onto an adjacent field or returned to an open water conveyance; or

ii. a discharge authorized by an individual or general NPDES or AZPDES permit.

I. Signage and Notification. A permittee shall place and maintain signage at locations and provide applicable notification as specified in Table 1 so the public is informed reclaimed water is in use and no one should drink from the system.

J. Pipeline Conveyances of Reclaimed Water.

1. Applicability. Any person constructing a pipeline conveyance, whether new or a replacement of an existing pipeline, shall meet the requirements of this subsection.

2. A person shall design and construct a pipeline conveyance system using good engineering judgment following standards of practice.

3. A person shall construct a pipeline conveyance so that:

a. Reclaimed water does not find its way into, or otherwise contaminate, a potable water system;

b. System structural integrity is maintained; and

c. The capability for inspection, maintenance, and testing is maintained.

4. A person shall construct a pipeline conveyance and all appurtenances conducting reclaimed water to withstand a static pressure of at least 50 pounds per square inch greater than the design working pressure without leakage as determined in R18-9-E301(D)(2)(j).

5. A person shall provide a pipeline conveyance with thrust blocks or restrained joints where needed to prevent excessive movement of the pipeline.

6. The following requirements for minimum separation distance apply. A person shall:

a. Locate a pipeline conveyance no closer than 50 feet from a drinking water well unless the pipeline conveyance is constructed as specified under subsection (J)(6)(c);

b. Locate a pipeline conveyance no closer than two feet vertically nor six feet horizontally from a potable water pipeline unless the pipeline conveyance is constructed as specified under subsection (J)(6)(c);
c. Construct a pipeline conveyance that does not meet the minimum separation distances specified in subsections (J)(6)(a) and (J)(6)(b) by encasing the pipeline conveyance in at least six inches of concrete or using mechanical joint ductile iron pipe or other materials of equivalent or greater tensile and compressive strength at least 10 feet beyond any point on the pipeline conveyance within the specified minimum separation distance; and
d. If a reclaimed water system is supplemented with water from a potable water system, separate the potable water system from the pipeline conveyance by an air gap.

7. A person shall:
a. For a pipeline conveyance, eight inches in diameter or less, use pipe marked on opposite sides in English: "CAUTION: RECLAIMED WATER, DO NOT DRINK" in intervals of three feet or less and colored purple or wrapped with durable purple tape.
b. For a mechanical appurtenance to a pipeline conveyance, ensure the mechanical appurtenance is colored purple or legibly marked to identify it as part of the reclaimed water distribution system and distinguish it from systems for potable water distribution and sewage collection.

K. Open Water Conveyances of Reclaimed Water.
1. This subsection applies to an open water conveyance, regardless of the date of construction.
2. A person shall maintain an open water conveyance to prevent release of reclaimed water except as allowed under federal and state regulations. The maintenance program shall include periodic inspections and follow-up corrective measures to ensure the integrity of conveyance banks and capacity of the conveyance to safely carry operational flows.
3. Signage for Class B+, B, and C Reclaimed Water. A person shall:
a. Ensure signs state: "CAUTION: RECLAIMED WATER, DO NOT DRINK," and display the international "do not drink" symbol;
b. Place signs at all points of ingress and, if the open water conveyance is operated with open access, at least every 1/4-mile along the length of the open water conveyance or other interval as approved in writing by the Department; and
c. Ensure signs are visible and legible from both sides of the open water conveyance.

Historical Note
New Section R18-9-B702 renumbered from R18-9-704 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018; clerical error to subsections corrected at (J)(6)(a), (b), and (c) as published at 23 A.A.R. 3091 (Supp. 17-4).

Table 1. Signage and Notification Requirements for Direct Reuse Sites

Reclaimed Water Class	Hose Bibbs	Residential Irrigation	Schoolground Irrigation	Other Open Access Irrigation	Restricted Access Irrigation	Mobile Reclaimed Water Dispersal
A+, A	Each bibb at valve	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	On dispersal equipment and visible to the public
B+, B	Each bibb at valve	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points; 2. At reasonably spaced intervals of not more than 1/4 mile at the reuse site or along the open water conveyance, unless access to vehicular and pedestrian traffic is secured; and 3. If applicable, notice on golf score cards	On dispersal equipment and visible to the public
C	Each bibb at valve	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points; 2. At reasonably spaced intervals of not more than 1/4 mile at the reuse site or along the open water conveyance, unless access to vehicular and pedestrian traffic is secured; and 3. If applicable, notice on golf score cards	On dispersal equipment and visible to the public

Note: All impoundments with open access including lakes, ponds, ornamental fountains, waterfalls, and other water features shall be posted with signs regardless of the class of reclaimed water.

Historical Note

New Section R18-9-B702, Table 1 renumbered from R18-9-704, Table 1 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B703. General Provisions for Recycled Water Individual Permit for Reclaimed Water

A. A Recycled Water Individual Permit for Reclaimed Water is obtained under R18-9-A703. A Recycled Water Individual Permit for Reclaimed Water:
1. Is valid for five years;
2. Must be updated as prescribed by R18-9-A705; and
3. Continues, pending the issuance of a new permit, with the same terms following its expiration if the following are met:
   a. The permittee submits an application for a new permit at least 60 days before the expiration of the existing permit; and
   b. The permitted activity is of a continuing nature.

B. A Recycled Water Individual Permit for Reclaimed Water shall contain, if applicable:
1. The class of reclaimed water to be applied for direct reuse or the alternative water quality criteria appropriate for a direct reuse type not listed in 18 A.A.C. 11, Article 3, Table A that ADEQ may allow under R18-11-309;
2. Specific types of direct reuse and any limitations on reuse;
3. Requirements for monitoring reclaimed water quality and flow to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;
4. Requirements for reporting the following data to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3:
   a. Water quality test results demonstrating the reclaimed water meets the applicable standards for the class of water or the alternative water quality criteria identified in subsection (B)(1), and
   b. The total volume of reclaimed water generated for direct reuse.
5. Requirements for maintaining records of all monitoring information and monitoring activities include:
   a. The date, description of sampling location, and time of sampling or measurement;
   b. The name of the person who performed the sampling or measurement;
   c. The date the analyses were performed;
   d. The name of the person who performed the analyses;
   e. The analytical techniques or methods used;
   f. The results of the analyses; and
   g. Documentation of sampling technique, sample preservation, and transportation, including chain-of-custody forms.
6. Requirements to retain all monitoring activity records and results, including all data for continuous monitoring instrumentation, and calibration and maintenance records for five years from the date of sampling or analysis. The Director shall extend the five-year retention period:
   a. During the course of an unresolved litigation regarding compliance with the permit conditions, or
   b. For any other justifiable cause.
7. A requirement to allow all end users access to the records of physical, chemical, and biological quality of the reclaimed water.
8. Signage or other notification requirements appropriate to the use; and
9. Closure requirements, if applicable.

Historical Note

New Section R18-9-B703 renumbered from R18-9-706 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B704. Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water

A. A Type 2 Recycled Water General Permit for Direct Reuse of Class A+ Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, Table A, if the conditions in this Article are met.

B. Record maintenance. A permittee shall maintain records for five years describing the direct reuse site and the total amount of reclaimed water used annually for the permitted direct reuse activity. The records shall be made available to the Department upon request.

C. A permittee shall post signs or provide notification or both as specified in R18-9-B702(I).

D. No lining is required for an impoundment storing Class A+ reclaimed water.

Historical Note

New Section R18-9-B704 renumbered from R18-9-712 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B705. Type 2 Recycled Water General Permit for Direct Reuse of Class A Reclaimed Water

A. A Type 2 Recycled Water General Permit for the Direct Reuse of Class A Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, Table A, if the conditions in this Article are met.

B. Records and reporting. A permittee shall:
1. Maintain records containing the following information for five years, and make them available to the Department upon request:
   a. The direct reuse site,
   b. The volume of reclaimed water applied monthly for each category of direct reuse activity listed in 18 A.A.C. 11, Article 3, Table A,
   c. The total nitrogen concentration of the reclaimed water applied, and
   d. The acreage and type of vegetation to which the reclaimed water is applied.
2. Report annually to the Department on or before the anniversary date of the Notice of Intent to Use Recycled Water:
   a. The volume of reclaimed water received,
   b. The type of reclaimed water application, and
   c. If used for irrigation, the vegetation and acreage irrigated.

C. Nitrogen management. A permittee shall ensure:
1. Impoundments storing reclaimed water allowed by the general permit are lined using a low-hydraulic conductivity artificial or site-specific liner material achieving a calculated discharge rate less than 550 gallons per acre per day; and
2. The application rates of the reclaimed water are based on one of the following:
   a. If assigned, the water allotment specified by the Arizona Department of Water Resources;
   b. A water balance that considers consumptive use of water by the crop, turf, or landscape vegetation; or

c. An alternative method approved by the Department.

D. In addition to the Notice of Intent to Use Recycled Water specified in R18-9-A704(B)(2), the applicant shall provide a list of impoundments, water depth, freeboard, and the liner characteristics and the method chosen from the list in subsection (C)(2).

E. The permittee shall post signs or provide notification, or both, as specified in R18-9-B702(I).

Historical Note
New Section R18-9-B705 renumbered from R18-9-713 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B706. Type 2 Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water

A. A Type 2 Recycled Water General Permit for Direct Reuse of Class B+ Reclaimed Water allows any direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Table A, if the conditions in this Article are met.

B. A permittee shall comply with the record maintenance and posting requirements established under R18-9-B704 and make records available to the Department upon request.

C. No lining is required for an impoundment storing Class B+ reclaimed water.

Historical Note
New Section R18-9-B706 renumbered from R18-9-714 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B707. Type 2 Recycled Water General Permit for Direct Reuse of Class B Reclaimed Water

A. A Type 2 Recycled Water General Permit for the Direct Reuse of Class B Reclaimed Water allows the direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Table A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-B705(B), (C), (D), and (E).

Historical Note
New Section R18-9-B707 renumbered from R18-9-715 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B708. Type 2 Recycled Water General Permit for Direct Reuse of Class C Reclaimed Water

A. A Type 2 Recycled Water General Permit for the Direct Reuse of Class C Reclaimed Water allows the direct reuse application of Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Table A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-B705(B), (C), (D), and (E).

Historical Note
New Section R18-9-B708 renumbered from R18-9-716 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B709. Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility

A. Permit conditions.
1. A Type 3 Recycled Water General Permit for a Reclaimed Water Blending Facility allows the blending of reclaimed water with other water, if the conditions in this Article are met.
2. Blending reclaimed water with industrial wastewater or with reclaimed water from an industrial wastewater treatment plant is not authorized by this general permit.

B. A person shall file with the Department a Notice of Intent to Operate a reclaimed water blending facility on a form provided by the Department. The Notice of Intent to Operate shall include:
1. The name, address, e-mail address, and telephone number of the applicant;
2. The name, address, e-mail address, and telephone number of a contact person;
3. The source and volume of reclaimed water to be blended;
4. The class of reclaimed water to be blended;
5. The source, volume, and quality of other water to be blended;
6. The latitude and longitude coordinates of the blending facility;
7. A description of the reclaimed water blending facility, including a demonstration the proposed blending methodology will meet the standards established in 18 A.A.C. 11, Article 3 for the class of reclaimed water the facility will produce;
8. The applicant's certification that the applicant agrees to comply with the requirements of this Article, 18 A.A.C. 11, Article 3, and the terms of this recycled water general permit; and
9. The applicable permit fee specified under 18 A.A.C. 14.

C. A person shall not operate a reclaimed water blending facility until the Department issues a written Recycled Water Authorization under R18-9-A704(C).

D. A permittee shall monitor:
1. The blended water quality for total nitrogen and fecal coliform at frequencies specified by the class of reclaimed water in 18 A.A.C. 11, Article 3.
   a. If the concentration in the blended water of either total nitrogen or fecal coliform, as applicable, exceeds the limits for the applicable reclaimed water class established in 18 A.A.C. 11, Article 3, within 30 days of the exceedance, the permittee shall submit a plan to the Department to change the blending process or to otherwise correct the deficiency. The permittee shall also double the monitoring frequency for the next four months.
   b. If another exceedance occurs within the interval of increased monitoring, the permittee shall submit an application within 45 days for a Recycled Water Individual Permit for Reclaimed Water.
2. The volume of reclaimed water, the volume of the other water, and the total volume of blended water delivered for direct reuse on a monthly basis.

E. The permittee shall report the results of the monitoring under subsection (D) to the Department by January 31, for the immediately preceding calendar year, and shall make this information available to the end users.

Historical Note
New Section R18-9-B709 renumbered from R18-9-717 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-B710. Type 3 Recycled Water General Permit for a Reclaimed Water Agent

A. A Type 3 Recycled Water General Permit for a Reclaimed Water Agent allows a person to operate as a Reclaimed Water Agent if the conditions of this Article are met, and the follow-

ing conditions are met for the class of reclaimed water delivered by the Reclaimed Water Agent:

1. Signage and notification requirements specified under R18-9-B702(I), as applicable;
2. Impoundment liner requirements specified under R18-9-B704(D), R18-9-B705(C), R18-9-B706(C), R18-9-B707(B) or R18-9-B708(B), as applicable; and
3. Nitrogen management requirements specified under R18-9-B705(C), R18-9-B707(B), and R18-9-B708(B), as applicable.

B. A person holding a Type 3 Recycled Water Permit for a Reclaimed Water Agent:

1. Is responsible for the direct reuse of reclaimed water by more than one end user instead of direct reuse by the end users under separate Type 2 Recycled Water General Permits, and
2. Shall maintain a contractual agreement with each end user stipulating any end user responsibilities for the requirements specified under subsection (A).

C. A person shall file with the Department a Notice of Intent to Operate as a reclaimed water agent. The Notice of Intent to Operate shall include:

1. The name, address, e-mail address, and telephone number of the applicant;
2. The name, address, e-mail address, and telephone number of a contact person;
3. The following information for each end user to be supplied reclaimed water by the applicant:
   a. The name, address, e-mail address, and telephone number of the end user;
   b. A system map showing the locations of the direct reuse sites and the latitude and longitude coordinates of each site; and
   c. A description of each direct reuse activity, including the type of vegetation, acreage, and annual volume of reclaimed water to be used, unless Class A+ or Class B+ reclaimed water is delivered.
4. The source, class, and annual volume of reclaimed water to be delivered by the applicant;
5. A description of the contractual arrangement between the applicant and each end user, including any end user responsibilities for the requirements specified under subsection (A); and
6. The applicable permit fee specified under 18 A.A.C. 14.

D. A proposed reclaimed water agent shall not distribute reclaimed water to end users until the Department issues a written Recycled Water Authorization under R18-9-A704(C).

E. A reclaimed water agent shall record and annually report the following information to the Department by January 31, for the immediately preceding year:

1. The total volume of reclaimed water delivered by the reclaimed water agent;
2. The volume of reclaimed water delivered to each end user for Class A, Class B, and Class C reclaimed water; and
3. Any change in the information submitted under subsection (C).

Historical Note

New Section R18-9-B710 renumbered from R18-9-718 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART C. RECYCLED INDUSTRIAL WASTEWATER

R18-9-C701. Recycled Water Individual Permit for Industrial Wastewater That Is Reused

A. The following activities are prohibited unless a Recycled Water Individual Permit is obtained under R18-9-A703:

1. Use of reclaimed water from a sewage treatment facility that is combined with industrial wastewater or water from an industrial wastewater treatment facility.
2. Use of reclaimed water from an industrial wastewater treatment facility for production or processing of a crop or substance that may be used as human or animal food.

B. In addition to the requirements in R18-9-A703(A), an application for a Recycled Water Individual Permit shall include:

1. Each source of the industrial wastewater with Standard Industrial Code or North American Industry Classification System Code, and the projected rates and volumes from each source;
2. The chemical, biological, and physical characteristics of the industrial wastewater from each source; and
3. If reclaimed water will be used in the processing of any crop or substance that may be used as human or animal food, the information regarding food safety and any potential adverse health effects of this direct reuse.

Historical Note

New Section R18-9-C701 renumbered from R18-9-707 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART D. GRAY WATER

R18-9-D701. Type 1 Recycled Water General Permit for Gray Water

A. A Type 1 Recycled Water General Permit for Gray Water allows private residential use of gray water for a flow of less than 400 gallons per day if all the following conditions are met:

1. Gray water originating from the residence is used and contained within the property boundary for household gardening, composting, or landscape watering;
2. Human contact with gray water and soil watered by gray water is avoided;
3. Surface application of gray water is not used for watering of food plants, except for trees and shrubs which have an edible portion that does not come into contact with the gray water;
4. The gray water does not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags, or disposing of waste solutions from hobbyist or home occupational activities;
5. The gray water does not contain water used to wash diapers or similarly soiled or infectious garments;
6. The application of gray water is managed to minimize standing water on the surface by using measures such as avoiding overwatering, distributing the gray water beneath a mulch or other cover, and using best practices to improve soil condition and increase filtration;
7. If blockage, backup, or overload of the system occurs, gray water distribution shall cease until the deficiency is corrected. The gray water system may include components to reduce blockage and backup and be operated using best practices to extend system lifetime;
8. Gray water surge tanks, if any, are covered to restrict access and to eliminate habitat for mosquitoes or other vectors, and holding time is minimized to avoid development of anaerobic conditions and odors;
9. The gray water system is sited outside of a floodway;
10. The gray water system is operated to maintain a minimum vertical separation distance of at least five feet from

the point of gray water application to the top of the seasonally high groundwater table;

11. For a residence using an on-site wastewater treatment facility for black water treatment and disposal, the use of a gray water system does not change the design, capacity, or reserve area requirements for the on-site wastewater treatment facility at the residence, and ensures the facility can handle the combined black water and gray water flow;
12. Any pressure piping used in a gray water system that may be susceptible to cross connection with a potable water system clearly indicates the piping does not carry potable water; and
13. Surface application of gray water is only by flood or drip distribution methods. Flood distribution methods may include containment by horticultural mulch basins and swales.

B. Prohibitions. The following are prohibited:

1. Gray water use for purposes other than watering and composting, and
2. Application of gray water by a spray method.

Historical Note
New Section R18-9-D701 renumbered from R18-9-711 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-D702. Type 3 Recycled Water General Permit for Gray Water

A. A Type 3 Recycled Water General Permit for Gray Water allows for the use of gray water for landscape irrigation and composting if:

1. The general permit described in R18-9-D701 does not apply,
2. The flow is not more than 3000 gallons per day, and
3. The gray water system satisfies the notification, design, and installation requirements specified in subsections (B) and (C).

B. A person shall file a Notice of Intent to Operate a Gray Water System with the Department on a form provided by the Department. The Notice of Intent to Operate shall include:

1. The name, address, e-mail address, and telephone number of the applicant;
2. The latitude and longitude coordinates;
3. A description of the sources of gray water and calculations demonstrating the flow is not more than 3000 gallons per day;
4. Design plans for the gray water system;
5. The applicant's certification that the applicant agrees to comply with the requirements of this Article and the terms of this Recycled Water General Permit for Gray Water; and
6. The applicable permit fee specified under 18 A.A.C. 14.

C. The following requirements apply to the design, installation, and operation of a gray water system allowed under this Recycled Water General Permit for Gray Water:

1. Human contact with gray water and soil irrigated by gray water is avoided;
2. Gray water is not applied to an exposed surface but into a bed or trench of permeable material, through piping installed below the soil surface, or by similar means. Spray irrigation of gray water is not allowed. The application of gray water shall not result in standing water on the surface.
3. The design shall ensure gray water is used and contained within the property boundary for landscape irrigation or composting;
4. Gray water is not used for irrigation of food plants, except for trees and shrubs which have an edible portion that does not come into contact with the gray water;
5. The gray water may contain water from drinking fountains but does not contain hazardous chemicals derived from industrial, hobbyist, or similar activities at the site;
6. Gray water does not contain water used to wash diapers or similarly soiled or infectious garments;
7. The gray water system is constructed so if blockage, plugging, or backup of the system occurs, gray water can be directed into the sewage collection system or on-site wastewater treatment and disposal system, as applicable;
8. Gray water surge tanks, if any, are covered to restrict access and to eliminate habitat for mosquitoes or other vectors, and holding time is minimized to avoid development of anaerobic conditions and odors;
9. The gray water system is sited outside of a floodway;
10. The gray water system is operated to maintain a minimum vertical separation distance of at least five feet from the point of gray water application to the top of the seasonally high groundwater table;
11. If an on-site wastewater treatment facility is used for black water treatment and disposal, the use of a gray water system does not change the design, capacity, or reserve area requirements for the on-site wastewater treatment facility so the facility may handle the combined black water and gray water flow; and
12. Any piping used in a gray water system susceptible to cross connection with a potable water system clearly indicates the piping does not carry potable water.

D. The applicant shall not operate the gray water system until the Department issues a written Recycled Water Authorization under R18-9-A704(C).

E. The Department may issue a Recycled Water Authorization that differs from the requirements specified in subsection (C) if the system provides equivalent performance and protection of human health and water quality.

F. In the Recycled Water Authorization, the Department may require a permittee to report data or information for any of the conditions in this Section if the Department deems the reporting necessary to protect human health or water quality or both.

Historical Note
New Section R18-9-D702 renumbered from R18-9-719 and amended by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART E. PURIFIED WATER FOR POTABLE USE

R18-9-E701. Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility

A. An application for a Recycled Water Individual Permit for an Advanced Reclaimed Water Treatment Facility must be submitted to the Department according to the requirements in R18-9-A703, as applicable.

B. Safe Drinking Water Act. For purposes of Safe Drinking Water Act requirements, water produced by an Advanced Reclaimed Water Treatment Facility shall be considered surface water for purposes of compliance with Title 18, Chapter 4 of the Arizona Administrative Code. Nothing in this Section exempts an applicable facility from Safe Drinking Water Act requirements.

C. Design Report. In addition to the information required by subsection (A), the applicant shall submit a design report for the Advanced Reclaimed Water Treatment Facility according to a form prescribed by the Department and certified by an Arizona-registered professional engineer. The design report must include the following information:

1. Characterization of source water quantity and quality, including:
   a. Average and anticipated minimum and maximum source water flows to the facility;
   b. Concentrations of the source water's physical, microbiological, and chemical constituents regulated for drinking water Maximum Contaminant Levels under the Safe Drinking Water Act and which the Department determines are appropriate for the particular facility and source water;
   c. Description and concentrations of constituents in the source water used for unit treatment process monitoring and assessment of unit treatment process efficacy, and
   d. A list of unregulated microbial and chemical constituents and corresponding concentrations in the source water a facility proposes to monitor in order to assess the treatment effectiveness of the overall treatment train. The particular constituents will depend on consideration of factors, such as:
      i. Occurrence of the constituent in source and local waters,
      ii. Availability of standardized laboratory methods for quantification of the constituent,
      iii. Usefulness as representatives of or surrogates for larger classes of constituents, and
      iv. Availability of toxicity data for the constituent.
2. Description of, and results from, the pilot water treatment system for the facility or of analogous systems where comparable treatment components are demonstrated as appropriate for treating the particular characteristics of the applicant's proposed source water;
3. Identification and description of the technologies, processes, methodologies, and process control monitoring to be employed for microbial control;
4. Logarithmic reduction targets for microbial control, to ensure the product water is free of pathogens and suitable for potable use;
5. Identification and description of technologies, processes, methodologies and process control monitoring for chemical control;
6. Plan for monitoring the product water for public health protection;
7. Commissioning and startup plan, including preoperational and startup testing and monitoring, expected timeframe for meeting full operational performance, and any other special startup condition meriting consideration in the individual permit;
8. Operation and maintenance plan including corrective actions for out-of-range monitoring results and contingencies for non-compliant water;
9. Operator training plan; and
10. Documentation of technical, financial, and management capability.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

ARTICLE 8. REPEALED

R18-9-801. Repealed

Historical Note

Corrected A.R.S. reference (Supp. 77-3). Former Section R9-8-311 renumbered without change as Section R18-9-801 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-802. Repealed

Historical Note

Amended by adding subsections (N) through (R) effective June 8, 1981 (Supp. 81-3). Former Section R9-8-312 renumbered without change as Section R18-9-802 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-803. Repealed

Historical Note

Amended effective April 18, 1979 (Supp. 79-2). Amended by adding subsection (E) effective October 2, 1986 (Supp. 86-5). Former Section R9-8-313 renumbered without change as Section R18-9-803 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-804. Repealed

Historical Note

Amended effective April 18, 1979 (Supp. 79-2). Amended effective February 20, 1980 (Supp. 80-1). Amended by adding subsections (I) and (J) effective June 8, 1981 (Supp. 81-3). Amended subsections (A), (F) and (H) effective October 2, 1986 (Supp. 86-5). Former Section R9-8-314 renumbered without change as Section R18-9-804 (Supp. 87-3). Amended effective July 25, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-805. Repealed

Historical Note

Adopted effective April 18, 1979 (Supp. 79-2). Amended effective October 2, 1986 (Supp. 86-5). Former Section R9-8-315 renumbered without change as Section R18-9-805 (Supp. 87-3). Amended effective July 25, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-806. Repealed

Historical Note

Adopted effective October 2, 1986 (Supp. 86-5). Former Section R9-8-317 renumbered without change as Section R18-9-806 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-807. Repealed

Historical Note

Former Section R9-8-321 renumbered without change as Section R18-9-807 (Supp. 87-3). Section repealed by

final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-808. Repealed

Historical Note

Former Section R9-8-323 renumbered without change as Section R18-9-808 (Supp. 87-3). Amended effective July 25, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-809. Repealed

Historical Note

Former Section R9-8-324 renumbered without change as Section R18-9-809 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-810. Repealed

Historical Note

Former Section R9-8-325 renumbered without change as Section R18-9-810 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-811. Repealed

Historical Note

Former Section R9-8-326 repealed, new Section R9-8-326 adopted effective October 2, 1986 (Supp. 86-5). Former Section R9-8-326 renumbered without change as Section R18-9-811 (Supp. 87-3). First entry in Historical Note corrected to reflect Section numbers at time of rule repeal and adoption by changing R18-9-326 to R9-8-326 (Supp. 96-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-812. Repealed

Historical Note

Former Section R9-8-327 renumbered without change as Section R18-9-812 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-813. Repealed

Historical Note

Amended effective April 18, 1979 (Supp. 79-2). Former Section R9-8-329 renumbered without change as Section R18-9-813 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-814. Repealed

Historical Note

Former Section R9-8-331 renumbered without change as Section R18-9-814 (Supp. 87-3). Amended effective October 19, 1989 (Supp. 89-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-815. Repealed

Historical Note

Former Section R9-8-332 renumbered without change as Section R18-9-815 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-816. Repealed

Historical Note

Former Section R9-8-351 renumbered without change as Section R18-9-816 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-817. Repealed

Historical Note

Former Section R9-8-352 renumbered without change as Section R18-9-817 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-818. Repealed

Historical Note

Former Section R9-8-353 renumbered without change as Section R18-9-818 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-819. Repealed

Historical Note

Former Section R9-8-361 renumbered without change as Section R18-9-819 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 9, consisting of Sections R18-9-901 through R18-9-914 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

PART A. GENERAL REQUIREMENTS

R18-9-A901. Definitions

In addition to the definitions in A.R.S. § 49-201 and 49-255, the following terms apply to this Article:

1. "Animal confinement area" means any part of an animal feeding operation where animals are restricted or confined including open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables.
2. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
   a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
   b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

3. "Aquaculture project" means a defined managed water area that uses discharges of pollutants into that designated project area for the maintenance or production of harvestable freshwater plants or animals. For purposes of this definition, "designated project area" means the portion or portions of the navigable waters within which the permittee or permit applicant plans to confine the cultivated species using a method or plan of operation, including physical confinement, that on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.
4. "Border area" means 100 kilometers north and south of the Arizona-Sonora, Mexico border.
5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
6. "CAFO" means any large concentrated animal feeding operation, medium concentrated animal feeding operation, or animal feeding operation designated under R18-9-D901.
7. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility that contains, grows, or holds aquatic animals in either of the following categories:
    a. Cold-water aquatic animals. Cold-water fish species or other cold-water aquatic animals (including the Salmonidae family of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
        i. A facility that produces less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
        ii. A facility that feeds the aquatic animals less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
    b. Warm-water aquatic animals. Warm-water fish species or other warm-water aquatic animals (including the Ameiuride, Centrarchidae, and Cyprinidae families of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
        i. A closed pond that discharges only during periods of excess runoff; or
        ii. A facility that produces less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.
8. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
9. "Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to a navigable water from any point source.
    a. The term includes the addition of any pollutant into a navigable water from:
        i. A treatment works treating domestic sewage;
        ii. Surface runoff that is collected or channeled by man;
        iii. A discharge through a pipe, sewer, or other conveyance owned by a state, municipality, or other person that does not lead to a treatment works; and
        iv. A discharge through a pipe, sewer, or other conveyance, leading into a privately owned treatment works.
    b. The term does not include an addition of a pollutant by any industrial user as defined in A.R.S. § 49-255(4).
10. "Draft permit" means a document indicating the Director's tentative decision to issue, deny, modify, revoke and reissue, terminate, or reissue a permit.
    a. A notice of intent to terminate a permit is a type of draft permit unless the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well.
    b. A notice of intent to deny a permit is a type of draft permit.
    c. A proposed permit or a denial of a request for modification, revocation and reissuance, or termination of a permit, are not draft permits.
11. "EPA" means the U.S. Environmental Protection Agency.
12. "General permit" means an AZPDES permit issued under 18 A.A.C. 9, Article 9, authorizing a category of discharges within a geographical area.
13. "Individual permit" means an AZPDES permit for a single point source, a single facility, or a municipal separate storm sewer system.
14. "Land application area," for purposes of Article 9, Part D, means land under the control of an animal feeding operation owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.
15. "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at least the number of animals specified in any of the following categories:
    a. 700 mature dairy cows, whether milked or dry;
    b. 1,000 veal calves;
    c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
    d. 2,500 swine each weighing 55 pounds or more;
    e. 10,000 swine each weighing less than 55 pounds;
    f. 500 horses;
    g. 10,000 sheep or lambs;
    h. 55,000 turkeys;
    i. 30,000 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
    j. 125,000 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
    k. 82,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
    l. 30,000 ducks, if the animal feeding operation uses other than a liquid manure handling system; or
    m. 5,000 ducks, if the animal feeding operation uses a liquid manure handling system.
16. "Large municipal separate storm sewer system" means a municipal separate storm sewer that is either:

a. Located in an incorporated area with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census;
b. Located in a county with an unincorporated urbanized area with a population of 250,000 or more, according to the 1990 Decennial Census by the Bureau of Census, but not a municipal separate storm sewer that is located in an incorporated place, township, or town within the county; or
c. Owned or operated by a municipality other than those described in subsections (16)(a) and (16)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the large municipal separate storm sewer system.

17. "Manure" means any waste or material mixed with waste from an animal including manure, bedding, compost and raw materials, or other materials commingled with manure or set aside for disposal.
18. "Manure storage area" means any part of an animal feeding operation where manure is stored or retained including lagoons, run-off ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles.
19. "Medium concentrated animal feeding operation" means an animal feeding operation in which:
    a. The type and number of animals that it stables or confines falls within any of the following ranges:
        i. 200 to 699 mature dairy cows, whether milked or dry;
        ii. 300 to 999 veal calves;
        iii. 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
        iv. 750 to 2,499 swine each weighing 55 pounds or more;
        v. 3,000 to 9,999 swine each weighing less than 55 pounds;
        vi. 150 to 499 horses;
        vii. 3,000 to 9,999 sheep or lambs;
        viii. 16,500 to 54,999 turkeys;
        ix. 9,000 to 29,999 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
        x. 37,500 to 124,999 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
        xi. 25,000 to 81,999 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
        xii. 10,000 to 29,999 ducks, if the animal feeding operation uses other than a liquid manure handling system; or
        xiii. 1,500 to 4,999 ducks, if the animal feeding operation uses a liquid manure handling system; and
    b. Either one of the following conditions are met:
        i. Pollutants are discharged into a navigable water through a man-made ditch, flushing system, or other similar man-made device; or
        ii. Pollutants are discharged directly into a navigable water that originates outside of and passes over, across, or through the animal feeding operation or otherwise comes into direct contact with the animals confined in the operation.
20. "Medium municipal separate storm sewer system" means a municipal separate storm sewer that is either:
    a. Located in an incorporated area with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census; or
    b. Located in a county with an unincorporated urbanized area with a population of 100,000 or more but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or
    c. Owned or operated by a municipality other than those described in subsections (20)(a) and (20)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the medium municipal separate storm sewer system.
21. "MS4" means municipal separate storm sewer system.
22. "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):
    a. Owned or operated by a state, city, town county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
    b. Designed or used for collecting or conveying stormwater;
    c. That is not a combined sewer; and
    d. That is not part of a POTW.
23. "Municipal separate storm sewer system" means all separate storm sewers defined as "large," "medium," or "small" municipal separate storm sewer systems or any municipal separate storm sewers on a system-wide or jurisdiction-wide basis as determined by the Director under R18-9-C902(A)(1)(g)(i) through (iv).
24. "New discharger" includes an industrial user and means any building, structure, facility, or installation:
    a. From which there is or may be a discharge of pollutants;
    b. That did not commence the discharge of pollutants at a particular site before August 13, 1979;
    c. That is not a new source; and
    d. That has never received a finally effective NPDES or AZPDES permit for discharges at that site.
25. "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
    a. After the promulgation of standards of performance under section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, or
    b. After the proposal of standards of performance in accordance with section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, but only if the standards are promulgated under section 306 (33 U.S.C. 1316) within 120 days of their proposal.
26. "NPDES" means the National Pollutant Discharge Elimination System, which is the national program for issuing, modifying, revoking, reissuing, terminating, monitoring,

and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under sections 307 (33 U.S.C. 1317), 318 (33 U.S.C. 1328), 402 (33 U.S.C. 1342), and 405 (33 U.S.C. 1345) of the Clean Water Act.

27. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:
    a. Sewage from vessels; or
    b. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of this state, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources. (40 CFR 122.2)
28. "POTW" means a publicly owned treatment works.
29. "Process wastewater," for purposes of Article 9, Part D, means any water that comes into contact with a raw material, product, or byproduct including manure, litter, feed, milk, eggs, or bedding and water directly or indirectly used in the operation of an animal feeding operation for any or all of the following:
    a. Spillage or overflow from animal or poultry watering systems;
    b. Washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities;
    c. Direct contact swimming, washing, or spray cooling of animals; or
    d. Dust control.
30. "Proposed permit" means an AZPDES permit prepared after the close of the public comment period (including EPA review), and any applicable public hearing and administrative appeal, but before final issuance by the Director. A proposed permit is not a draft permit.
31. "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing the pollutants into a POTW.
32. "Production area," for purposes of Article 9, Part D, means the animal confinement area, manure storage area, raw materials storage area, and waste containment areas. Production area includes any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of animal mortalities.
33. "Raw materials storage area" means the part of an animal feeding operation where raw materials are stored including feed silos, silage bunkers, and bedding materials.
34. "Silviculture point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities that are operated in connection with silvicultural activities and from which pollutants are discharged into navigable waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. For purposes of this definition:
    a. "Log sorting and log storage facilities" means facilities whose discharge results from the holding of unprocessed wood, for example, logs or round wood with or without bark held in self-contained bodies of water or stored on land if water is applied intentionally on the logs.
    b. "Rock crushing and gravel washing facilities" mean facilities that process crushed and broken stone, gravel, and riprap.
35. "Small municipal separate storm sewer system" means a separate storm sewer that is:
    a. Owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharge to navigable waters.
    b. Not defined as a "large" or "medium" municipal separate storm sewer system or designated under R18-9-A902(D)(2).
    c. Similar to municipal separate storm sewer systems such as systems at military bases, large hospital or prison complexes, universities, and highways and other thoroughfares. The term does not include a separate storm sewer in a very discrete area such as an individual building.
36. "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.
37. "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment device or system, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.
38. "Waste containment area" means any part of an animal feeding operation where waste is stored or contained including settling basins and areas within berms and diversions that separate uncontaminated stormwater.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions

A. Upon the effective date of EPA approval of the AZPDES program, the Department shall, under A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, administer any permit authorized or issued under the NPDES program,

including an expired permit that EPA has continued in effect under 40 CFR 122.6.

1. The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging in Indian Country, and shall publish a notice in one or more newspapers of general circulation in the state. The notice shall contain:
   a. The effective date of EPA approval of the AZPDES program;
   b. The name and address of the Department;
   c. The name of each individual permitted facility and its permit number;
   d. The title of each general permit administered by the Department;
   e. The name and address of the contact person, to which the permittee will submit notification and monitoring reports;
   f. Information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit; and
   g. The name, address, and telephone number of a person from whom an interested person may obtain further information about the transition.
2. The Department shall provide the following entities with a copy of the notice:
   a. Each county department of health, environmental services, or comparable department;
   b. Each Arizona council of government, tribal government, the states of Utah, Nevada, New Mexico, and California, and EPA Region 9;
   c. Any person who requested, in writing, notification of the activity;
   d. The Mexican Secretaria de Medio Ambiente y Recursos Naturales, and
   e. The United States Section of the International Boundary and Water Commission.
3. If a timely application for a NPDES permit is submitted to EPA before approval of the AZPDES program, the applicant may continue the process with EPA or request the Department to act on the application. In either case, the Department shall issue the permit.
4. The terms and conditions under which the permit was issued remain the same until the permit is modified.

B. Article 9 of this Chapter applies to any "discharge of a pollutant." Examples of categories that result in a "discharge of a pollutant" and may require an AZPDES permit include:

1. CAFOs;
2. Concentrated aquatic animal production facilities;
3. Case-by-case designation of concentrated aquatic animal production facilities;
   a. The Director may designate any warm- or cold-water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to navigable waters. The Director shall consider the following factors when making this determination:
      i. The location and quality of the receiving waters of the United States;
      ii. The holding, feeding, and production capacities of the facility;
      iii. The quantity and nature of the pollutants reaching navigable waters; and
      iv. Any other relevant factor;
   b. A permit application is not required from a concentrated aquatic animal production facility designated under subsection (B)(3)(a) until the Director conducts an onsite inspection of the facility and determines that the facility should and could be regulated under the AZPDES permit program;
4. Aquaculture projects;
5. Manufacturing, commercial, mining, and silviculture point sources;
6. POTWs;
7. New sources and new dischargers;
8. Stormwater discharges:
   a. Associated with industrial activity as defined under 40 CFR 122.26(b)(14), incorporated by reference in R18-9-A905(A)(1)(d). The Department shall not consider a discharge to be a discharge associated with industrial activity if the discharge is composed entirely of stormwater and meets the conditions of no exposure as defined under 40 CFR 122.26(g), incorporated by reference in R18-9-A905(A)(1)(d);
   b. From a large, medium, or small MS4;
   c. From a construction activity, including clearing, grading, and excavation, that results in the disturbance of:
      i. Equal to or greater than one acre or;
      ii. Less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre; but
      iii. Not including routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility;
   d. Any discharge that the Director determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to a navigable water, which may include a discharge from a conveyance or system of conveyances (including roads with drainage systems and municipal streets) used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers.

C. Articles 9 and 10 of this Chapter apply to the following biosolids categories and may require an AZPDES permit:

1. Treatment works treating domestic sewage that would not otherwise require an AZPDES permit; and
2. Using, applying, generating, marketing, transporting, and disposing of biosolids.

D. Director designation of MS4s.

1. The Director may designate and require any small MS4 located outside of an urbanized area to obtain an AZPDES stormwater permit. The Director shall base this designation on whether a stormwater discharge results in or has the potential to result in an exceedance of a water quality standard, including impairment of a designated use, or another significant water quality impact, including a habitat or biological impact.
   a. When deciding whether to designate a small MS4, the Director shall consider the following criteria:
      i. Discharges to sensitive waters,
      ii. Areas with high growth or growth potential,
      iii. Areas with a high population density,
      iv. Areas that are contiguous to an urbanized area,

v. Small MS4s that cause a significant contribution of pollutants to a navigable water,
vi. Small MS4s that do not have effective programs to protect water quality, and
vii. Any other relevant criteria.

b. The same requirements for small MS4s designated under 40 CFR 122.32(a)(1) apply to permits for designated MS4s not waived under R18-9-B901(A)(3).

2. The Director may designate an MS4 as part of a large or medium system due to the interrelationship between the discharges from a designated storm sewer and the discharges from a municipal separate storm sewer described under R18-9-A901(16)(a) and (b), or R18-9-A901(20)(a) or (b), as applicable. In making this determination, the Director shall consider the following factors:
   a. Physical interconnections between the municipal separate storm sewers;
   b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R18-9-A901(16)(a) and R18-9-A901(20)(a);
   c. The quantity and nature of pollutants discharged to a navigable water;
   d. The nature of the receiving waters; and
   e. Any other relevant factor.
3. The Director shall designate a small MS4 that is physically interconnected with a MS4 that is regulated by the AZPDES program if the small MS4 substantially contributes to the pollutant loading of the regulated MS4.

E. Petitions. The Director may, upon a petition, designate as a large, medium or small MS4, a municipal separate storm sewer located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R18-9-A901(16), R18-9-A901(20) or R18-9-A901(35), as applicable.

F. Phase-ins.
1. The Director may phase-in permit coverage for a small MS4 serving a jurisdiction with a population of less than 10,000 if a phasing schedule is developed and implemented for approximately 20 percent annually of all small MS4s that qualify for the phased-in coverage.
   a. If the phasing schedule is not yet approved for permit coverage, the Director shall, by December 9, 2002, determine whether to issue an AZPDES permit or allow a waiver under R18-9-B901(A)(3) for each eligible MS4.
   b. All regulated MS4s shall have coverage under an AZPDES permit no later than March 8, 2007.
2. The Director may provide a waiver under R18-9-B901(A)(3) for any municipal separate storm sewage system operating under a phase-in plan.

G. Exclusions. The following discharges do not require an AZPDES permit:
1. Discharge of dredged or fill material into a navigable water that is regulated under section 404 of the Clean Water Act (33 U.S.C. 1344);
2. The introduction of sewage, industrial wastes, or other pollutants into POTWs by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with a permit until all discharges of pollutants to a navigable water are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through a pipe, sewer, or other conveyance owned by the state, a municipality, or other party not leading to treatment works;
3. Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR 300, The National Oil and Hazardous Substances Pollution Contingency Plan; or 33 CFR 153.10(e), Control of Pollution by Oil and Hazardous Substances, Discharge Removal;
4. Any introduction of pollutants from a nonpoint source agricultural or silvicultural activity, including stormwater runoff from an orchard, cultivated crop, pasture, rangeland, and forest land, but not discharges from a concentrated animal feeding operation, concentrated aquatic animal production facility, silvicultural point source, or to an aquaculture project;
5. Return flows from irrigated agriculture;
6. Discharges into a privately owned treatment works, except as the Director requires under 40 CFR 122.44(m), which is incorporated by reference in R18-9-A905(A)(3)(d);
7. Discharges from conveyances for stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows from conveyances or systems of conveyances, including pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste product located on the site of the operations.

H. Conditional no exposure exclusion.
1. Discharges composed entirely of stormwater are not considered stormwater discharges associated with an industrial activity if there is no exposure, and the discharger satisfies the conditions under 40 CFR 122.26(g), which is incorporated by reference in R18-9-A905(A)(1)(d).
2. For purposes of this subsection:
   a. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and runoff.
   b. "Industrial materials or activities" include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products.
   c. "Material-handling activities" include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A903. Prohibitions

A. The Director shall not issue a permit for a discharge to a WOTUS:
1. If the conditions of the permit do not provide for compliance with the applicable requirements of A.R.S. Title 49,

Chapter 2, Article 3.1; 18 A.A.C. 9, Articles 9 and 10; and the Clean Water Act;

2. Before resolution of an EPA objection to a draft or proposed permit under R18-9-A908(C);
3. If the imposition of conditions cannot ensure compliance with the applicable water quality requirements from Arizona or an affected state or tribe, or a federally promulgated water quality standard under 40 CFR 131.31;
4. If in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, the discharge will substantially impair anchorage and navigation in or on any navigable water;
5. For the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste;
6. For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the Clean Water Act (33 U.S.C. 1288); and
7. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of a water quality standard. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet water quality standards or is not expected to meet those standards even after the application of the effluent limitations required under R18-9-A905(A)(8), and for which the Department has performed a wasteload allocation for the proposed discharge, shall demonstrate before the close of the public comment period that:
   a. There are sufficient remaining wasteload allocations to allow for the discharge, and
   b. The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with water quality standards.

B. The Director shall not issue a permit for a discharge to a non-WOTUS protected surface water:

1. If the permit or the conditions of the permit violate the restrictions listed in A.R.S. § 49-255.04; and
2. If the conditions of the permit do not provide for compliance with 18 A.A.C. 11, Article 2 and the applicable requirements of 18 A.A.C. 9, Article 9.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 296 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-9-A904. Effect of a Permit

A. Except for a standard or prohibition imposed under section 307 of the Clean Water Act (33 U.S.C. 1317) for a toxic pollutant that is injurious to human health and standards for sewage sludge use or disposal under Article 10 of this Chapter, compliance with an AZPDES permit during its term constitutes compliance, for purposes of enforcement, with Article 9 of this Chapter. However, the Director may modify, revoke and reissue, suspend, or terminate a permit during its term for cause under R18-9-B906.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to a person or property or invasion of other private rights, or any infringement of federal, state, or local law, or regulations.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A905. AZPDES Program Standards

A. Except for subsection (A)(11), the following 40 CFR sections and appendices, amended as of April 15, 2023, as they apply to the NPDES program, are incorporated by reference, do not include any later amendments or editions of the incorporated matter, and are on file with the Department:

1. General program requirements.
   a. 40 CFR 122.7;
   b. 40 CFR 122.21, except 40 CFR 122.21(a) through (e) and (l);
   c. 40 CFR 122.22;
   d. 40 CFR 122.26, except 40 CFR 122.26(c)(2), and 40 CFR 122.26(e)(2);
   e. 40 CFR 122.29;
   f. 40 CFR 122.32;
   g. 40 CFR 122.33;
   h. 40 CFR 122.34;
   i. 40 CFR 122.35;
   j. 40 CFR 122.62(a) and (b).
2. Procedures for Decision making.
   a. 40 CFR 124.8, except 40 CFR 124.8(b)(3); and
   b. 40 CFR 124.56.
3. Permit requirements and conditions.
   a. 40 CFR 122.41, except 40 CFR 122.41(a)(2) and (a)(3);
   b. 40 CFR 122.42;
   c. 40 CFR 122.43;
   d. 40 CFR 122.44;
   e. 40 CFR 122.45;
   f. 40 CFR 122.47;
   g. 40 CFR 122.48; and
   h. 40 CFR 122.50.
4. Criteria and standards for the national pollutant discharge elimination system. 40 CFR 125, subparts A, B, D, H, and I.
5. Toxic pollutant effluent standards. 40 CFR 129.
6. Secondary treatment regulation. 40 CFR 133.
7. Guidelines for establishing test procedures for the analysis of pollutants, 40 CFR 136.
8. Effluent guidelines and standards.
   a. General provisions, 40 CFR 401; and
   b. General pretreatment regulations for existing and new sources of pollution, 40 CFR 403 and Appendices A, D, E, and G.
9. Effluent limitations guidelines. 40 CFR 405 through 40 CFR 471.
10. Standards for the use or disposal of sewage sludge. 40 CFR 503, Subpart C.
11. The following substitutions apply to the material in subsections (A)(1) through (A)(10):
    a. Substitute the term AZPDES for any reference to NPDES;
    b. Except for 40 CFR 122.21(f) through (q), substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122.21;
    c. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 122;
    d. Substitute R18-9-C901 for any reference to 40 CFR 122.28;

e. Substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122 subpart B;
f. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 123;
g. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 124;
h. Substitute R18-9-1006 for any reference to 40 CFR 503.32; and
i. Substitute R18-9-1010 for any reference to 40 CFR 503.33.

B. A person shall analyze a pollutant using a test procedure for the pollutant specified by the Director in an AZPDES permit. If the Director does not specify a test procedure for a pollutant in an AZPDES permit, a person shall analyze the pollutant using:
1. A test procedure listed in 40 CFR 136, which is incorporated by reference in subsection (A)(7);
2. An alternate test procedure approved by the EPA as provided in 40 CFR 136;
3. A test procedure listed in 40 CFR 136, with modifications allowed by the EPA and approved as a method alteration by the Arizona Department of Health Services under A.A.C. R9-14-610(B); or
4. If a test procedure for a pollutant is not available under subsection (B)(1) through (B)(3), a test procedure listed in A.A.C. R9-14-612 or approved under A.A.C. R9-14-610(C).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4). Amended by final expedited rulemaking at 30 A.A.R. 28 (January 5, 2024), with an immediate effective date of December 15, 2023 (Supp. 23-4).

R18-9-A906. General Pretreatment Regulations for Existing and New Sources of Pollution

A. The reduction or alteration of a pollutant may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited under 40 CFR 403.6(d), which is incorporated by reference in R18-9-A905(A)(8)(b). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit calculated under 40 CFR 403.6(e), which is incorporated by reference in R18-9-A905(A)(8)(b).

B. Pretreatment applies to:
1. Pollutants from non-domestic sources covered by pretreatment standards that are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;
2. POTWs that receive wastewater from sources subject to national pretreatment standards; and
3. Any new or existing source subject to national pretreatment standards.

C. National pretreatment standards do not apply to sources that discharge to a sewer that is not connected to a POTW.

D. For purposes of this Section the terms "National Pretreatment Standard" and "Pretreatment Standard" mean any regulation containing pollutant discharge limits promulgated by EPA under section 307(b) and (c) of the Clean Water Act (33 U.S.C. 1317), which applies to Industrial Users. This term includes prohibitive discharge limits established under 40 CFR 403.5.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A907. Public Notice

A. Individual permits.
1. The Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied, in one or more newspapers of general circulation where the facility is located. The notice shall contain:
   a. The name and address of the Department;
   b. The name and address of the permittee or permit applicant and if different, the name of the facility or activity regulated by the permit;
   c. A brief description of the business conducted at the facility or activity described in the permit application;
   d. The name, address, and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, fact sheet, and application;
   e. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing (unless a hearing has already been scheduled), and any other procedure by which the public may participate in the final permit decision;
   f. A general description of the location of each existing or proposed discharge point and the name of the receiving water;
   g. For sources subject to section 316(a) of the Clean Water Act, a statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316);
   h. Requirements applicable to cooling water intake structures at new facilities subject to 40 CFR 125, subpart I; and
   i. Any additional information considered necessary to the permit decision.
2. The Department shall provide the applicant with a copy of the draft individual permit.
3. Copy of the notice. The Department shall provide the following entities with a copy of the notice:
   a. The applicant or permittee;
   b. Any user identified in the permit application of a privately owned treatment works;
   c. Any affected federal, state, tribal, or local agency, or council of government;
   d. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Arizona

Historic Preservation Office, and the U.S. Army Corps of Engineers;
e. Each applicable county department of health, environmental services, or comparable department;
f. Any person who requested, in writing, notification of the activity; and
g. The Secretaria de Medio Ambiente y Recursos Naturales and the United States Section of the International Boundary and Water Commission, if the Department is aware the effluent discharge is expected to reach Sonora, Mexico, either through surface water or groundwater.

B. General permits. If the Director considers issuing a general permit applicable to a category of discharge under R18-9-C901, the Director shall publish a general notice of the draft permit in the *Arizona Administrative Register*. The notice shall contain:
1. The name and address of the Department,
2. The name of the person to contact regarding the permit,
3. The general permit category,
4. A brief description of the proposed general permit,
5. A map or description of the permit area,
6. The web site or any other location where the proposed general permit may be obtained, and
7. The ending date for public comment.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A908. Public Participation, EPA Review, EPA Hearing

A. Public comment period.
1. The Director shall accept written comments from any interested person before a decision is made on any notice published under R18-9-A907(A) or (B).
2. The public comment period begins on the publication date of the notice and extends for 30 calendar days.
3. The Director may extend the comment period to provide commenters a reasonable opportunity to participate in the decision-making process.
4. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Director may reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted. Comments filed during a reopened comment period are limited to the substantial new questions that caused its reopening.
   a. Corps of Engineers.
      i. If the District Engineer advises the Director that denying the permit or imposing specified conditions upon a permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall deny the permit or include the specified conditions in the permit.
      ii. A person shall use the applicable procedures of the Corps of Engineers Review and not the procedures under this Article to appeal the denial of a permit or conditions specified by the District Engineer.
      iii. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions are considered stayed in the AZPDES permit for the duration of that stay.
   b. If an agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resource, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Clean Water Act.

B. Public hearing.
1. The Director shall provide notice and conduct a public hearing to address a draft permit or denial regarding a final decision if:
   a. Significant public interest in a public hearing exists, or
   b. Significant issues or information have been brought to the attention of the Director during the comment period that was not considered previously in the permitting process.
2. If, after publication of the notice under R18-9-A907, the Director determines that a public hearing is necessary, the Director shall schedule a public hearing and publish notice of the public hearing at least once, in one or more newspapers of general circulation where the facility is located. The notice for public hearing shall contain:
   a. The date, time, and place of the hearing;
   b. Reference to the date of a previous public notice relating to the proposed decision, if any; and
   c. A brief description of the nature and purpose of the hearing, including reference to the applicable laws and rules.
3. The Department shall accept written public comment until the close of the hearing or until a later date specified by the person presiding at the public hearing.

C. EPA review of draft and proposed permits.
1. Individual permits.
   a. The Department shall send a copy of the draft permit to EPA.
   b. If EPA objects to the draft permit within 30 days from the date of receipt of the draft permit, the EPA comment period is extended to 90 days from the date of receipt of the draft permit and the substantive review time-frame is suspended until EPA makes a final determination.
   c. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 30 days from the date of receipt of the proposed permit, the EPA comment period is extended to 90 days from the date of receipt of the proposed permit and the substantive review time-frame is suspended until EPA makes a final determination.
   d. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.
2. General permits. The Director shall send a copy of the draft permit to EPA and comply with the following review procedure for EPA comments:

a. If EPA objects to the draft permit within 90 days from receipt of the draft permit, the Department shall not issue the permit until the objection is resolved;
b. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 90 days from receipt of the proposed permit, the Department shall not issue the permit until the objection is resolved;
c. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.

D. EPA hearing. Within 90 days of receipt by the Director of a specific objection by EPA, the Director or any interested person may request that EPA hold a public hearing on the objection.
1. If following the public hearing EPA withdraws the objection, the Director shall issue the permit.
2. If a public hearing is not held, and EPA reaffirms the original objection, or modifies the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 90 days of receipt of the objection, EPA may issue the permit for one term. Following the completion of the permit term, authority to issue the permit reverts to the Department.
3. If a public hearing is held and EPA does not withdraw an objection or modify the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 30 days of notification of the EPA objection, EPA may issue the permit for one permit term. Following the completion of the permit term, authority to issue the permit reverts to the Department.
4. If EPA issues the permit instead of the Director, the Department shall close the application file.

E. Final permit determination.
1. Individual permits. At the same time the Department notifies a permittee or an applicant of the final individual permit determination, the Department shall send, through regular mail, a notice of the determination to any person who submitted comments or attended a public hearing on the final individual permit determination. The Department shall:
a. Specify the provisions, if any, of the draft individual permit that have been changed in the final individual permit determination, and the reasons for the change; and
b. Briefly describe and respond to all significant comments on the draft individual permit or the permit application raised during the public comment period, or during any hearing.
2. General permits. The Director shall publish a general notice of the final permit determination in the *Arizona Administrative Register*. The notice shall:
a. Specify the provisions, if any, of the draft general permit that have been changed in the final general permit determination, and the reasons for the change;
b. Briefly describe and respond to all significant comments on the draft general permit raised during the public comment period, or during any hearing; and
c. Specify where a copy of the final general permit may be obtained.
3. The Department shall make the response to comments available to the public.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A909. Petitions

A. Any person may submit a petition to the Director requesting:
1. The issuance of a general permit;
2. An individual permit covering any discharge into an MS4 under 40 CFR 122.26(f), which is incorporated by reference in R18-9-A905(A)(1)(d); or
3. An individual permit under R18-9-C902(B)(1).

B. The petition shall contain:
1. The name, address, and telephone number of the petitioner;
2. The location of the facility;
3. The exact nature of the petition, and
4. Evidence of the validity of the petition.

C. The Department shall provide the permittee with a copy of the petition.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

PART B. INDIVIDUAL PERMITS

R18-9-B901. Individual Permit Application

A. Time to apply.
1. Any person who owns or operates a facility covered by R18-9-A902(B) or R18-9-A902(C), shall apply for an AZPDES individual permit at least 180 days before the date of the discharge or a later date if granted by the Director, unless the person:
a. Is exempt under R18-9-A902(G);
b. Is covered by a general permit under Article 9, Part C of this Chapter; or
c. Is a user of a privately owned treatment works, unless the Director requires a permit under 40 CFR 122.44(m).
2. Construction. Any person who proposes a construction activity under R18-9-A902(B)(9)(c) or R18-9-A902(B)(9)(d) and wishes coverage under an individual permit, shall apply for the individual permit at least 90 days before the date on which construction is to commence.
3. Waivers.
a. Unless the Director grants a waiver under 40 CFR 122.32, a person operating a small MS4 is regulated under the AZPDES program.
b. The Director shall review any waiver granted under subsection (A)(3)(a) at least every five years to determine whether any of the information required for granting the waiver has changed.

B. Application. An individual permit applicant shall submit the following information on an application obtained from the Department. The Director may require more than one application from a facility depending on the number and types of discharges or outfalls.
1. Discharges, other than stormwater.
a. The information required under 40 CFR 122.21(f) through (k);
b. The signature of the certifying official required under 40 CFR 122.22;

c. The name and telephone number of the operator, if the operator is not the applicant; and
d. Whether the facility is located in the border area, and, if so:
i. A description of the area into which the effluent discharges from the facility may flow, and
ii. A statement explaining whether the effluent discharged is expected to cross the Arizona-Sonora, Mexico border.

2. Stormwater. In addition to the information required in subsection (B)(1)(c) and (B)(1)(d):
a. For stormwater discharges associated with industrial activity, the application requirements under 40 CFR 122.26(c)(1);
b. For large and medium MS4s, the application requirements under 40 CFR 122.26(d);
c. For small MS4s:
i. A stormwater management program under 40 CFR 122.34, and
ii. The application requirements under 40 CFR 122.33.

C. Consolidation of permit applications.
1. The Director may consolidate two or more permit applications for any facility or activity that requires a permit under Articles 9 and 10 of this Chapter.
2. Whenever a facility or activity requires an additional permit under Articles 9 and 10 of this Chapter, the Director may coordinate the expiration date of the new permit with the expiration date of an existing permit so that all permits expire simultaneously. The Department may then consolidate the processing of the subsequent applications for renewal permits.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 30 A.A.R. 28 (January 5, 2024), with an immediate effective date of December 15, 2023 (Supp. 23-4).

R18-9-B902. Requested Coverage Under a General Permit
An owner or operator may request that an individual permit be revoked, if a source is excluded from a general permit solely because it already has an individual permit.
1. The Director shall grant the request for revocation of an individual permit upon determining that the permittee otherwise qualifies for coverage under a general permit.
2. Upon revocation of the individual permit, the general permit applies to the source.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B903. Individual Permit Issuance or Denial
A. Once the application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
B. Permit issuance. If, based upon the information obtained by or available to the Department under R18-9-A907, R18-9-A908, and R18-9-B901, the Director determines that an applicant complies with A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, the Director shall issue a permit that is effective as prescribed in A.R.S. 49-255.01(H).
C. Permit denial.
1. If the Director decides to deny the permit application, the Director shall provide the applicant with a written notice of intent to deny the permit application. The written notification shall include:
a. The reason for the denial with reference to the statute or rule on which the denial is based;
b. The applicant's right to appeal the denial with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the denial, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
2. The Director shall provide an opportunity for public comment under R18-9-A907 and R18-9-A908 on a denial.
3. The decision of the Director to deny the permit application takes effect 30 days after the decision is served on the applicant, unless the applicant files an appeal under A.R.S. 49-255.01(H)(1).

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B904. Individual Permit Duration, Reissuance, and Continuation
A. Permit duration.
1. An AZPDES individual permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
2. If the Director does not reissue a permit within the period specified in the permit, the permit expires, unless it is continued under subsection (C).
3. If a permittee of a large or medium MS4 allows a permit to expire by failing to reapply within the time period specified in subsection (B), the permittee shall submit a new application under R18-9-B901 and follow the application requirements under 40 CFR 122.26(d), which is incorporated by reference in R18-9-A905(A)(1)(d).

B. Permit reissuance.
1. A permittee shall reapply for an individual permit at least 180 days before the permit expiration date.
2. Unless otherwise specified in the permit, an annual report submitted 180 days before the permit expiration date satisfies the reapplication requirement for an MS4 permit. The annual report shall contain:
a. The name, address, and telephone number of the MS4;
b. The name, address, and telephone number of the contact person;
c. The status of compliance with permit conditions, including an assessment of the appropriateness of the selected best management practices and progress toward achieving the selected measurable goals for each minimum measure;
d. The results of any information collected and analyzed, including monitoring data, if any;
e. A summary of the stormwater activities planned for the next reporting cycle;

f. A change in any identified best management practices or measurable goals for any minimum measure; and

g. Notice of relying on another governmental entity to satisfy some of the permit obligations.

C. Continuation. An AZPDES individual permit may continue beyond its expiration date if:

1. The permittee has submitted a complete application for an AZPDES individual permit at least 180 days before the expiration date of the existing permit and the permitted activity is of a continuing nature; and
2. The Department is unable, through no fault of the permittee, to issue an AZPDES individual permit on or before the expiration date of the existing permit.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 30 A.A.R. 28 (January 5, 2024), with an immediate effective date of December 15, 2023 (Supp. 23-4).

R18-9-B905. Individual Permit Transfer

A. A permittee may request the Director to transfer an individual permit to a new permittee. The Director may modify, or revoke and reissue the permit to identify the new permittee, or make a minor modification to identify the new permittee.

B. Automatic transfer. The Director may automatically transfer an individual permit to a new permittee if:

1. The current permittee notifies the Director by certified mail at least 30 days in advance of the proposed transfer date and includes a written agreement between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
2. The Director does not notify the existing permittee and the proposed new permittee of the Director's intent to modify, or revoke and reissue the permit. A modification under this subsection may include a minor modification specified in R18-9-B906(B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits

A. Permit modification, revocation and reissuance.

1. The Director may modify, or revoke and reissue an individual permit for any of the following reasons:
   a. The Director receives a written request from an interested person;
   b. The Director receives information, such as when inspecting a facility;
   c. The Director receives a written request to modify, or revoke and reissue a permit from a permittee as required in the individual permit; or
   d. After review of a permit file, the Director determines one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.
      i. If the Director decides a written request is not justified under 40 CFR 122.62 or subsection (B), the Director shall send the requester a brief written response giving a reason for the decision.
      ii. The denial of a request for modification, or revocation and reissuance is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).
2. If the Director tentatively decides to modify, or revoke and reissue an individual permit, the Director shall prepare a draft permit incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application.
   a. Modified individual permit. The Director shall reopen only the modified conditions when preparing a new draft permit and process the modifications.
   b. Revoked and reissued individual permit.
      i. The permittee shall submit a new application.
      ii. The Director shall reopen the entire permit just as if the permit had expired and was being reissued.
3. During any modification, or revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

B. Minor modifications.

1. Upon consent of the permittee, the Director may make any of the following modifications to an individual permit:
   a. Correct typographical errors;
   b. Update a permit condition that changed as a result of updating an Arizona water quality standard;
   c. Require more frequent monitoring or reporting by the permittee;
   d. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
   e. Allow for a change in ownership or operational control of a facility, if no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
   f. Change the construction schedule for a new source discharger. The change shall not affect a discharger's obligation to have all pollution control equipment installed and in operation before the discharge;
   g Delete a point source outfall if the discharge from that outfall is terminated and does not result in a discharge of pollutants from other outfalls except under permit limits;
   h. Incorporate conditions of a POTW pretreatment program approved under 40 CFR 403.11 and 40 CFR 403.18, which is incorporated by reference in R18-9-A905(A)(8) as enforceable conditions of the permit, and
   i. Annex an area by a municipality.
2. Any modification processed under subsection (B)(1) is not subject to the public notice provision under R18-9-A907 or public participation procedures under R18-9-A908.

C. Permit termination.

1. The Director may terminate an individual permit during its term or deny reissuance of a permit for any of the following causes:
   a. The permittee's failure to comply with any condition of the permit;
   b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact;
   c. The Director determined that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
   d. A change occurs in any condition that requires either a temporary or permanent reduction or elimination of any discharge, sludge use, or disposal practice controlled by the permit, for example, a plant closure or termination of discharge by connection to a POTW.
2. If the Director terminates a permit during its term or denies a permit renewal application for any cause listed in subsection (C)(1), the Director shall issue a Notice of Intent to Terminate, except when the entire discharge is terminated.
   a. Unless the permittee objects to the termination notice within 30 days after the notice is sent, the termination is final at the end of the 30 days.
   b. If the permittee objects to the termination notice, the permittee shall respond in writing to the Director within 30 days after the notice is sent.
   c. Expedited permit termination. If a permittee requests an expedited permit termination procedure, the permittee shall certify that the permittee is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.
   d. The denial of a request for termination is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 30 A.A.R. 28 (January 5, 2024), with an immediate effective date of December 15, 2023 (Supp. 23-4).

R18-9-B907. Individual Permit Variances

A. The Director may grant or deny a request for any of the following variances:
1. An extension under section 301(i) of the Clean Water Act (33 U.S.C. 1311) based on a delay in completion of a POTW;
2. After consultation with EPA, an extension under section 301(k) of the Clean Water Act (33 U.S.C. 1311) based on the use of innovative technology;
3. A variance under section 316(a) of the Clean Water Act (33 U.S.C. 1326) for thermal pollution, or
4. A variance under R18-11-122 for a water quality standard.

B. The Director may deny, forward to EPA with a written concurrence, or submit to EPA without recommendation a completed request for:
1. A variance based on the economic capability of the applicant under section 301(c) of the Clean Water Act (33 U.S.C. 1311); or
2. A variance based on water quality related effluent limitations under 302(b)(2) (33 U.S.C. 1312) of the Clean Water Act.

C. The Director may deny or forward to EPA with a written concurrence a completed request for:
1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline is based; and
2. A variance based upon water quality factors under section 301(g) of the Clean Water Act (33 U.S.C. 1311).

D. If the Department approves a variance under subsection (A) or if EPA approves a variance under subsection (B) or (C), the Director shall prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing the decision.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

PART C. GENERAL PERMITS

R18-9-C901. General Permit Issuance

A. The Director may issue a general permit to cover one or more categories of discharges, sludge use, or disposal practices, or facilities within a geographic area corresponding to existing geographic or political boundaries, if the sources within a covered category of discharges are either:
1. Stormwater point sources; or
2. One or more categories of point sources other than stormwater point sources, or one or more categories of treatment works treating domestic sewage, if the sources, or treatment works treating domestic sewage, within each category all:
   a. Involve the same or substantially similar types of operations;
   b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
   c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;
   d. Require the same or similar monitoring; and
   e. Are more appropriately controlled under a general permit than under an individual permit.

B. Any person seeking coverage under a general permit issued under subsection (A) shall submit a Notice of Intent on a form provided by the Department within the time-frame specified in the general permit unless exempted under the general permit as provided in subsection (C)(2). The person shall not discharge before the time specified in the general permit unless the discharge is authorized by another permit.

C. Exemption from filing a Notice of Intent.
1. The following dischargers are not exempt from submitting a Notice of Intent:
   a. A discharge from a POTW;
   b. A combined sewer overflow;
   c. A MS4;
   d. A primary industrial facility;
   e. A stormwater discharge associated with industrial activity;
   f. A CAFO;
   g. A treatment works treating domestic sewage; and

h. A stormwater discharge associated with construction activity.

2. For dischargers not listed in subsection (C)(1), the Director may consider a Notice of Intent inappropriate for the discharge and authorize the discharge under a general permit without a Notice of Intent. In making this finding, the Director shall consider:
   a. The type of discharge,
   b. The expected nature of the discharge,
   c. The potential for toxic and conventional pollutants in the discharge,
   d. The expected volume of the discharge,
   e. Other means of identifying the discharges covered by the permit, and
   f. The estimated number of discharges covered by the permit.
3. The Director shall provide reasons for not requiring a Notice of Intent for a general permit in the public notice.

D. Notice of Intent. The Director shall specify the contents of the Notice of Intent in the general permit and the applicant shall submit information sufficient to establish coverage under the general permit, including, at a minimum:
1. The name, position, address, and telephone number of the owner of the facility;
2. The name, position, address, and telephone number of the operator of the facility, if different from subsection (D)(1);
3. The name and address of the facility;
4. The type and location of the discharge;
5. The receiving streams;
6. The latitude and longitude of the facility;
7. For a CAFO, the information specified in 40 CFR 122.21(i)(1) and a topographic map;
8. The signature of the certifying official required under 40 CFR 122.22; and
9. Any other information necessary to determine eligibility for the AZPDES general permit.

E. The general permit shall contain:
1. The expiration date; and
2. The appropriate permit requirements, permit conditions, and best management practices, and measurable goals for MS4 general permits, under R18-9-A905(A)(1), R18-9-A905(A)(2), and R18-9-A905(A)(3) and determined by the Director as necessary and appropriate for the protection of navigable waters.

F. The Department shall inform a permittee if EPA requests the permittee's Notice of Intent, unless EPA requests that the permittee not be notified.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-C902. Required and Requested Coverage Under an Individual Permit

A. Individual permit requirements.
1. The Director may require a person authorized by a general permit to apply for and obtain an individual permit for any of the following cases:
   a. A discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general permit;
   b. A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
   c. Effluent limitation guidelines are promulgated for point sources covered by the general permit;
   d. An Arizona Water Quality Management Plan containing requirements applicable to the point sources is approved;
   e. Circumstances change after the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
   f. Standards for sewage sludge use or disposal are promulgated for the sludge use and disposal practices covered by the general permit; or
   g. If the Director determines that the discharge is a significant contributor of pollutants. When making this determination, the Director shall consider:
      i. The location of the discharge with respect to navigable waters,
      ii. The size of the discharge,
      iii. The quantity and nature of the pollutants discharged to navigable waters, and
      iv. Any other relevant factor.
2. If an individual permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:
   a. A brief statement of the reasons for the decision,
   b. An application form,
   c. A statement setting a deadline to file the application,
   d. A statement that on the effective date of issuance or denial of the individual permit, coverage under the general permit will automatically terminate,
   e. The applicant's right to appeal the individual permit requirement with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the individual permit requirement, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
   f. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
3. The discharger shall apply for a permit within 90 days of receipt of the notice, unless the Director grants a later date. In no case shall the deadline be more than 180 days after the date of the notice.
4. If the permittee fails to submit the individual permit application within the time period established in subsection (A)(3), the applicability of the general permit to the permittee is automatically terminated at the end of the day specified by the Director for application submittal.
5. Coverage under the general permit shall continue until an individual permit is issued unless the permit coverage is terminated under subsection (A)(4).

B. Individual permit request.
1. An owner or operator authorized by a general permit may request an exclusion from coverage of a general permit by applying for an individual permit.
   a. The owner or operator shall submit an individual permit application under R18-9-B901(B) and

include the reasons supporting the request no later than 90 days after publication of the general permit.
b. The Director shall grant the request if the reasons cited by the owner or operator are adequate to support the request.
2. If an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the discharge is automatically terminated on the effective date of the individual permit.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C903. General Permit Duration, Reissuance, and Continuation
A. General permit duration.
1. An AZPDES general permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
2. If the Director does not reissue a general permit before the expiration date, the current general permit will be administratively continued and remain in force and effect until the general permit is reissued.
B. Continued coverage. Any permittee granted permit coverage before the expiration date automatically remains covered by the continued permit until the earlier of:
1. Reissuance or replacement of the permit, at which time the permittee shall comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or
2. The date the permittee has submitted a Notice of Termination; or
3. The date the Director has issued an individual permit for the discharge; or
4. The date the Director has issued a formal permit decision not to reissue the general permit, at which time the permittee shall seek coverage under an alternative general permit or an individual permit.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C904. Change of Ownership or Operator Under a General Permit
If a change of ownership or operator occurs for a facility operating under a general permit:
1. Permitted owner or operator. The permittee shall provide the Department with a Notice of Termination by certified mail within 30 days after the new owner or operator assumes responsibility for the facility.
a. The Notice of Termination shall include all requirements for termination specified in the general permit for which the Notice of Termination is submitted.
b. A permittee shall comply with the permit conditions specified in the general permit for which the Notice of Termination is submitted until the Notice of Termination is received by the Department.
2. New owner or operator.
a. The new owner or operator shall complete and file a Notice of Intent with the Department within the time period specified in the general permit before taking over operational control of, or initiation of activities at, the facility.
b. If the previous permittee was required to implement a stormwater pollution prevention plan, the new owner shall develop a new stormwater pollution prevention plan, or may modify, certify, and implement the old stormwater pollution prevention plan if the old stormwater pollution prevention plan complies with the requirements of the current general permit.
c. The permittee shall provide the Department with a Notice of Termination if a permitted facility ceases operation, ceases to discharge, or changes operator status. In the case of a construction site, the permittee shall submit a Notice of Termination to the Department when:
i. The facility ceases construction operations and the discharge is no longer associated with construction or construction-related activities,
ii. The construction is complete and final site stabilization is achieved, or
iii. The operator's status changes.

Historical Note
New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C905. General Permit Modification and Revocation and Reissuance
A. The Director may modify or revoke a general permit issued under R18-9-A907(B), R18-9-A908, and R18-9-C901 if one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.
B. The Director shall follow the procedures specified in R18-9-A907(B) and R18-9-A908 to modify or revoke and reissue a general permit.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

PART D. ANIMAL FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS

R18-9-D901. CAFO Designations
A. Two or more animal feeding operations under common ownership are considered a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.
B. The Director shall designate an animal feeding operation as a CAFO if the animal feeding operation significantly contributes a pollutant to a navigable water. The Director shall consider the following factors when making this determination:
1. The size of the animal feeding operation and the amount of wastes reaching a navigable water;
2. The location of the animal feeding operation relative to a navigable water;
3. The means of conveyance of animal wastes and process wastewaters into a navigable water;
4. The slope, vegetation, rainfall, and any other factor affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into a navigable water; and
5. Any other relevant factor.
C. The Director shall conduct an onsite inspection of the animal feeding operation before the making a designation under subsection (B).
D. The Director shall not designate an animal feeding operation having less than the number of animals established in R18-9-A901(19)(a) as a CAFO unless a pollutant is discharged:

1. Into a navigable water through a manmade ditch, flushing system, or other similar manmade device; or
2. Directly into a navigable water that originates outside of and passes over, across, or through the animal feeding operation or otherwise comes into direct contact with the animals confined in the operation.

E. If the Director makes a designation under subsection (B), the Director shall notify the owner or operator of the operation, in writing, of the designation.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D902. AZPDES Permit Coverage Requirements

A. Any person who owns or operates a CAFO, except as provided in subsections (B) and (C), shall submit an application for an individual permit under R18-9-B901(B) or seek coverage under a general permit under R18-9-C901(B) within the applicable deadline specified in R18-9-D904(A).

B. If a person who owns or operates a large CAFO receives a no potential to discharge determination under R18-9-D903, coverage under an AZPDES permit described in this Part is not required.

C. The discharge of manure, litter, or process wastewater to a navigable water from a CAFO as a result of the application of manure, litter, or process wastewater by the CAFO to land areas under its control is subject to AZPDES permit requirements, except where it is an agricultural stormwater discharge as provided in section 502(14) of the Clean Water Act (33 U.S.C. 1362(14)). For purposes of this Section, an "agricultural stormwater discharge" means a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO when the person who owns or operates the CAFO has applied the manure, litter, or process wastewater according to site-specific nutrient management practices to ensure appropriate agricultural use of the nutrients in the manure, litter, or process wastewater, as specified under 40 CFR 122.42(e)(1)(vi) through (ix).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D903. No Potential To Discharge Determinations for Large CAFOs

A. For purposes of this Section, "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to enter into a navigable water under any circumstance or climatic condition.

B. Any person who owns or operates a large CAFO and has not had a discharge within the previous five years may request a no potential to discharge determination by submitting to the Department:
1. The information specified in 40 CFR 122.21(f) and 40 CFR 122.21(i)(1)(i) through (ix) on a form obtained from the Department, by the applicable date specified in R18-9-D904(A); and
2. Any additional information requested by the Director to supplement the request or requested through an onsite inspection of the CAFO.

C. Process for making a no potential to discharge determination.
1. Upon receiving a request under subsection (B), the Director shall consider:
   a. The potential for discharges from both the production area and any land application area, and
   b. Any record of prior discharges by the CAFO.
2. The Director shall issue a public notice that includes:
   a. A statement that a no potential to discharge request has been received;
   b. A fact sheet, when applicable;
   c. A brief description of the type of facility or activity that is the subject of the no potential to discharge determination;
   d. A brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination; and
   e. A description of the procedures for reaching a final decision on the no potential to discharge determination.
3. The Director shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of a no potential to discharge determination and any other supporting data gathered by the Director.
4. The Director shall notify the owner or operator of the large CAFO of the final determination within 90 days of receiving the request.

D. If the Director determines that the operation has the potential to discharge, the person who owns or operates the CAFO shall seek coverage under an AZPDES permit within 30 days after the determination of potential to discharge.

E. A no potential to discharge determination does not relieve the CAFO from the consequences of a discharge. An unpermitted CAFO discharging a pollutant into a navigable water is in violation of the Clean Water Act even if the Director issues a no potential to discharge determination for the facility. If the Director issues a determination of no potential to discharge to a CAFO facility but the owner or operator anticipates a change in circumstances that could create the potential for a discharge, the owner or operator shall contact the Director and apply for and obtain permit authorization before the change of circumstances.

F. When the Director issues a determination of no potential to discharge, the Director retains the authority to subsequently require AZPDES permit coverage if:
1. Circumstances at the facility change;
2. New information becomes available; or
3. The Director determines, through other means, that the CAFO has a potential to discharge.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D904. AZPDES Permit Coverage Deadlines

A. Any person who owns or operates a CAFO shall apply for or seek coverage under an AZPDES permit and shall comply with all applicable AZPDES requirements, including the duty to maintain permit coverage under subsection (C).
1. Permit coverage deadline for an animal feeding operation operating before April 14, 2003.
   a. An owner or operator of an animal feeding operation that operated before April 14, 2003 and was defined as a CAFO before February 2, 2004 shall apply for or seek permit coverage or maintain permit coverage and comply with the conditions of the applicable AZPDES permit;
   b. An owner or operator of an animal feeding operation that operated before April 14, 2003 and was not defined as a CAFO until February 2, 2004 shall

apply for or seek permit coverage by a date specified by the Director, but no later than February 13, 2006;

c. An owner or operator of an animal feeding operation that operated before April 14, 2003 who changes the operation on or after February 2, 2004, resulting in the operation being defined as a CAFO, shall apply for or seek permit coverage as soon as possible, but no later than 90 days after the operational change. If the operational change will not make the operation a CAFO as defined before February 2, 2004, the owner or operator may take until April 13, 2006 or 90 days after the operation is defined as a CAFO, whichever is later, to apply for or seek permit coverage;

d. An owner or operator of an animal feeding operation that operated before April 14, 2003 who constructs additional facilities on or after February 2, 2004, resulting in the operation being defined as a CAFO that is a new source, shall apply for or seek permit coverage at least 180 days before the new source portion of the CAFO commences operation. If the calculated 180-day deadline occurs before February 2, 2004 and the operation is not subject to this Article before February 2, 2004, the owner or operator shall apply for or seek permit coverage no later than March 3, 2004.

2. Permit coverage deadline for an animal feeding operation operating on or after April 14, 2003. An owner or operator who started construction of a CAFO on or after April 14, 2003, including a CAFO subject to the effluent limitations guidelines in 40 CFR 412, shall apply for or seek permit coverage at least 180 days before the CAFO commences operation. If the calculated 180-day deadline occurs before February 2, 2004 and the operation is not subject to this Article before February 2, 2004, the owner or operator shall apply for or seek permit coverage no later than March 3, 2004.

3. Permit coverage deadline for a designated CAFO. Any person who owns or operates a CAFO designated under R18-9-D901(B) shall apply for or seek permit coverage no later than 90 days after receiving a designation notice.

B. Unless specified under R18-9-D903(E) and (F), the Director shall not require permit coverage for a CAFO that the Director determines under R18-9-D903 to have no potential to discharge. If circumstances change at a CAFO that has a no potential to discharge determination and the CAFO now has a potential to discharge, the person who owns or operates the CAFO shall notify the Director within 30 days after the change in circumstances and apply for or seek coverage under an AZPDES permit.

C. Duty to maintain permit coverage.

1. The permittee shall:
   a. If covered by an individual AZPDES permit, submit an application to renew the permit no later than 180 days before the expiration of the permit under R18-9-B904(B); or
   b. If covered by a general AZPDES permit, comply with R18-9-C903(B).
2. Continued permit coverage or reapplication for a permit is not required if:
   a. The facility ceases operation or is no longer a CAFO; and
   b. The permittee demonstrates to the Director that there is no potential for a discharge of remaining manure, litter, or associated process wastewater (other than agricultural stormwater from land application areas) that was generated while the operation was a CAFO.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D905. Closure Requirements

A. Closure.

1. A person who owns or operates a CAFO shall notify the Department of the person's intent to cease operations without resuming an activity for which the facility was designed or operated.
2. A person who owns or operates a CAFO shall submit a closure plan to the Department for approval 90 days before ceasing operation. The closure plan shall describe:
   a. For operations that met the "no potential to discharge" under R18-9-D903, facility-related information based on the Notice of Termination form for the applicable general permit;
   b. The approximate quantity of manure, process wastewater, and other materials and contaminants to be removed from the facility;
   c. The destination of the materials to be removed from the facility and documentation that the destination is approved to accept the materials;
   d. The method to treat any material remaining at the facility;
   e. The method to control the discharge of pollutants from the facility;
   f. Any limitations on future land or water use created as a result of the facility's operations or closure activities;
   g. A schedule for implementing the closure plan; and
   h. Any other relevant information the Department determines necessary.

B. The owner or operator shall provide the Department with written notice that a closure plan has been fully implemented within 30 calendar days of completion and before redevelopment.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

R18-9-1001. Definitions

In addition to the definitions in A.R.S. § 49-255 and R18-9-A901, the following terms apply to this Article:

1. "Aerobic digestion" means the biochemical decomposition of organic matter in biosolids into carbon dioxide and water by microorganisms in the presence of air.
2. "Agronomic rate" means the whole biosolids application rate on a dry-weight basis that meets the following conditions:
   a. The amount of nitrogen needed by existing vegetation or a planned or actual crop has been provided, and
   b. The amount of nitrogen that passes below the root zone of the crop or vegetation is minimized.

3. "Anaerobic digestion" means the biochemical decomposition of organic matter in biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.
4. "Annual biosolids application rate" means the maximum amount of biosolids (dry-weight basis) that can be applied to an acre or hectare of land during a 365-day period.
5. "Annual pollutant loading rate" means the maximum amount of a pollutant that can be applied to an acre or hectare of land during a 365-day period.
6. "Applicator" means a person who arranges for and controls the site-specific land application of biosolids in Arizona.
7. "Biosolids" means sewage sludge, including exceptional quality biosolids, that is placed on, or applied to the land to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer. Biosolids do not include any of the following:
   a. Sludge determined to be hazardous under A.R.S. Title 49, Chapter 5, Article 2 and 40 CFR 261;
   b. Sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry-weight basis);
   c. Grit (for example, sand, gravel, cinders, or other materials with a high specific gravity) or screenings generated during preliminary treatment of domestic sewage by a treatment works;
   d. Sludge generated during the treatment of either surface water or groundwater used for drinking water;
   e. Sludge generated at an industrial facility during the treatment of industrial wastewater, including industrial wastewater combined with domestic sewage;
   f. Commercial septage, industrial septage, or domestic septage combined with commercial or industrial septage; or
   g. Special wastes as defined and controlled under A.R.S. Title 49, Chapter 4, Article 9.
8. "Bulk biosolids" means biosolids that are transported and land-applied in a manner other than in a bag or other container holding biosolids of 1.102 short tons or 1 metric ton or less.
9. "Class I sludge management facility" means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including a POTW for which the Department assumes local program responsibilities under 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the Director or by the Director because of the potential for its sludge use or disposal practices to adversely affect public health or the environment.
10. *"Clean water act" means the federal water pollution control act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376).* A.R.S. 49-201(6).
11. "Coarse fragments" means rock particles in the gravel-size range or larger.
12. "Coarse or medium sands" means a soil mixture of which more than 50% of the sand fraction is retained on a No. 40 (0.425 mm) sieve.
13. "Cumulative pollutant loading rate" means the maximum amount of a pollutant applied to a land application site.
14. "Domestic septage" means the liquid or solid material removed from a septic tank, cesspool, portable toilet, marine sanitation device, or similar system or device that receives only domestic sewage. Domestic septage does not include commercial or industrial wastewater or restaurant grease-trap wastes.
15. "Domestic sewage" means waste or wastewater from humans or household operations that is discharged to a publicly or privately owned treatment works. Domestic sewage also includes commercial and industrial wastewaters that are discharged into a publicly-owned or privately-owned treatment works if the industrial or commercial wastewater combines with human excreta and other household and nonindustrial wastewaters before treatment.
16. "Dry-weight basis" means the weight of biosolids calculated after the material has been dried at 105° C until reaching a constant mass.
17. "Exceptional quality biosolids" means biosolids certified under R18-9-1013(A)(6) as meeting the pollutant concentrations in R18-9-1005 Table 2, Class A pathogen reduction in R18-9-1006, and one of the vector attraction reduction requirements in subsections R18-9-1010(A)(1) through R18-9-1010(A)(8).
18. "Feed crops" means crops produced for animal consumption.
19. "Fiber crops" means crops grown for their physical characteristics. Fiber crops, including flax and cotton, are not produced for human or animal consumption.
20. "Food crops" means crops produced for human consumption.
21. "Gravel" means soil predominantly composed of rock particles that will pass through a 3-inch (75 mm) sieve and be retained on a No. 4 (4.75 mm) sieve.
22. "Industrial wastewater" means wastewater that is generated in a commercial or industrial process.
23. "Land application," "apply biosolids," or "biosolids applied to the land" means spraying or spreading biosolids on the surface of the land, injecting biosolids below the land's surface, or incorporating biosolids into the soil to amend, condition, or fertilize the soil.
24. "Monthly average" means the arithmetic mean of all measurements taken during a calendar month.
25. "Municipality" means a city, town, county, district, association, or other public body, including an intergovernmental agency of two or more of the foregoing entities created by or under state law. The term includes special districts such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity that has as one of its principal responsibilities, the treatment, transport, use, or disposal of biosolids.
26. *"Navigable waters" means the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7)).* A.R.S. § 49-201(21).
27. "Other container" means a bucket, bin, box, carton, trailer, pickup truck bed, or a tanker vehicle or an open or closed receptacle with a load capacity of 1.102 short tons or one metric ton or less.
28. "Pathogen" means a disease-causing organism.
29. *"Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political*

subdivision of this state, a commission, the United States government or a federal facility, interstate body or other entity. A.R.S. § 49-201(26).

30. "Person who prepares biosolids" means a person who generates biosolids during the treatment of domestic sewage in a treatment works, packages biosolids, or derives a new product from biosolids either through processing or by combining it with another material, including blending several biosolids together.
31. "pH" means the logarithm of the reciprocal of the hydrogen ion concentration.
32. "Pollutant" means an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after release into the environment and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chain, could cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformities in either organisms or reproduced offspring.
33. "Pollutant limit" means:
    a. A numerical value that describes the quantity of a pollutant allowed in a unit of biosolids such as milligrams per kilogram of total solids,
    b. The quantity of a pollutant that can be applied to a unit area of land such as kilograms per hectare, or
    c. The volume of biosolids that can be applied to a unit area of land such as gallons per acre.
34. "Privately owned treatment works" means a device or system owned by a non-governmental entity used to treat, recycle, or reclaim, either domestic sewage or a combination of domestic sewage and industrial waste that is generated off-site.
35. "Public contact site" means a park, sports field, cemetery, golf course, plant nursery, or other land with a high potential for public exposure to biosolids.
36. "Reclamation" means the use of biosolids to restore or repair construction sites, active or closed mining sites, landfill caps, or other drastically disturbed land.
37. "Responsible official" means a principal corporate officer, general partner, proprietor, or, in the case of a municipality, a principal executive official or any duly authorized agent.
38. "Runoff" means rainwater, leachate, or other liquid that drains over any part of a land surface and runs off of the land surface.
39. "Sand" means soil that contains more than 85% grains in the size range that will pass through a No. 4 (4.75 mm) sieve and be retained on a No. 200 (0.075 mm) sieve.
40. *"Sewage sludge":*
    (a) Means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works.
    (b) Includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge.
    (c) Does not include ash that is generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings that are generated during preliminary treatment of domestic sewage in a treatment works. A.R.S. § 49-255(6)
41. "Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include navigable waters.
42. "Specific oxygen uptake rate (SOUR)" means the mass of oxygen consumed per unit time per unit mass of total solids (dry-weight basis) in biosolids.
43. "Store biosolids" or "storage of biosolids" means the temporary holding or placement of biosolids on land before land application.
44. "Surface disposal site" means an area of land that contains one or more active sewage sludge units.
45. "Ton" means a net weight of 2000 pounds and is known as a short ton.
46. "Total solids" means the biosolids material that remains when sewage sludge is dried at 103° C to 105° C.
47. "Treatment of biosolids" means the thickening, stabilization, dewatering, and other preparation of biosolids for land application. Storage is not a treatment of biosolids.
48. "Unstabilized solids" means the organic matter in biosolids that has not been treated or reduced through an aerobic or anaerobic process.
49. "Vectors" means rodents, flies, mosquitoes, or other organisms capable of transporting pathogens.
50. "Volatile solids" means the amount of total solids lost when biosolids are combusted at 550° C in the presence of excess air.
51. "Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and do under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, cienegas, tinajas, and similar areas.

Historical Note

New Section recodified from R18-13-1502 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1002. Applicability and Prohibitions

A. This Article applies to:
1. Any person who:
    a. Prepares biosolids for land application or disposal in a sewage sludge unit or in an incinerator,
    b. Transports biosolids for land application or incineration, or disposal in a sewage sludge unit,
    c. Applies biosolids to the land,
    d. Owns or operates a sewage sludge unit,
    e. Owns or leases land to which biosolids are applied, or
    f. Owns or operates an incinerator that fires sewage sludge,
2. Biosolids applied to the land or placed on a surface disposal site,
3. Land where biosolids are applied, and
4. A surface disposal site.

B. The land application of biosolids in a manner consistent with this Article is exempt from the requirements of the aquifer protection program established under A.R.S. Title 49, Chapter 2, Article 3 and 18 A.A.C. 9, Articles 1, 2, and 3.

C. Except as provided in subsection (D), the land application of biosolids in a manner that is not consistent with Articles 9 and 10 of this Chapter is prohibited.

D. The Department may permit the land application of biosolids in a manner that differs from the requirements in R18-9-1007 and R18-9-1008 if the land application is permitted under the aquifer protection permit program established under A.R.S. Title 49, Chapter 2, Article 3, and 18 A.A.C. 9, Articles 1, 2, and 3.

E. Surface disposal site.

1. Any person who prepares biosolids that are placed in a sewage sludge unit, or places biosolids in a sewage sludge unit, or who owns or operates a biosolids surface disposal site shall comply with 40 CFR 503, Subpart C, which is incorporated by reference in R18-9-A905(A)(9), and
   a. The pathogen reduction requirements in R18-9-1006, and
   b. The vector attraction reduction requirements in R18-9-1010.
2. In addition to the requirements under subsection (E)(1), any person who owns or operates a biosolids surface disposal site shall apply for, and obtain, a permit under 18 A.A.C. 9, Articles 1 and 2.

F. A person shall not apply bulk biosolids to the land or place bulk biosolids in a surface disposal site or fire sewage sludge in a sewage sludge incinerator if the biosolids are likely to adversely affect a threatened or endangered species as listed under section 4 of the Endangered Species Act (16 U.S.C. 1533), or its designated critical habitat as defined in 16 U.S.C. 1532.

G. A person incinerating biosolids shall comply with the requirements set out in 40 CFR Part 503, Subpart E, July 1, 2013 edition, which is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the U.S. General Printing office at http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

Historical Note

New Section recodified from R18-13-1501 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 21 A.A.R. 751, effective July 4, 2015 (Supp. 15-2).

R18-9-1003. General Requirements

A. A person shall not use or transport biosolids, apply biosolids to land, or place biosolids on a surface disposal site in Arizona, except as established in this Article.

B. The management practices in R18-9-1007 and R18-9-1008 do not apply if biosolids are exceptional quality biosolids.

C. The applicator shall obtain, submit to the Department, and maintain the information required to comply with the requirements of this Article.

D. The applicator shall not receive bulk biosolids without prior written confirmation of the filing of a "Request for Registration" under R18-9-1004.

E. The land owner or lessee of land on which bulk biosolids, that are not exceptional quality biosolids, have been applied shall notify any subsequent land owner and lessee of all previous land applications of biosolids and shall disclose any site restrictions listed in R18-9-1009 that are in effect at the time the property is transferred.

F. A person who prepares biosolids shall ensure that the applicable requirements in this Article are met when the biosolids are applied to the land or placed on a surface disposal site.

G. If necessary to protect public health and the environment from any adverse effect of a pollutant in the biosolids, the Department may impose, on a case-by-case basis, requirements for the use or disposal of biosolids, including exceptional quality biosolids, in addition to, or more stringent than, the requirements in this Article. The Department shall notify the preparer, applier, or land owner of these requirements by letter and include the justification for the requirements and the length of time or applicability for the requirements.

Historical Note

New Section recodified from R18-13-1503 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1004. Applicator Registration, Bulk Biosolids

A. Any person intending to land-apply bulk biosolids in Arizona shall submit, on a form provided by the Department, a completed "Request for Registration."

B. An applicator shall not engage in land application of bulk biosolids, unless the applicator has obtained a prior written acknowledgment of the Request for Registration or a supplemental request from the Department.

C. The Request for Registration for all biosolids, except exceptional quality biosolids, shall include:

1. The name, address, and telephone number of the applicator and any agent of the applicator;
2. The name and telephone number of a primary contact person who has specific knowledge of the land application activities of the applicator;
3. Whether the applicator holds a NPDES or AZPDES permit, and, if so, the permit number;
4. The identity of the person, if different from the applicator, including the NPDES or AZPDES permit number, who will prepare the biosolids for land application; and
5. The following information, unless the information is already on file at the Department as part of an approved land application plan, for each site on which application is anticipated to take place:
   a. The name, mailing address, and telephone number of the land owner and lessee, if any;
   b. The physical location of the site by county;
   c. The legal description of the site, including township, range, and section, or latitude and longitude at the center of each site;
   d. The number of acres or hectares at each site to be used;
   e. Except for sites described in R18-9-1005(D)(2)(c), background concentrations of the pollutants listed in Table 4 of R18-9-1005 from representative soil samples;
   f. The location of any portion of the site having a slope greater than 6%; and
   g. Public notice. Proof of placement of a public notice announcing the potential use of the site for the application of biosolids when a site has not previously

received biosolids, or when a site has not been used for land application for at least three consecutive years.

i. The notice shall appear at least once each week for at least two consecutive weeks in the largest newspaper in general circulation in the area in which the site is located.

ii. If a site is not used for land application for at least three consecutive years, the applicator shall renotice the site following the process described in subsection (C)(5)(g)(i) before its reuse.

D. The Request for Registration for exceptional quality biosolids shall include the information in subsections (C)(1) through (C)(4).

E. A responsible official of the applicator shall sign the Request for Registration.

F. The Department shall mail a written acknowledgment of a Request for Registration or supplemental request, within 15 business days of receipt of the request.

G. An applicator wishing to use a site that has not been identified in a Request for Registration shall file a supplemental request with the Department before using the new site. Public notice requirements under R18-9-1004(C)(5)(g) apply.

Historical Note

New Section recodified from R18-13-1504 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1005. Pollutant Concentrations

A. A person shall not apply biosolids with pollutant concentrations that exceed any of the ceiling concentrations established in Table 1.

B. A person shall not apply biosolids sold or given away in a bag or other container that are not exceptional quality biosolids to a site if any annual pollutant loading rate in Table 3 will be exceeded. A person shall determine annual application rates using the methodology established in Appendix A.

C. A person shall not apply bulk biosolids to a lawn or garden unless the biosolids are exceptional quality biosolids.

D. Unless using exceptional quality biosolids, a person shall not apply bulk biosolids to a site when:

1. The pollutant concentrations exceed the levels in Table 2, or
2. Any cumulative pollutant loading rate in Table 4 will be exceeded. A person shall determine compliance with the site cumulative pollutant loading rates using the following:
   a. By identifying all known biosolids application events and information relevant to a site since September 13, 1979.
   b. By calculating the existing cumulative level of the pollutants established in Table 4 using actual analytical data from the application events or if actual analytical data from application events before April 1996 are not available, background concentrations determined by taking representative soil samples of the site, if it is known that the site received biosolids before April 1996.
   c. Background soil tests are not required for those sites that have not received biosolids before April 23, 1996.

Table 1. Ceiling Concentrations

Pollutant	Ceiling concentrations (milligrams per kilogram) [1]
Arsenic	75.0
Cadmium	85.0
Chromium	3000.0
Copper	4300.0
Lead	840.0
Mercury	57.0
Molybdenum	75.0
Nickel	420.0
Selenium	100.0
Zinc	7500.0

[1] Dry-weight basis.

Table 2. Monthly Average Pollutant Concentrations

Pollutant	Concentration limits (milligrams per kilogram)[1]
Arsenic	41.0
Cadmium	39.0
Copper	1500.0
Lead	300.0
Mercury	17.0
Nickel	420.0
Selenium	100.0
Zinc	2800.0

[1] Dry-weight basis.

Table 3. Annual Pollutant Loading Rates

Pollutant	Annual pollutant loading rates (in kilograms per hectare)
Arsenic	2.0
Cadmium	1.9
Copper	75.0
Lead	15.0
Mercury	0.85
Nickel	21.0
Selenium	5.0
Zinc	140.0

Table 4. Cumulative Pollutant Loading Rates

Pollutant	Cumulative pollutant loading rates (in kilograms per hectare)
Arsenic	41.0
Cadmium	39.0
Copper	1500.0
Lead	300.0
Mercury	17.0

Nickel	420.0
Selenium	100.0
Zinc	2800.0

Historical Note

New Section recodified from R18-13-1505 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1006. Class A and Class B Pathogen Reduction Requirements

A. An applicator shall ensure that all biosolids applied to land meet Class A or Class B pathogen reduction requirements at the time the biosolids are:
1. Placed on an active sewage sludge unit unless the biosolids are covered with soil or other material at the end of each operating day, or
2. Land applied.

B. Biosolids that are sold or given away in a bag or other container for land application, or that are applied on a lawn or home garden, shall meet the Class A pathogen reduction requirements established in subsection (D).

C. Land on which biosolids with Class B pathogen reduction requirements are applied is subject to the use restrictions established in R18-9-1009.

D. Biosolids satisfy the Class A pathogen reduction requirements when the density of fecal coliform is less than 1000 Most Probable Number per gram of total solids (dry-weight basis), or the density of *Salmonella sp.* bacteria is less than three Most Probable Number per four grams of total solids (dry-weight basis), and any one of the following alternative pathogen treatment options is used:
1. Alternative 1. The pathogen treatment process meets one of the following time and temperature requirements:
   a. When the percent solids of the biosolids are seven percent or greater, the temperature of the biosolids shall be held at 50° C or higher for at least 20 minutes. The temperature and time period is determined using the equation in subsection (D)(1)(b), except when small particles of the biosolids are heated by either warmed gases or an immiscible liquid;
   b. When the percent solids of the biosolids are seven percent or greater, and small particles of the biosolids are heated by either warmed gases or an immiscible liquid, a temperature of 50° C or higher shall be held for 15 seconds or longer. The temperature and time period is determined using the following equation:

$$D = \frac{131,700,000}{10^{[0.1400t]}}$$

D = time in days, and
t = temperature in degrees Celsius;

   c. When the percent solids of the biosolids are less than seven percent, the temperature of the biosolids is 50° C or higher and the time period is 30 minutes or longer. The temperature and time period shall be determined using the following equation:

$$D = \frac{50,070,000}{10^{[0.1400t]}}$$

D = time in days, and
t = temperature in degrees Celsius; or

   d. When the percent solids of the biosolids are less than seven percent, and the time of heating is at least 15 seconds, but less than 30 minutes, the time and temperature is determined using the following equation:

$$D = \frac{131,700,000}{10^{[0.1400t]}}$$

D = time in days, and
t = temperature in degrees Celsius.

2. Alternative 2. The pathogen treatment process meets all the following parameters:
   a. The pH of the quantity of biosolids treated is raised to 12 or higher and held at least 72 hours;
   b. During the period that the pH is above 12, the temperature of the biosolids is held above 52° C for at least 12 hours; and
   c. At the end of the 72-hour period during which the pH is above 12, the biosolids are air dried to achieve a percent solids in the biosolids greater than 50%.
3. Alternative 3. The following conditions are met:
   a. The biosolids, before pathogen treatment and until the next monitoring event, have an enteric virus density less than one plaque-forming unit for four grams of total solids (dry-weight basis);
   b. The biosolids, before pathogen treatment and until the next monitoring event, have a viable helminth ova density less than one for four grams of total solids (dry-weight basis); and
   c. Once the density requirements in subsections (D)(3)(a) and (D)(3)(b) are consistently met after pathogen treatment and the values and ranges of the pathogen treatment process used are documented, the biosolids continue to be Class A with respect to enteric viruses and viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the previously documented values or ranges of values.
4. Alternative 4. The following requirements are met at the time the biosolids are used or disposed or at the time the biosolids are prepared for sale or given away in a bag or other container for application to the land:
   a. The biosolids have an enteric virus density less than one plaque-forming unit for four grams of total solids (dry-weight basis), and
   b. The biosolids have a viable helminth ova density less than one for four grams of total solids (dry-weight basis).
5. Alternative 5. Composting.
   a. Use either the within-vessel or the static-aerated-pile composting method, maintaining the temperature of the biosolids at 55° C or higher for three days; or
   b. Use the windrow composting method, maintaining the temperature of the biosolids at 55° C or higher for at least 15 days. The windrow shall be turned at

least five times when the compost is maintained at 55° C or higher.

6. Alternative 6. Heat drying. The biosolids are dried by direct or indirect contact with hot gases to reduce the moisture content to 10% or lower by weight. During the process:
   a. The temperature of the sewage sludge particles shall exceed 80° C, or
   b. The wet bulb temperature of the gas as the biosolids leave the dryer shall exceed 80° C.
7. Alternative 7. Heat treatment. The quantity of liquid biosolids treated are heated to a temperature of 180° C or higher for at least 30 minutes.
8. Alternative 8. Thermophilic aerobic digestion. Liquid biosolids are agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the biosolids is 10 days at 55 ° to 60° C.
9. Alternative 9. Beta ray irradiation. Biosolids are irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20° C).
10. Alternative 10. Gamma ray irradiation. Biosolids are irradiated with gamma rays from certain isotopes, such as ^{60}Cobalt and ^{137}Cesium at dosages of at least 1.0 megarad at room temperature (approximately 20° C).
11. Alternative 11. Pasteurization. The temperature of the biosolids is maintained at 70° C or higher for at least 30 minutes.
12. Alternative 12. The Director shall approve another process if the process is equivalent to a Process to Further Reduce Pathogens specified in subsections (D)(5) through (D)(11), as determined by the EPA Pathogen Equivalency Committee.

E. Biosolids satisfy the Class B pathogen reduction requirements when the biosolids meet any one of the following options:

1. Alternative 1. The geometric mean of the density of fecal coliform in seven representative samples is less than either 2,000,000 Most Probable Number per gram of total solids (dry-weight basis), or 2,000,000 colony forming units per gram of total solids (dry-weight basis);
2. Alternative 2. Air drying. The biosolids are dried on sand beds or paved or unpaved basins for at least three months. During at least two of the three months, the ambient average daily temperature is above 0° C;
3. Alternative 3. Lime stabilization. Sufficient lime is added to the biosolids to raise the pH of the biosolids to 12 after at least two hours of contact;
4. Alternative 4. Aerobic digestion. The biosolids are agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature between 40 days at 20° C and 60 days at 15° C;
5. Alternative 5. Anaerobic digestion. The biosolids are treated in the absence of air for a specific mean cell residence time at a specific temperature between 15 days at 35° C to 55° C and 60 days at 20° C;
6. Alternative 6. Composting. Using the within-vessel, static-aerated-pile or windrow composting methods, the temperature of the biosolids is raised to 40° C or higher for five consecutive days. For at least four hours during the five days, the temperature in the compost pile exceeds 55° C; or
7. Alternative 7. The Director shall approve another process if it is equivalent to a Process to Significantly Reduce Pathogens specified in subsections (E)(2) through (E)(6), as determined by the EPA Pathogen Equivalency Committee.

Historical Note

New Section recodified from R18-13-1506 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1007. Management Practices and General Requirements

A. An applicator of bulk biosolids that are not exceptional quality biosolids shall comply with the following management practices at each land application site, except a site where bulk biosolids are applied for reclamation. The applicator shall not:

1. Apply bulk biosolids to soil with a pH less than 6.5 at the time of the application, unless the biosolids are treated under one of the procedures in subsections R18-9-1006(D)(2), R18-9-1006(E)(3), or R18-9-1010(A)(6), or the soil and biosolids mixture has a pH of 6.5 or higher immediately after land application;
2. Apply bulk biosolids to land with slopes greater than 6%, unless the site is operating under an AZPDES permit or a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342);
3. Apply bulk biosolids to land under the following conditions:
   a. Bulk biosolids with Class A pathogen reduction. If the depth to groundwater is five feet (1.52 meters) or less;
   b. Bulk biosolids with Class B pathogen reduction.
      i. If the depth to groundwater is 10 feet (3.04 meters) or less; or
      ii. To gravel, coarse or medium sands, or sands with less than 15% coarse fragments, if the depth to groundwater is 40 feet (12.2 meters) or less from the point of application of biosolids;
4. Apply bulk biosolids to land that is 32.8 feet (10 meters) or less from navigable waters;
5. Store or apply bulk biosolids closer than 1000 feet (305 meters) from a public or semi-public drinking water supply well or no closer than 250 feet (76.2 meters) from any other water well;
6. Store or apply bulk biosolids within 25 feet (7.62 meters) of a public right-of-way or private property line unless the applicator receives permission to apply bulk biosolids from the land owner or lessee of the adjoining property;
7. Apply bulk biosolids at an application rate greater than the agronomic rate of the vegetation or crop grown on the site;
8. Apply domestic septage or any other bulk biosolids with less than 10% solids at a rate that exceeds the annual application rate, calculated in gallons per acre for a 365-day period by dividing the amount of nitrogen needed by the crop or vegetation grown on the land, in pounds per acre per 365-day period, by 0.0026;
9. Apply bulk biosolids to land that is flooded, frozen, or snow-covered, so that the bulk biosolids enter a wetland or other navigable waters, except as provided in an AZPDES permit or a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342);
10. Apply any additional bulk biosolids before a crop is grown on the site if the site has received biosolids con-

taining nitrogen at the equivalent of the agronomic rate appropriate for that crop;

11. Exceed the irrigation needs of the crop of an application site;
12. To minimize odors, apply bulk biosolids within 1000 feet (305 meters) of a dwelling unless the biosolids are injected or incorporated into the soil within 10 hours of being applied; or
13. Store bulk biosolids within 1000 feet (305 meters) of a dwelling unless the applicator obtains permission from the dwelling owner or lessee to store the biosolids at a shorter distance from the dwelling. If the dwelling owner or lessee changes, the applicator shall obtain permission from the new dwelling owner or lessee to continue to store the bulk biosolids within 1000 feet of the dwelling or move the biosolids to a location at least 1000 feet from the dwelling.

B. If biosolids are placed in a bag or other container, the person who prepares the biosolids shall distribute a label or information sheet to the person receiving the material. This label or information sheet shall, at a minimum, contain the following information:

1. The identity and address of the person who prepared the biosolids;
2. Instructions on the proper use of the material, including agronomic rates and an annual application rate that ensures that the annual pollutant rates established in R18-9-1005 are not exceeded; and
3. A statement that application of biosolids to the land shall not exceed application rates described in the instructions on the label or information sheet.

Historical Note

New Section recodified from R18-13-1507 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1008. Management Practices, Application of Biosolids to Reclamation Sites

A. An applicator of bulk biosolids that are not exceptional quality biosolids shall comply with the following management practices at each land application site where the bulk biosolids are applied for reclamation. The applicator shall not:

1. Apply bulk biosolids unless the soil and biosolids mixture has a pH of 5.0 or higher immediately after land application;
2. Apply bulk biosolids to land with slopes greater than 6% unless:
   a. The site is operating under an AZPDES permit or a permit issued under section 402 (33 U.S.C. 1342) or 404 (33 U.S.C. 1344) of the Clean Water Act;
   b. The site is reclaimed as specified under A.R.S. Title 27, Chapter 5, and controls are in place to prevent runoff from leaving the application area; or
   c. Runoff from the site does not reach navigable waters;
3. Apply bulk biosolids to land under the following conditions:
   a. Bulk biosolids with Class A pathogen reduction. To land if the depth to groundwater is 5 feet (1.52 meters) or less;
   b. Bulk biosolids with Class B pathogen reduction.
      i. To land if the depth to groundwater is 10 feet (3.04 meters) or less; and
      ii. To gravel, coarse or medium sands, or sands with less than 15% coarse fragments if the depth to groundwater is 40 feet (12.2 meters) or less from the point of application of biosolids;
4. Apply bulk biosolids to land that is 32.8 feet (10 meters) or less from navigable waters;
5. Store or apply bulk biosolids closer than 1000 feet (305 meters) from a public or semi-public drinking water supply well, unless the applicator justifies and the Department approves a shorter distance, or apply bulk biosolids closer than 250 feet (76.2 meters) from any other water well;
6. Store or apply bulk biosolids within 1000 feet (305 meters) of a public right-of-way or private property line unless the applicator receives permission to apply bulk biosolids from the land owner or lessee of the adjoining property;
7. Exceed a total of 150 dry tons per acre to any portion of a reclamation site if bulk biosolids are applied;
8. Apply bulk biosolids with less than 10% solids;
9. Apply bulk biosolids to land that is flooded, frozen, or snow-covered so that the bulk biosolids enter a wetland or other navigable waters, except as provided in an AZPDES permit or a permit issued under section 402 (33 U.S.C. 1342) or 404 (33 U.S.C. 1344) of the Clean Water Act;
10. Apply more water than necessary to control dust and establish vegetation; and
11. Apply bulk biosolids within 1000 feet (305 meters) of a dwelling unless the biosolids are injected or incorporated into the soil within 10 hours of being applied.
12. Store bulk biosolids within 1000 feet (305 meters) of a dwelling unless the applicator obtains permission from the dwelling owner or lessee to store the biosolids at a shorter distance from the dwelling. If the dwelling owner or lessee changes, the applicator shall obtain permission from the new dwelling owner or lessee to continue to store the bulk biosolids within 1000 feet of the dwelling or move the biosolids to a location at least 1000 feet from the dwelling.

B. The requirements of R18-9-1007(B) apply if biosolids placed in a bag or other container are used to reclaim a site.

Historical Note

New Section recodified from R18-13-1508 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1008 renumbered to R18-9-1009; new Section R18-9-1008 made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1009. Site Restrictions

A. The following site restrictions apply to land where biosolids, which do not meet the Class A pathogen reduction requirements established in R18-9-1006, are land-applied.

1. A person shall not:
   a. Harvest food crop parts that touch the biosolids, or biosolids and soil mixture, but otherwise grow above the land's surface for 14 months following application;
   b. Harvest food crop parts growing in or below the land's surface for 20 months following application if

the biosolids remain unincorporated on the land's surface for four months or more;
c. Harvest food crop parts growing in or below the land's surface for 38 months following application if the biosolids remain on the land's surface for less than four months before incorporation;
d. Harvest food, feed, and fiber crops for 30 days after application;
e. Graze animals on the land for 30 days after application; or
f. Harvest turf to be used at a public contact site or private residence for one year after application.
2. A person shall restrict public access to:
a. Public contact sites for one year after application, and
b. Land with a low potential for public exposure for 30 days after application.

B. If the vector attraction reduction requirement is met using the method:
1. In R18-9-1010(C)(1) or R18-9-1010(C)(2), the requirements of subsection (A) apply to domestic septage applied to agricultural land, forests, or reclamation sites; or
2. In R18-9-1010(C)(3), the requirements of subsection (A)(1)(a) through (A)(1)(d) apply to domestic septage applied to agricultural land, forests, or reclamation sites.

C. Once application is completed at a site, the applicator shall, in writing, provide the land owner and lessee with the following information:
1. The cumulative pollutant loading at the site if it is greater than or equal to 90% of the available site capacity established in Table 4 of R18-9-1005;
2. Any restriction established in this Section that applies to the property and the nature of the restriction; and
3. The signature of a responsible official of the applicator on this document that includes the following statement:
"I certify under penalty of law, that the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for false representations, including fines and imprisonment."

D. The land owner or lessee shall provide each applicator with a signature indicating receipt of the site restriction statement.

Historical Note
New Section recodified from R18-13-1509 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1009 renumbered to R18-9-1010; new Section R18-9-1009 renumbered from R18-9-1008 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-1010. Vector Attraction Reduction

A. Except as provided in subsection (B), an applicator or person who prepares biosolids shall use one of the following vector attraction reduction procedures if biosolids are land-applied:
1. Reducing the mass of volatile solids by a minimum of 38% using the calculation procedures established in "Environmental Regulations and Technology -- Control of Pathogens and Vector Attraction in Sewage Sludge," EPA/625/R-92-013, published by the U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, 1999 edition. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State;
2. If the 38% volatile solids reduction cannot be met for anaerobically digested biosolids the reduction can be met by digesting a portion of the previously digested material anaerobically in a laboratory in a bench-scale unit for 40 additional days at a temperature between 30° C and 37° C. Vector attraction reduction is achieved if, at the end of the 40 days, the volatile solids in the material at the beginning of the period are reduced by less than 17%;
3. If the 38% volatile solids reduction cannot be met for aerobically digested biosolids, the reduction can be met by digesting a portion of the previously digested material, which has a percent solids of 2% or less, aerobically in a laboratory in a bench-scale unit for 30 additional days at 20° C. Vector attraction reduction is achieved if, at the end of the 30 days, the volatile solids in the material at the beginning of the period are reduced by less than 15%;
4. Treat the biosolids in an aerobic process during which the specific oxygen uptake rate (SOUR) is equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry-weight basis) at 20° C;
5. Treat the biosolids in an aerobic process for 14 days or longer, during which the temperature of the biosolids is higher than 40° C and the average temperature of the biosolids is higher than 45° C;
6. Raising the pH of the biosolids to 12 or higher by alkali addition and, without the addition of more alkali, remain at 12 or higher for two hours and at 11.5 or higher for an additional 22 hours;
7. The percent solids of the biosolids that do not contain unstabilized solids generated in a primary wastewater treatment process is equal to or greater than 75% based on the moisture content and total solids before mixing with other materials;
8. The percent solids of the biosolids containing unstabilized solids generated in a primary wastewater treatment process are equal to or greater than 90% based on the moisture content and total solids before mixing with other materials;
9. Injecting the biosolids below the surface of the land so that no significant amount of biosolids is present on the land surface one hour after injection. If the biosolids meet Class A pathogen reduction, injection shall occur within eight hours after being discharged from a Class A pathogen treatment process; or
10. Incorporating the biosolids into the soil within six hours after application. If the biosolids meet Class A pathogen reduction, application shall occur within eight hours after being discharged from a Class A pathogen treatment process.

B. Biosolids that are sold or given away in a bag or other container, or are applied to a lawn or home garden, shall meet one of the vector attraction reduction alternatives established in subsections (A)(1) through (A)(8).

C. For domestic septage, vector attraction reduction is met by one of the following methods:
1. By injecting as specified in subsection (A)(9);
2. By incorporating as specified in subsection (A)(10); or
3. By raising the pH of the domestic septage to 12 or higher through the addition of alkali and, without the addition of more alkali, holding the pH at 12 or higher for at least 30 minutes.

Historical Note

New Section recodified from R18-13-1510 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1010 renumbered to R18-9-1011; new Section R18-9-1010 renumbered from R18-9-1009 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-1011. Transportation

A. A transporter of bulk biosolids into and within Arizona shall use covered trucks, trailers, rail-cars, or other vehicles that are leakproof.

B. A transporter of bulk biosolids in liquid or semisolid form, including domestic septage, into and within Arizona shall comply with the requirements in A.A.C. R18-13-310. A transporter of bulk biosolids in solid form into and within Arizona shall comply with the requirements in A.A.C. R18-13-310.

C. A transporter of biosolids shall clean any truck, trailer, rail-car, or other vehicle used to transport biosolids to prevent odors or insect breeding. A transporter shall clean any tank vessel used to transport commercial or industrial septage or restaurant grease-trap wastes, that is also used to haul domestic septage, before loading the domestic septage to ensure that mixing of wastes does not occur.

D. If bulk biosolids are spilled while being transported, the transporter shall:

1. Immediately pick up any spillage, including any visibly discolored soil, unless otherwise determined by the Department on a case-by-case basis;
2. Within 24 hours after the spill, notify the Department of the spill and submit written notification of the spill within seven days. The written notification shall include the location of the spill, the reason it occurred, the amount of biosolids spilled, and the steps taken to clean up the spill.

Historical Note

New Section recodified from R18-13-1511 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1011 renumbered to R18-9-1012; new Section R18-9-1011 renumbered from R18-9-1010 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4). A.C.C. citation corrected in subsection (B) at the request of the Department; Office file number M16-185 (Supp. 16-3).

R18-9-1012. Self-monitoring

A. Except as provided in subsection (B) the person who prepares the biosolids shall conduct self-monitoring events at the frequency listed in Table 5 for the pollutants listed in R18-9-1005, the pathogen reduction in R18-9-1006 and the vector attraction reduction requirements in R18-9-1010.

Table 5. Frequency of Self-monitoring

Amount of biosolids prepared (tons/metric tons per 365-day period[(1)])	**Frequency**
Greater than zero but less than 319.6/290	Once per year
Equal to or greater than 319.6/290 but less than 1,653/1,500	Once per quarter (Four times per year)
Equal to or greater than 1,653/1,500 but less than 16,530/15,000	Once per 60 days (Six times per year)
Equal to or greater than 16,530/15,000	Once per month (12 times per year)

[(1)] The amount of biosolids prepared in a calendar year (dry-weight basis).

B. If biosolids are stockpiled or lagooned, the person shall sample the biosolids for pathogen and vector attraction reduction before land application. A person shall sample in a manner that is representative of the entire stockpile or lagoon.

C. A person who prepares biosolids shall submit additional or more frequent biosolids samples, collected and analyzed during the reporting period, to the Department with the regularly-scheduled data required in subsection (A).

D. The Department may order the person who prepares biosolids or the applicator to collect and analyze additional samples to measure pollutants of concern other than those established in Table 1 of R18-9-1005.

E. The applicator, person who prepares biosolids, or a person collecting samples for the applicator or preparer for analysis shall obtain the samples in a manner that does not compromise the integrity of the sample, sample method, or sampling instrument and shall be representative of the quality of the biosolids being applied during the reporting period.

F. A person responsible for sampling the biosolids shall track biosolids samples using a chain-of-custody procedure that documents each person in control of the sample from the time it was collected through the time of analysis.

G. The person who prepares biosolids or the applicator shall ensure that the biosolids samples are analyzed as specified by the analytical methods established in 40 CFR 503.8, July 1, 2001 edition, or by the wastewater sample methods and solid, liquid, and hazardous waste sample methods established in A.A.C. R9-14-612 and R9-14-613. The person who prepares the biosolids or the applicator shall ensure that the biosolids analyses are performed at a laboratory operating in compliance with A.R.S. § 36-495 et seq. The information in 40 CFR 503.8 is incorporated by reference, does not include any later amendments or editions of the incorporated matter and is on file with the Department and the Office of the Secretary of State.

H. The person who prepares the biosolids or the applicator shall monitor pathogen and vector attraction reduction treatment operating parameters, such as time and temperature, shall be monitored on a continual basis.

I. An applicator shall conduct and record monitoring of each site for the management practices established in R18-9-1007 and R18-9-1008.

J. A person shall maintain, as specified in R18-9-1013, and report to the Department as specified in R18-9-1014, all compliance measurements, including the analysis of pollutant concentrations.

Historical Note

New Section recodified from R18-13-1512 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1012 renumbered to R18-9-1013; new Section R18-9-1012 renumbered from R18-9-1011 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-1013. Recordkeeping

A. A person who prepares biosolids shall collect and retain the following information for at least five years:

1. The date, time, and method used for each sampling activity and the identity of the person collecting the sample;
2. The date, time, and method used for each sample analysis and the identity of the person conducting the analysis;

3. The results of all analyses of pollutants regulated under R18-9-1005 and organic and ammonium nitrogen to comply with R18-9-1007(A)(7);
4. The results of all pathogen density analyses and applicable descriptions of the methods used for pathogen treatment in R18-9-1006;
5. A description of the methods used, if any, and the operating values and ranges observed in any pre-land application, vector attraction reduction activities required in R18-9-1010(A); and
6. For the records described in subsections (A)(1) through (A)(5), the following certification statement signed by a responsible official of the person who prepares the biosolids:

"I certify, under penalty of law, that the pollutant analyses and the description of pathogen treatment and vector attraction reduction activities have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

B. An applicator of bulk biosolids, except exceptional quality biosolids, shall collect the following information for each land application site, and, except as indicated in subsection (B)(6), shall retain this information for at least five years:
1. The location of each site, by either street address or latitude and longitude;
2. The number of acres or hectares;
3. The date and time the biosolids were applied;
4. The amount of biosolids (in dry metric tons);
5. The biosolids loading rates for domestic septage and other biosolids with less than 10 percent solids in tons or kilograms of biosolids per acre or hectare and in gallons per acre and the biosolids loading rates for other biosolids in tons or kilograms of biosolids per acre or hectare;
6. The cumulative pollutant levels of each regulated pollutant (in tons or kilograms per acre or hectare). The applicator shall retain these records permanently;
7. The results of all pathogen density analyses and applicable descriptions of the methods used for pathogen treatment in R18-9-1006;
8. A description of the activities and measures used to ensure compliance with the management practices in R18-9-1007 and R18-9-1008, including information regarding the amount of nitrogen required for the crop grown on each site;
9. If vector attraction reduction was not met by the person who prepares the biosolids, a description of the vector attraction reduction activities used by the applicator to ensure compliance with the requirements in R18-9-1010;
10. A description of any applicable site restriction imposed by in R18-9-1009 if biosolids with Class B pathogen reduction have been applied and documentation that the applicator has notified the land owner and lessee of these restrictions;
11. For the records described in subsections (B)(1) through (B)(8), the following certification statement signed by a responsible official of the applicator of the biosolids:

"I certify, under penalty of law, that the information and descriptions, have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

12. The information in subsections (A)(1) through (A)(6) if the person who prepares the biosolids is not located in this state.

C. All records required for retention under this Section are subject to periodic inspection and copying by the Department.

D. If there is unresolved litigation, including enforcement, concerning the activities documented by the records required in this Section, the period of record retention shall be extended pending final resolution of the litigation.

Historical Note

New Section recodified from R18-13-1513 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1013 renumbered to R18-9-1014; new Section R18-9-1013 renumbered from R18-9-1012 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1014. Reporting

A. A person who prepares biosolids for application shall provide the applicator with the necessary information to comply with this Article including the concentration of pollutants listed in R18-9-1005 and the concentration of nitrogen in the biosolids.

B. A transporter shall report spills to the Department under R18-9-1011(D).

C. A bulk applicator of biosolids other than exceptional quality biosolids shall provide the land owner and lessee of land application sites with information on the concentrations of the pollutants listed in R18-9-1005 and loading rates of biosolids applied to that site, and any applicable site restrictions under R18-9-1009.

D. A bulk applicator of biosolids other than exceptional quality biosolids shall report to the Department if 90% or more of any cumulative pollutant loading rate has been used at a site.

E. On or before February 19 of each year, any person land-applying bulk biosolids that are not exceptional quality biosolids shall, by letter or on a form provided by the Department, report to the Department the following applicable information for the previous calendar year:
1. The actual sites used; and
2. For each site used, the following information:
   a. The amount of biosolids applied (in tons or kilograms per acre or hectare);
   b. The application loading rates (in tons or kilograms per acre or hectare, and gallons per acre for domestic septage);
   c. The concentrations of the pollutants listed in R18-9-1005 (in milligrams per kilogram of biosolids on a dry-weight basis);
   d. The pathogen treatment methodologies used during the year and the results; and
   e. The vector attraction reduction methodologies used during the year and the results.

F. On or before February 19 of each year, a person preparing biosolids in a Class I Sludge Management Facility, POTW with a design flow rate equal to or greater than one million gallons per day, or POTW that serves 10,000 people or more, that are

applied to land, shall, by letter or on a form provided by the Department, report to the Department all the following applicable information regarding their activities during the previous calendar year:

1. The amount of biosolids received if the preparer purchased or received the biosolids from another preparer or source;
2. The amount of biosolids produced (tons or kilograms);
3. The amount of biosolids distributed;
4. The concentrations of the pollutants listed in R18-9-1005 (in milligrams per kilogram of biosolids on a dry-weight basis);
5. The pathogen treatment methodologies used during the year, including the results; and
6. The vector attraction reduction methodologies used during the year, including the results.

G. All annual self-monitoring reports shall contain the following certification statement signed by a responsible official:

"I certify, under penalty of law, that the information and descriptions, have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

Historical Note

New Section recodified from R18-13-1514 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Former Section R18-9-1014 renumbered to R18-9-1015; new Section R18-9-1014 renumbered from R18-9-1013 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 4923, effective January 5, 2003 (Supp. 02-4).

R18-9-1015. Inspection

A person subject to this Article shall allow, during reasonable times, a representative of the Department to enter property subject to this Article, to:

1. Inspect all biosolids pathogen and vector treatment facilities, transportation vehicles, incinerators that fire sewage sludge, and land application sites to determine compliance with this Article;
2. Inspect and copy records prepared in accordance with this Article; and
3. Sample biosolids quality.

Historical Note

Renumbered from R18-9-1014 and amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 21 A.A.R. 751, effective July 4, 2015 (Supp. 15-2).

Appendix A. Procedures to Determine Annual Biosolids Application Rates

The following procedure determines the annual biosolids application rate (ABAR) that ensures that the annual pollutant loading rates in Table 3 of R18-9-1005 are not exceeded.

1. The relationship between the annual pollutant loading rate (APLR) for a pollutant and the ABAR is shown in the following equation.

   APLR = C x ABAR x 0.001

   APLR = Annual pollutant loading rate in kilograms of biosolids, per hectare, per 365-day period;
   C = Pollutant concentration in milligrams, per kilogram of total solids (dry-weight basis);
   ABAR = Annual biosolids application rate in metric tons, per hectare, per 365-day period (dry-weight basis); and
   0.001 = A conversion factor.
   metric ton = 1.102 short tons
   hectare = 2.471 acres
2. The ABAR is calculated using the following procedure:
   a. Analyze a biosolids sample to determine a concentration for each of the pollutants listed in Table 3 of R18-9-1005; and
   b. Using each of the pollutant concentrations from subsection (2)(a) and the APLRs from Table 3 of R18-9-1005, calculate a separate ABAR for each pollutant using the following equation:

   $$ABAR = \frac{APLR}{C \times 0.001}$$

   c. The ABAR for biosolids is the lowest value calculated in under subsection (2)(b) for any pollutant.

Historical Note

New Appendix recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Amended by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through regulating the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

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

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and not more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Use any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department shall establish by rule a fee as a condition of licensure, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, articles 8 and 9 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203 except that state agencies are exempt from paying the fees.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.

2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:

(a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.

(b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.

(c) Maintenance but not construction of drainage ditches.

(d) Construction and maintenance of irrigation ditches.

(e) Maintenance of structures such as dams, dikes and levees.

4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.

5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.

6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.

8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.

9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection B shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State agencies are exempt from all fees imposed pursuant to this chapter.

10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before adopting these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.

13. Consider evidence gathered by the Arizona navigable stream adjudication commission established by section 37-1121 when deciding whether a permit is required to discharge pursuant to article 3.1 of this chapter.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant to assist the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection B, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 9 of this section.

D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

49-221. Water quality standards in general; protected surface waters list

A. The director shall:

1. Adopt, by rule, water quality standards for all WOTUS and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses. For non-WOTUS protected surface waters, the director shall apply surface water quality standards established as of January 1, 2021, until specifically changed by the director pursuant to paragraph 2 of this subsection. Rules regarding the following shall not be adopted or applied as water quality standards for non-WOTUS protected surface waters:

(a) Antidegradation.

(b) Antidegradation criteria.

(c) Outstanding Arizona waters.

2. Adopt, by rule, water quality standards for non-WOTUS protected surface waters, by December 31, 2022, consistent with paragraph 1 of this subsection and as determined necessary in the rulemaking process. In adopting those standards, the director shall consider the unique characteristics of this state's surface waters and the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

C. In setting standards pursuant to subsection A or B of this section, the director shall consider the following:

1. The protection of the public health and the environment.

2. The uses that have been made, are being made or with reasonable probability may be made of these waters.

3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.

4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.

5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.

6. Any unique physical, biological or chemical properties of the waters.

D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards that the director deems appropriate.

E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards, the director shall consider the following:

1. The protection of public health and the environment.

2. The uses that are being made or may be made of the reclaimed water.

3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration pursuant to title 3, chapter 3, article 4.1 of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

1. "Agricultural water":

(a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.

(b) Includes all of the following:

(i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.

(ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.

2. "Covered activity" means growing, harvesting, packing or holding produce. Covered activity includes processing produce to the extent that the activity is within the meaning of farm as defined in section 3-525.

3. "Harvesting" has the same meaning prescribed in section 3-525.

4. "Holding" has the same meaning prescribed in section 3-525.

5. "Packing" has the same meaning prescribed in section 3-525.

6. "Produce" has the same meaning prescribed in section 3-525.

G. The director shall maintain and publish a protected surface waters list. The department shall publish the initial list on the department's website and in the Arizona administrative register within thirty days after September 29, 2021. Not later than December 31, 2022, the department shall adopt by rule the protected surface waters list, including procedures for determining economic, social and environmental costs and benefits. Publication of the list in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 and may be appealed by any party that provides evidence of an actual adverse effect that the party appealing the decision would suffer as a result of the director's decision. All of the following apply to the protected surface water list:

1. The protected surface waters list shall include:

(a) All WOTUS.

(b) Any perennial, intermittent and ephemeral reaches and any impoundments of the following rivers, not including tributaries or reaches of waters wholly within tribal jurisdiction or reaches of waters outside of the United States:

(i) The Bill Williams river, from the confluence of the Big Sandy and Santa Maria rivers at 113°31'38.617"w, 34°18'22.373"n, to its confluence with the Colorado river at 114°8'9.854"w, 34°18'9.33"n.

(ii) The Colorado river, from the Arizona-Utah border at 111°32'35.741"w, 36°58'51.698"n, to the Arizona-Mexico border at 114°43'12.564"w, 32°43'6.218"n.

(iii) The Gila river, from the Arizona-New Mexico border at 109°2'52.8"w, 32°41'11.2015"n, to the confluence with the Colorado river at 114°33'28.145"w, 32°43'14.408"n.

(iv) The Little Colorado river, from the confluence of the east and west forks of the Little Colorado river at 109°28'7.131"w, 33°59'39.852"n, to its confluence with the Colorado river at 111°49'4.693"w, 36°12'10.243"n.

(v) The Salt river, from the confluence of the Black and White rivers at 110°13'39.5"w, 33°44'6.082"n, to the confluence with the Gila river at 112°18'5.704"w, 33°22'42.978"n.

(vi) The San Pedro river, from the Arizona-Mexico border at 110°9'1.704"w, 31°20'2.387"n, to the confluence with the Gila river at 110°47'0.905"w, 32°59'5.671"n.

(vii) The Santa Cruz river, from its origins in the Canelo Hills of southeastern Arizona at 110°37'3.968"w, 31°27'39.21"n, to its confluence with the Gila river at 111°33'26.02"w, 32°41'39.058"n.

(viii) The Verde river, from Sullivan lake at 112°28'10.588"w, 34°52'11.136"n, to its confluence with the Salt river at 111°39'48.32"w, 33°33'20.538"n.

(c) Any non-WOTUS waters of the state that are added under paragraphs 3 and 4 of this subsection.

2. Notwithstanding paragraph 1 of this subsection, the protected surface waters list shall not contain any of the following non-WOTUS waters:

(a) Canals in the Yuma project and ditches, canals, pipes, impoundments and other facilities that are operated by districts organized under title 48, chapters 18, 19, 20, 21 and 22 and that are not used to directly deliver water for human consumption, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner and operator of the ditch or canal until the owner and operator withdraws its request.

(b) Irrigated areas, including fields flooded for agricultural production.

(c) Ornamental and urban ponds and lakes such as those owned by homeowners' associations and golf courses, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner of the ornamental or urban pond or lake until the owner withdraws its request.

(d) Swimming pools and other bodies of water that are regulated pursuant to section 49-104, subsection B.

(e) Livestock and wildlife water tanks and aquaculture tanks that are not constructed within a protected surface water.

(f) Stormwater control features.

(g) Groundwater recharge, water reuse and wastewater recycling structures, including underground storage facilities and groundwater savings facilities permitted under title 45, chapter 3.1 and detention and infiltration basins, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner of the groundwater recharge, water reuse or wastewater recycling structure until the owner withdraws its request.

(h) Water-filled depressions created as part of mining or construction activities or pits excavated to obtain fill, sand or gravel.

(i) All waste treatment systems components, including constructed wetlands, lagoons and treatment ponds, such as settling or cooling ponds, designed to either convey or retain, concentrate, settle, reduce or remove pollutants, either actively or passively, from wastewater before discharge or to eliminate discharge.

(j) Groundwater.

(k) Ephemeral waters except for those prescribed in paragraph 1, subdivision (b) of this subsection.

(l) Lakes and ponds owned and managed by the United States department of defense and other surface waters located on and that do not leave United States department of defense property, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the United States department of defense until it withdraws its request.

3. Unless listed in paragraph 2 of this subsection, the director shall add the following non-WOTUS surface waters to the protected surface waters list:

(a) All lakes, ponds and reservoirs that are public waters used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water.

(b) Perennial waters or intermittent waters of the state that are used as a drinking water source, including ditches and canals.

(c) Perennial or intermittent tributaries to the Bill Williams river, the Colorado river, the Gila river, the Little Colorado river, the Salt river, the San Pedro river, the Santa Cruz river and the Verde river.

(d) Perennial or intermittent public waters used for recreational or commercial fish consumption.

(e) Perennial or intermittent public waters used for water-based recreation such as swimming, wading, boating and other types of recreation in and on the water.

(f) Perennial or intermittent wetlands adjacent to waters on the protected surface waters list.

(g) Perennial or intermittent waters of the state that cross into another state, the Republic of Mexico or the reservation of a federally recognized tribe.

4. The director may add additional non-WOTUS surface waters to the protected surface waters list if all of the following apply:

(a) The water is not required to be listed under paragraph 1 or 3 of this subsection.

(b) The water is not excluded under paragraph 2 of this subsection.

(c) The economic, environmental and social benefits of adding the water outweigh the economic, environmental and social costs of excluding the water from the list.

5. The director shall remove any erroneously listed, non-WOTUS waters from the protected surface waters list when the water is excluded under paragraph 2 of this subsection and shall not regulate discharges to those waters in the interim.

6. The director shall remove non-WOTUS waters from the protected surface waters list when the water is not required to be listed under paragraph 3 of this subsection and the economic, environmental and social benefits of removing the water outweigh the economic, environmental and social costs of retaining the water on the list.

7. The director, on an emergency basis, may add a water to the protected surface waters list if the director discovers an imminent and substantial danger to public health or welfare or the environment, if the water would otherwise qualify to be added under paragraph 3 of this subsection. Notwithstanding any other law, the emergency addition shall take effect immediately on the director's determination that describes the imminent and substantial danger in writing. Within thirty days after the director's determination, the department shall publish a notice of that determination in the Arizona administrative register and on the department's website. Waters added under this subsection shall be incorporated into the protected surface waters list during the next rulemaking that follows the addition.

49-223. Aquifer water quality standards

A. Primary drinking water maximum contaminant levels established by the administrator before August 13, 1986 are adopted as drinking water aquifer water quality standards. The director may only adopt additional aquifer water quality standards by rule. Within one year after the administrator establishes additional primary drinking water maximum contaminant levels, the director shall open a rule making docket pursuant to section 41-1021 for adoption of those maximum contaminant levels as drinking water aquifer water quality standards. If substantial opposition is demonstrated in the rule making docket regarding a particular constituent, the director may adopt for that constituent the maximum contaminant level as a drinking water aquifer water quality standard upon making a finding that this level is appropriate for adoption in Arizona as an aquifer water quality standard. In making this finding, the director shall consider whether the assumptions about technologies, costs, sampling and analytical methodologies and public health risk reduction used by the administrator in developing and implementing the maximum contaminant level are appropriate for establishing a drinking water aquifer water quality standard. For purposes of this subsection "substantial opposition" means information submitted to the director that explains with reasonable specificity why the maximum contaminant level is not appropriate as an aquifer water quality standard.

B. The director may adopt by rule numeric drinking water aquifer water quality standards for pollutants for which the administrator has not established primary drinking water maximum contaminant levels or for which a maximum contaminant level has been established but the director has determined it to be inappropriate as an aquifer water quality standard pursuant to subsection A of this section. These standards shall be based on the protection of human health. In establishing numeric drinking water aquifer water quality standards, the director shall rely on technical protocols appropriate for the development of aquifer water quality standards and shall base the standards on credible medical and toxicological evidence that has been subjected to peer review.

C. Any person may petition the director to adopt a numeric drinking water aquifer quality standard for any pollutant for which no drinking water aquifer quality standard exists. The director shall grant the petition and institute rule making proceedings adopting a numeric standard as provided under subsection B of this section within one hundred eighty days if the petition shows that the pollutant is a toxic pollutant, that the pollutant has been, or may in the future be, detected in any of the state's drinking water aquifers, and that there exists technical information on which a numeric standard might reasonably be based. Within one year of the commencement of the rule making proceeding, the director shall either adopt a numeric standard or make and publish a finding that, pursuant to subsection B of this section, the development of a numeric standard is not possible. The decision to not adopt a numeric standard shall, for purposes of judicial review, be treated in the same manner as a rule adopted pursuant to title 41, chapter 6.

D. For purposes of assessing compliance with each aquifer water quality standard adopted pursuant to this section, the director shall for purposes of articles 3 and 4 of this chapter, and may for purposes of other provisions of this title, identify sampling and analytical protocols appropriate for detecting and measuring the pollutant in the aquifers in the state.

E. Within one year from the reclassification of an aquifer to a non-drinking water status, pursuant to section 49-224, the director shall adopt water quality standards for that aquifer. For any pollutants which were not the basis for the reclassification, the applicable standard shall be identical with the standard for those pollutants adopted pursuant to subsections A and B of this section. For any pollutants which were the basis for reclassification, the standard shall be sufficient to achieve the purpose for which the aquifer was reclassified but shall minimize unnecessary degradation of the aquifer by taking into consideration the potential long-term uses of the aquifer and the short-term and long-term benefits of the activities resulting in discharges into the aquifer.

F. The director shall adopt water quality standards for an aquifer for which a petition has been submitted pursuant to section 49-224, subsection D sufficient to achieve the non-drinking water use for which that aquifer was classified, taking into consideration the potential long-term uses of that aquifer and the short-term and long-term benefits of the discharging activities creating that aquifer.

G. In any action pursuant to this title, aquifer water quality protection provisions, including monitoring requirements, may be imposed only for pollutants for which aquifer water quality standards have been established that are likely to be present in a discharge. Indicator parameters and quality assurance parameters appropriate for such pollutants also may be specified.

49-224. Aquifer identification, classification and reclassification

A. Not later than June 30, 1987 the director shall, by rule, identify and define the boundaries of all aquifers in this state utilizing, to the maximum extent possible, data available from the department of water resources.

B. All aquifers in this state identified and defined under subsection A of this section and any other aquifers subsequently discovered, identified and defined shall be classified for drinking water protected use unless the classification is changed in the manner provided in subsection C of this section.

C. The director, after consulting with the appropriate groundwater users advisory council established pursuant to title 45, chapter 2, article 2 if the aquifer is in an active management area, and a public hearing held pursuant to section 49-208, may change the classification of an aquifer or part of an aquifer for a protected use other than drinking water on making all of the following findings:

1. The identified aquifer or part of an aquifer is or will be so hydrologically isolated from other aquifers or other parts of the same aquifer that there is no reasonable probability that poorer quality water from the identified aquifer or part of an aquifer will cause or contribute to a violation of aquifer water quality standards in other aquifers or parts of the same aquifer.

2. Water from the identified aquifer or part of an aquifer is not being used as drinking water.

3. The short-term and long-term benefits to the public that would result from the degradation of the quality of the water in the identified aquifer or part of an aquifer below standards established pursuant to section 49-223, subsections A and B would significantly outweigh the short-term and long-term costs to the public of such degradation. Benefits and costs to be considered include economic, social and environmental.

D. Owners or operators of facilities whose discharges are solely responsible for creating an aquifer may petition the director for a classification of the aquifer for a non-drinking water use. The director may, by rule, classify that aquifer for a non-drinking water use upon making the findings prescribed in subsection C, paragraphs 1 and 2 of this section.

E. The director shall provide for public participation in proceedings under this section pursuant to section 49-208 and shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification.

Gmail

Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

ADEQ - AWQS Rulemaking - Inquiry Response

Jon Rezabek <rezabek.jon@azdeq.gov> Tue, May 6, 2025 at 6:33 AM
To: GRRC - ADOA <grrc@azdoa.gov>, Simon Larscheidt <simon.larscheidt@azdoa.gov>, Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

GRRC,

Concerning Items D1 through 5 in the Council Meeting agenda for 5/6/25, Council Member Thorwald had a number of inquiries on these items during the 4/29/25 Study Session.
ADEQ has developed the following response to one of the inquiries, which was, roughly:

Q: *How does a facility that is or is planning on potentially "discharging" a pollutant know whether their activity is subject to Aquifer Protection Program (APP) regulation?*

A: An APP applicability analysis starts with the assumption that "*...any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director ... [u]nless otherwise provided by this article..." --* A.R.S. § 49-241(A).

From that assumption, a potential discharging activity may fall out of APP applicability based on an examination of the definitions of the operative words in A.R.S. § 49-241(A), including:

- "Discharge" is defined at A.R.S. § 49-201(12) as, *"...[f]or purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.*

- "Facility" is defined at A.R.S. § 49-201(19) as,*"...any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge."*

- "Pollutant" is defined at A.R.S. § 49-201(35) as,*"...fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances."*

Furthermore, analysis of A.R.S. § 49-241, Subsection B may be necessary to determine applicability of the activity. In summary, this subsection delineates:

- a list of 10 categorical discharging facilities, automatically required to attain APP permit coverage to operate, unless
- the activity falls under one of the statutory exemptions to APP at A.R.S. § 49-250(B), or
- the director determines that a facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone.

  "[u]nless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article (1) Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons. (2) Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations. (3) Injection wells. (4) Land treatment facilities. (5) Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine. (6) Mine tailings piles and ponds. (7) Mine leaching operations. (8) Underground water storage facilities. (9) Sewage treatment facilities, including on-site wastewater treatment facilities. (10) Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage."

Additionally, A.R.S. 49-250(A) allows the the director to exempt classes or categories of facilities from APP requirements

by rule under certain circumstances. This list of "Class Exemptions" can be found at A.A.C. R18-9-103.

Besides undergoing the above analysis, which ADEQ welcomes preliminary questions on, the rule allows for a potential applicant to formally request a "Determination of Applicability" (DOA) under A.A.C. R18-9-106. An ADEQ APP - DOA form is attached to this email for review.

Thank you,

Jon Rezabek
Legal Specialist
Arizona Department of Environmental Quality

1110 W. Washington St., #160
Phoenix, AZ 85007

O: 602-771-8219
AZDEQ.gov

DOA Review Request Form_05 2024.doc
241K

AQUIFER PROTECTION PERMIT DETERMINATION OF APPLICABILITY (DOA)

INSTRUCTIONS

This form enables the staff of the ADEQ Groundwater Protection Value Stream to determine the applicability of A.R.S. §§ 49-241 through 49-252 to an operation or an activity that may result in a discharge regulated under Articles 1, 2, and 3 of the Arizona Administrative Code (A.A.C.). Please answer all questions and where applicable, provide sufficient detail for the conceptual or existing facility or activity to explain your answers. Attach additional reference sheets along with any design plans, site plans, maps, etc., that may assist us in this review.

GENERAL APPLICATION PROCESS

1) Applicant submits the DOA application including any attachments.
2) Applicant satisfies any deficiencies identified during the review process.
3) ADEQ makes a Determination of Applicability.
4) ADEQ sends the final bill.
5) Applicant pays the bill.
6) The project manager signs the Determination of Applicability.
7) ADEQ mails the Determination of Applicability.

FEES

The Department shall assess and collect an hourly rate fee for the number of review hours required to provide a water quality protection service, billed monthly and up to the maximum fee. A.A.C. R18-14-102 &103. Fee rates and maximum fees are available at: https://azdeq.gov/GroundwaterIndPermitsFees

APPLICANT

The DOA application form must be signed by the applicant; i.e. a "person who is engaging or who proposes to engage in the operation or activity" (A.A.C. R18-9-106(B)(2)). ADEQ will not accept a DOA application form signed by a third party, such as the client's representative or consultant.

HOW LONG DOES THE APPLICATION PROCESS TAKE?

The time frame specified by A.A.C. R18-9-106 is 45 days.

WITHDRAWING YOUR APPLICATION

An application may be withdrawn by the applicant at any time during the application process in accordance with A.A.C. R18-1-517. You may withdraw your application by submitting a written request to the reviewer assigned to your project. A final bill will be assessed at the time of withdrawal.

WHERE DO I SUBMIT MY APPLICATION?

Submit your DOA application to:

Arizona Department of Environmental Quality
Water Quality Division
Groundwater Protection and Reuse Section
1110 West Washington Street
Phoenix, AZ 85007

WHERE DO I GET HELP?

Program guidance can be found on our website at: http://www.azdeq.gov/environ/water/permits/app.html. A copy of the rules and statutes relating to the DOA can also be found on this website. It is strongly recommended that you review the applicable rules and statutes to ensure that you provide a complete and accurate application. ADEQ recommends scheduling a pre-application meeting to go over the various details of the program (The Project Manager's first hour of the pre-application meeting is free). During the application process, you are encouraged to communicate with the project team to resolve any issues that may arise during the process.

2 Facility Name [A.A.C. R18-9-106.B.1]

Facility Name _____

☐ New ☐ Currently Operating

3 Facility Address and Location Information [A.A.C. R18-9-106.B.1]

Address _____

_____

City _____ State _____ Zip _____

County _____

Township _____ Range _____ Section _____ Qtr1 _____ Qtr2 _____ Qtr3 _____

Latitude _____ "N Longitude _____ " "W ☐ NAD27 ☐ NAD83

GENERAL INFORMATION

1 Applicant – Person signing the application [A.A.C. R18-9-106.B.2]

(Check One) ☐ Owner ☐ Operator ☐ Owner and Operator Email _____

Name _____ Phone _____

Title _____ Business _____

Mailing Address _____ City _____ State _____ Zip _____

4 Certification Statement [A.A.C. R18-9-A201(B)(7)]

I certify under penalty of law that this Aquifer Protection Permit application and all attachments were prepared under my direction or authorization and all information is, to the best of my knowledge, true, accurate and complete. I also certify that the APP discharging facilities described in this form is or will be designed, constructed, operated, and/or enclosed in accordance with the terms and conditions the Aquifer Protection Permit and applicable requirements of Arizona Revised Statutes Title 49, Chapter 2, and Arizona Administrative Code Title 18, Chapter 9 regarding aquifer protection permits. I am aware that there are significant penalties for submitting false information, including permit revocation as well as the possibility of fine and imprisonment for knowing violations.

Print Name _____

_____ _____

Signature Date

Pursuant to A.R.S. § 41-1030:

(1) ADEQ shall not base a licensing decision, in whole or in part, on a requirement or condition not specifically authorized by statute or rule. General authority in a statute does not authorize a requirement or condition unless a rule is made pursuant to it that specifically authorizes the requirement or condition.

(2) Prohibited licensing decisions may be challenged in a private civil action. Relief may be awarded to the prevailing party against ADEQ, including reasonable attorney fees, damages, and all fees associated with the license application.

(3) ADEQ employees may not intentionally or knowingly violate the requirement for specific licensing

The purpose of a Determination of Applicability application review is to evaluate if there are discharging facilities or any discharging activities regulated by the Aquifer Protection Permit requirements. The evaluation of the conceptual or existing facility/activity includes whether there are exemptions from the APP requirements or if there is a General APP that may be applicable. Please provide the following information:

1. List any potential categorical discharging facilities (see definition provided in the attachment to this form). Categorical facilities include surface impoundments, solid waste disposal facilities, sewage treatment facilities, and others.
    a. For each facility listed, indicate whether it has operated in the past, is currently operating, is not yet constructed, or is constructed but not yet operating.

2. List any activity that could potentially be considered a discharge (see definition provided in the attachment to this form). Examples of discharge include wastewater disposal on the ground surface, placement of non-inert material on the ground surface, or other activities that place pollutants on the ground surface in a manner that there is a reasonable probability that the pollutant will reach an aquifer.

a. For each activity listed, indicate whether it has occurred in the past, is currently occurring, or has not yet occurred.

3. Describe the potential categorical discharging facility and/or discharging activity.

4. Provide a site diagram that includes the potential categorical discharging facility and/or discharging activity. Include a North arrow and scale, and label all potential discharging facilities and discharge locations.

5. Provide a process flow diagram that shows the process that produces the potential discharge or materials that go to a discharging facility and/or discharging activity.

6. Provide a description of any exemption or general permit that you think may apply to the potential categorical discharging facility and/or activity. Include any documentation to support this conclusion, for example, laboratory data showing a material is inert, design documentation showing that a structure meets the tank exemption (see Additional Information Related to Tanks and Sumps), closure documentation (see Additional Information Related to Closed Facilities), etc. "Exemptions" and "General Permits" sections at the end of this document may be helpful in providing documentation that an exemption or general permit criteria are met.

7. List any environmental permits held for the operation, facility or activity. Provide the permit number and the name of the issuing entity.

ADDITIONAL INFORMATION RELATED TO TANKS AND SUMPS

a. Is the structure stationary?
b. Is the structure constructed of material compatible with the anticipated materials to be contained?
c. Is the structure constructed of concrete, steel, plastic, fiberglass or other non-earthen material?
d. Is the structure constructed of material that is resistant to wear caused by any equipment that will be placed in or enter the structure for purposes of repair or cleanout?
e. Does the structure provide substantial structural support?
f. Are all joints sealed and maintained so as not to leak?
g. Is the structure capable of fully containing the material that is to be held without overflow?

ADDITIONAL INFORMATION RELATED TO CLOSED FACILITIES

List each closed facility in the format provided (Attachment 1) and provide the following information in the "Justification/Documentation" section:

- all inflows and outflows to the facility
- the source of inflows and outflows (include a process flow diagram)
- dates discharge started and ended
- discharge description, characterization
- discharge location, volumes, frequency
- method of transfer into and out of facility
- date ADEQ approved clean closure of the facility
- description of any remedial or reclamation activity/action

For each closed facility listed in Attachment 1, indicate in the "Statute/Rule/Policy" section, which of the following criteria apply. Attach additional sheets and references as needed.

- Facility ceased operation before Jan. 1, 1986 (A.R.S. 49-201.7)
- As of August 13, 1986, facility was not engaged in any activity for which the facility was designed and that was previously operated with no intent to resume operation (A.R.S. 49-201.7)
- Facility's post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed (A.R.S. 49-201.7)
- Facility had new installations or modifications after January 1, 1986 to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sump and diversions (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications primary purpose is to manage, treat, or contain surface or subsurface flows (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications are NOT used to produce a marketed commodity (Substantive Policy Statement 3013.000)

ATTACHMENT 1			
SUMMARY OF CLOSED FACILITIES AND JUSTIFICATION			
Closed Facility	Date Closed	Statute/Rule/Policy	Justification/Documentation

DEFINITIONS

AQUIFER – (A.R.S. §49-201) means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.

AQUIFER PROTECTION PERMIT - means an individual or general permit issued under A.R.S. §§ 49-203, 49-241 through 252, and A.A.C. Title 18 Chapter 9, Articles 1, 2 and 3.

CATEGORICAL DISCHARGING FACILITY – means (A.R.S. §49-241.B)
1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
3. Injection wells.
4. Land treatment facilities.
5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
6. Mine tailings piles and ponds.
7. Mine leaching operations.
8. Underground water storage facilities.
9. Sewage treatment facilities, including on-site wastewater treatment facilities.
10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

CLOSED FACILITY – means (A.R.S. §49-201.7):

(a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation as provided by A.R.S. § 49-201.

(b) A facility that has been approved as a clean closure by the director as provided by A.R.S. § 49-201.

(c) A facility at which any post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed as provided by A.R.S. § 49-201.

(d) Any facility designed and operated to manage, treat or contain surface or subsurface flows at or from a closed facility (as defined in A.R.S. 49-201(7)(a)-(c)), to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sumps and diversions, even if such facilities were installed or modified after January 1, 1986, so long as the facility's primary purpose is to manage, treat, or contain surface or subsurface or subsurface flows and not for the production of a marketed commodity.

DISCHARGE – (A.R.S. §49-201) means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the Aquifer Protection Permit program prescribed by Title 49, Article 3, Chapter 2 of the Arizona Revised Statutes, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

DRYWELL - A.R.S. §49-331) means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended.

FACILITY – (A.R.S. §49-201) means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

INERT MATERIAL – (A.R.S. §49-201) means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

POLLUTANT - (A.R.S. §49-201) means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

SEWAGE TREATMENT FACILITY – (A.A.C. R18-9-101) means a plant or system for sewage treatment and disposal, except an on-site wastewater treatment facility, that consists of treatment works, disposal works, and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices.

SURFACE IMPOUNDMENT - (A.A.C. R18-9-101) means a pit, pond or lagoon, having a surface dimension that is equal to or greater than its depth, which is used for the storage, holding, settling, treatment or discharge of liquid pollutants or pollutants containing free liquids.

TANK – (A.R.S. §49-201) means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.

EXEMPTIONS

EXEMPTIONS – A.R.S. §49-250B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.
2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.
3. The noncommercial use of consumer products generally available to and used by the public.
4. Ponds used for watering livestock and wildlife.
5. Mining overburden returned to the excavation site including any common material which has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.
6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.
7. Discharge to a community sewer system.
8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.
9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.
10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.
11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.
12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.
13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.
14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.
15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.
16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.
17. Solid waste and special waste facilities when rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.
18. Facilities used in:
    (a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
    (b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.
    (c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions which have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.
20. Storage, treatment or disposal of inert material.
21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.
22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.
23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:
    (a) Fire fighting system testing and maintenance.
    (b) Potable water sources, including waterline flushings.
    (c) Irrigation drainage and lawn watering.
    (d) Routine external building wash down without detergents.
    (e) Pavement wash water where no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.
    (f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.
    (g) Foundation or footing drains in which flows are not contaminated with process materials.
    (h) Occupational safety and health administration or mining safety and health administration safety equipment.
24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.
25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply

Articles 1, 2, and 3 do not apply to:

1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

R18-9-103. Class Exemptions

Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94-580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10.

GENERAL PERMITS

General Aquifer Protection Permits (GPs) are permits by rule or statute. The rules are extensive and can be accessed on the Secretary of State's website at: http://www.azsos.gov/public_services/Title_18/18-09.htm Specific citations for general permits by rule are: Type 1: A.A.C. R18-9-B301, Type 2: A.A.C. R18-9-C301, Type 3: A.A.C. R18-9-D301, Type 4: A.A.C. R18-9-E301

The statutory general permits are:
49-245.01. Storm water general permit
A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.
2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water
A. A general permit is issued for the following discharges:
1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The vadose zone injection wells are registered pursuant to section 49-332.
(b) The discharge occurs only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration made to subdivision (a) of this paragraph.
(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.
(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.
(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.
(b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.
(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.

3. Point source discharges to waters of the United States from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit.
(b) The discharges occur only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

AQUIFER PROTECTION PERMIT DETERMINATION OF APPLICABILITY (DOA)

INSTRUCTIONS

This form enables the staff of the ADEQ Groundwater Protection Value Stream to determine the applicability of A.R.S. §§ 49-241 through 49-252 to an operation or an activity that may result in a discharge regulated under Articles 1, 2, and 3 of the Arizona Administrative Code (A.A.C.). Please answer all questions and where applicable, provide sufficient detail for the conceptual or existing facility or activity to explain your answers. Attach additional reference sheets along with any design plans, site plans, maps, etc., that may assist us in this review.

GENERAL APPLICATION PROCESS

1) Applicant submits the DOA application including any attachments.
2) Applicant satisfies any deficiencies identified during the review process.
3) ADEQ makes a Determination of Applicability.
4) ADEQ sends the final bill.
5) Applicant pays the bill.
6) The project manager signs the Determination of Applicability.
7) ADEQ mails the Determination of Applicability.

FEES

The Department shall assess and collect an hourly rate fee for the number of review hours required to provide a water quality protection service, billed monthly and up to the maximum fee. A.A.C. R18-14-102 &103. Fee rates and maximum fees are available at: https://azdeq.gov/GroundwaterIndPermitsFees

APPLICANT

The DOA application form must be signed by the applicant; i.e. a "person who is engaging or who proposes to engage in the operation or activity" (A.A.C. R18-9-106(B)(2)). ADEQ will not accept a DOA application form signed by a third party, such as the client's representative or consultant.

HOW LONG DOES THE APPLICATION PROCESS TAKE?

The time frame specified by A.A.C. R18-9-106 is 45 days.

WITHDRAWING YOUR APPLICATION

An application may be withdrawn by the applicant at any time during the application process in accordance with A.A.C. R18-1-517. You may withdraw your application by submitting a written request to the reviewer assigned to your project. A final bill will be assessed at the time of withdrawal.

WHERE DO I SUBMIT MY APPLICATION?

Submit your DOA application to:

Arizona Department of Environmental Quality
Water Quality Division
Groundwater Protection and Reuse Section
1110 West Washington Street
Phoenix, AZ 85007

WHERE DO I GET HELP?

Program guidance can be found on our website at: http://www.azdeq.gov/environ/water/permits/app.html. A copy of the rules and statutes relating to the DOA can also be found on this website. It is strongly recommended that you review the applicable rules and statutes to ensure that you provide a complete and accurate application. ADEQ recommends scheduling a pre-application meeting to go over the various details of the program (The Project Manager's first hour of the pre-application meeting is free). During the application process, you are encouraged to communicate with the project team to resolve any issues that may arise during the process.

2 Facility Name [A.A.C. R18-9-106.B.1]

Facility Name _____

☐ New ☐ Currently Operating

3 Facility Address and Location Information [A.A.C. R18-9-106.B.1]

Address _____

_____

City _____ State _____ Zip _____

County _____

Township _____ Range _____ Section _____ Qtr1 _____ Qtr2 _____ Qtr3 _____

Latitude _____ "N Longitude _____ " "W ☐ NAD27 ☐ NAD83

GENERAL INFORMATION

1 Applicant – Person signing the application [A.A.C. R18-9-106.B.2]

(Check One) ☐ Owner ☐ Operator ☐ Owner and Operator Email _____

Name _____ Phone _____

Title _____ Business _____

Mailing Address _____ City _____ State _____ Zip _____

4 Certification Statement [A.A.C. R18-9-A201(B)(7)]

I certify under penalty of law that this Aquifer Protection Permit application and all attachments were prepared under my direction or authorization and all information is, to the best of my knowledge, true, accurate and complete. I also certify that the APP discharging facilities described in this form is or will be designed, constructed, operated, and/or enclosed in accordance with the terms and conditions the Aquifer Protection Permit and applicable requirements of Arizona Revised Statutes Title 49, Chapter 2, and Arizona Administrative Code Title 18, Chapter 9 regarding aquifer protection permits. I am aware that there are significant penalties for submitting false information, including permit revocation as well as the possibility of fine and imprisonment for knowing violations.

Print Name _____

_____ _____

Signature Date

Pursuant to A.R.S. § 41-1030:

(1) ADEQ shall not base a licensing decision, in whole or in part, on a requirement or condition not specifically authorized by statute or rule. General authority in a statute does not authorize a requirement or condition unless a rule is made pursuant to it that specifically authorizes the requirement or condition.

(2) Prohibited licensing decisions may be challenged in a private civil action. Relief may be awarded to the prevailing party against ADEQ, including reasonable attorney fees, damages, and all fees associated with the license application.

(3) ADEQ employees may not intentionally or knowingly violate the requirement for specific licensing

The purpose of a Determination of Applicability application review is to evaluate if there are discharging facilities or any discharging activities regulated by the Aquifer Protection Permit requirements. The evaluation of the conceptual or existing facility/activity includes whether there are exemptions from the APP requirements or if there is a General APP that may be applicable. Please provide the following information:

1. List any potential categorical discharging facilities (see definition provided in the attachment to this form). Categorical facilities include surface impoundments, solid waste disposal facilities, sewage treatment facilities, and others.
    a. For each facility listed, indicate whether it has operated in the past, is currently operating, is not yet constructed, or is constructed but not yet operating.

2. List any activity that could potentially be considered a discharge (see definition provided in the attachment to this form). Examples of discharge include wastewater disposal on the ground surface, placement of non-inert material on the ground surface, or other activities that place pollutants on the ground surface in a manner that there is a reasonable probability that the pollutant will reach an aquifer.

a. For each activity listed, indicate whether it has occurred in the past, is currently occurring, or has not yet occurred.

3. Describe the potential categorical discharging facility and/or discharging activity.

4. Provide a site diagram that includes the potential categorical discharging facility and/or discharging activity. Include a North arrow and scale, and label all potential discharging facilities and discharge locations.

5. Provide a process flow diagram that shows the process that produces the potential discharge or materials that go to a discharging facility and/or discharging activity.

6. Provide a description of any exemption or general permit that you think may apply to the potential categorical discharging facility and/or activity. Include any documentation to support this conclusion, for example, laboratory data showing a material is inert, design documentation showing that a structure meets the tank exemption (see Additional Information Related to Tanks and Sumps), closure documentation (see Additional Information Related to Closed Facilities), etc. "Exemptions" and "General Permits" sections at the end of this document may be helpful in providing documentation that an exemption or general permit criteria are met.

7. List any environmental permits held for the operation, facility or activity. Provide the permit number and the name of the issuing entity.

ADDITIONAL INFORMATION RELATED TO TANKS AND SUMPS

a. Is the structure stationary?
b. Is the structure constructed of material compatible with the anticipated materials to be contained?
c. Is the structure constructed of concrete, steel, plastic, fiberglass or other non-earthen material?
d. Is the structure constructed of material that is resistant to wear caused by any equipment that will be placed in or enter the structure for purposes of repair or cleanout?
e. Does the structure provide substantial structural support?
f. Are all joints sealed and maintained so as not to leak?
g. Is the structure capable of fully containing the material that is to be held without overflow?

ADDITIONAL INFORMATION RELATED TO CLOSED FACILITIES

List each closed facility in the format provided (Attachment 1) and provide the following information in the "Justification/Documentation" section:

- all inflows and outflows to the facility
- the source of inflows and outflows (include a process flow diagram)
- dates discharge started and ended
- discharge description, characterization
- discharge location, volumes, frequency
- method of transfer into and out of facility
- date ADEQ approved clean closure of the facility
- description of any remedial or reclamation activity/action

For each closed facility listed in Attachment 1, indicate in the "Statute/Rule/Policy" section, which of the following criteria apply. Attach additional sheets and references as needed.

- Facility ceased operation before Jan. 1, 1986 (A.R.S. 49-201.7)
- As of August 13, 1986, facility was not engaged in any activity for which the facility was designed and that was previously operated with no intent to resume operation (A.R.S. 49-201.7)
- Facility's post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed (A.R.S. 49-201.7)
- Facility had new installations or modifications after January 1, 1986 to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sump and diversions (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications primary purpose is to manage, treat, or contain surface or subsurface flows (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications are NOT used to produce a marketed commodity (Substantive Policy Statement 3013.000)

ATTACHMENT 1			
SUMMARY OF CLOSED FACILITIES AND JUSTIFICATION			
Closed Facility	Date Closed	Statute/Rule/Policy	Justification/Documentation

DEFINITIONS

AQUIFER – (A.R.S. §49-201) means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.

AQUIFER PROTECTION PERMIT - means an individual or general permit issued under A.R.S. §§ 49-203, 49-241 through 252, and A.A.C. Title 18 Chapter 9, Articles 1, 2 and 3.

CATEGORICAL DISCHARGING FACILITY – means (A.R.S. §49-241.B)
1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
3. Injection wells.
4. Land treatment facilities.
5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
6. Mine tailings piles and ponds.
7. Mine leaching operations.
8. Underground water storage facilities.
9. Sewage treatment facilities, including on-site wastewater treatment facilities.
10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

CLOSED FACILITY – means (A.R.S. §49-201.7):

(a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation as provided by A.R.S. § 49-201.

(b) A facility that has been approved as a clean closure by the director as provided by A.R.S. § 49-201.

(c) A facility at which any post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed as provided by A.R.S. § 49-201.

(d) Any facility designed and operated to manage, treat or contain surface or subsurface flows at or from a closed facility (as defined in A.R.S. 49-201(7)(a)-(c)), to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sumps and diversions, even if such facilities were installed or modified after January 1, 1986, so long as the facility's primary purpose is to manage, treat, or contain surface or subsurface or subsurface flows and not for the production of a marketed commodity.

DISCHARGE – (A.R.S. §49-201) means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the Aquifer Protection Permit program prescribed by Title 49, Article 3, Chapter 2 of the Arizona Revised Statutes, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

DRYWELL - A.R.S. §49-331) means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended.

FACILITY – (A.R.S. §49-201) means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

INERT MATERIAL – (A.R.S. §49-201) means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

POLLUTANT - (A.R.S. §49-201) means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

SEWAGE TREATMENT FACILITY – (A.A.C. R18-9-101) means a plant or system for sewage treatment and disposal, except an on-site wastewater treatment facility, that consists of treatment works, disposal works, and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices.

SURFACE IMPOUNDMENT - (A.A.C. R18-9-101) means a pit, pond or lagoon, having a surface dimension that is equal to or greater than its depth, which is used for the storage, holding, settling, treatment or discharge of liquid pollutants or pollutants containing free liquids.

TANK – (A.R.S. §49-201) means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.

EXEMPTIONS

EXEMPTIONS – A.R.S. §49-250B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.
2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.
3. The noncommercial use of consumer products generally available to and used by the public.
4. Ponds used for watering livestock and wildlife.
5. Mining overburden returned to the excavation site including any common material which has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.
6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.
7. Discharge to a community sewer system.
8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.
9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.
10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.
11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.
12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.
13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.
14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.
15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.
16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.
17. Solid waste and special waste facilities when rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.
18. Facilities used in:
    (a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
    (b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.
    (c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions which have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.
20. Storage, treatment or disposal of inert material.
21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.
22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.
23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:
    (a) Fire fighting system testing and maintenance.
    (b) Potable water sources, including waterline flushings.
    (c) Irrigation drainage and lawn watering.
    (d) Routine external building wash down without detergents.
    (e) Pavement wash water where no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.
    (f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.
    (g) Foundation or footing drains in which flows are not contaminated with process materials.
    (h) Occupational safety and health administration or mining safety and health administration safety equipment.
24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.
25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply

Articles 1, 2, and 3 do not apply to:

1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

R18-9-103. Class Exemptions

Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94-580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10.

GENERAL PERMITS

General Aquifer Protection Permits (GPs) are permits by rule or statute. The rules are extensive and can be accessed on the Secretary of State's website at: http://www.azsos.gov/public_services/Title_18/18-09.htm Specific citations for general permits by rule are: Type 1: A.A.C. R18-9-B301, Type 2: A.A.C. R18-9-C301, Type 3: A.A.C. R18-9-D301, Type 4: A.A.C. R18-9-E301

The statutory general permits are:
49-245.01. Storm water general permit
A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.
2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water
A. A general permit is issued for the following discharges:
1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The vadose zone injection wells are registered pursuant to section 49-332.
(b) The discharge occurs only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration made to subdivision (a) of this paragraph.
(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.
(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.
(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.
(b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.
(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.

3. Point source discharges to waters of the United States from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit.
(b) The discharges occur only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

D-2.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 11 (Arsenic)

Amend: R18-11-406

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: May 6, 2025

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

FROM: Council Staff

DATE: April 22, 2025

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 11

Amend: R18-11-406

Staff Update:

As a reminder, this rulemaking from the Department of Environmental Quality was tabled at the May 6, 2025 Council meeting in order for the Council to have sufficient time to review supplemental information provided by the Department. This supplemental information was forwarded to Council members and also included as part of the materials for the meeting scheduled June 3, 2025.

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend one (1) rule in Title 18, Chapter 11, regarding Aquifer Water Quality Standards. The Department is proposing to make amendments and additions to Chapter 11 as part of a four part rulemaking package. The Department is required by A.R.S. § 49-223(A) to adopt Aquifer Water Quality Standards (AWQS) with these standards being based on maximum contaminant levels (MCLs). These MCLs are prescribed by the Environmental Protection Agency (EPA) and the Department is required to adopt the same MCLs unless there is a showing of substantial opposition, which allows the Department to prescribe different standards if the Department or stakeholder can show that the EPA levels are not appropriate for Arizona. The Department has

indicated to Department staff that this substantial opposition language is unique to Arizona and the Department believes Arizona to be the only state to have this type of language.

For this part of the rulemaking package, the Department will be adopting the MCL level prescribed by the EPA for arsenic. The rule currently allows for .050 mg/L, the Department is proposing to adopt the EPA standard of .010 mg/L. The Department has indicated that there has not been any substantial opposition as defined in A.R.S. § 49-223, to the proposed amendment.

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

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

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

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

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

The Department indicates that they reviewed two studies relevant to the rules and that these materials are available to the public upon request.

- MCL Assumptions Report – Arsenic Aquifer Water Quality Standards Technical Support: The Department indicates that this report was used to review EPA assumptions regarding the MCL for arsenic and included looking at technologies, costs, sampling, and analytical methodologies for public health risks reduction.
- Draft Economic Impact Statement for Arsenic Proposed AWQS: The Department indicates that this report informed DEQ on the economic impact of the subject matter of the rulemaking.

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

The Department states that this rulemaking is being taken by the Arizona Department of Environmental Quality (ADEQ) in order to adopt an adjustment to the Safe DrinkingWater Act Maximum Contaminant Level (MCL) for Arsenic as an Aquifer Water Quality Standard (AWQS) pursuant to Arizona Revised Statutes (A.R.S.) § 49-223. ADEQ has determined that this rulemaking will impact the regulated community, ADEQ customers, the environment, and may impact human health. The Department indicates that the AWQSs are designed to protect the State's aquifers, all of which have been designated for drinking water-protected use (see A.R.S. § 49-224(B)). The Department states the AWQSs are primarily used in ADEQ's Aquifer Protection Permit program (APP), and (to a lesser extent) in some remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the voluntary Remediation Program (VRP), and elsewhere.

The Department states that the full scope of stakeholders who may incur direct impacts from this rulemaking include individual APP Permittees, such as Mines, Industrial Facilities and Wastewater Treatment Plants, as well as rate payers to municipal drinking water systems, ADEQ, the general public and the environment. The Department indicates that while not all costs and benefits are borne evenly, these are the identified groups generally impacted from this Arsenic AWQS rulemaking. The Department states that the costs to permittees to meet the adjusted AWQS are significant and indeterminant at this time. The Department states that permittees must determine appropriate treatment technology for the specific conditions applicable to them, then upgrade or install technology and train personnel as needed to operate. Benefits to stakeholders include the State of Arizona and its constituents, generally, due to savings that could accrue through aquifers remaining a viable asset to community water portfolios and individual users alike.

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

The Department states that the controlling statute A.R.S. § 49-223 does not allow ADEQ to conduct any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking. The Department indicates that it simply requires ADEQ to open a rulemaking docket pursuant to A.R.S. § 41-1021 for adoption of new or adjusted MCL as an AWQS within one year of the MCLs establishment or adjustment.

6. What are the economic impacts on stakeholders?

The Department says individual APP Permittees will be the primary bearers of costs associated with this rulemaking. The Department states that other costs to stakeholders could occur, such as rate payers in municipal systems, where rates could conceivably increase to cover increased costs for expanded treatment. The Department believes some new costs will be incurred, despite the fact that some infrastructure for processing permits is already in place. The Department anticipates that hundreds of permits may need to be amended to update monitoring tables that include Arsenic as a parameter. The Department indicates that any additional costs would generally be covered by increased fees paid by Permittees.

The Department believes, generally, that the state and the constituents of the state benefit from this rulemaking through the protection of the aquifer resources as an asset for drinking water use both now and in the future, pursuant to statutory mandate at A.R.S. § 49-224. The Department states that savings could accrue to the people of the State of Arizona, generally, through aquifers (as a local, convenient and {in the right circumstances} inexpensive sources for drinking water) remaining a viable asset to community water portfolios and individual well users alike. In addition, the Department states that following EPA, quantified benefits are measured in terms of reduced loss of life and costs associated with treatment for disease. Additionally, the Department states that investments in treatment technology and processes by permittees would result in additional hires to operate equipment, which in turn would generate additional employment through indirect and induced (secondary) economic activity, and subsequent

tax revenue.

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

The Department indicates that there were no changes between the proposed draft and final rules before the Council.

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

The Department indicates it received 2 public comments as it relates to this rulemaking. The Department indicates that they conducted stakeholder outreach

Comment 1 was from an interest group and stated the following:

- Arsenic contamination in Arizona groundwater remains a persistent threat to public health. Chronic exposure to arsenic, even at low levels, is linked to cancers, cardiovascular disease, and developmental issues. The EPA updated its arsenic standard to 10 ppb in 2002, yet ADEQ has not incorporated this standard into state aquifer regulations. Adopting the EPA's MCL for arsenic without delay is critical to ensuring public safety. ADEQ must also prioritize monitoring and remediation efforts in rural and underserved communities disproportionately impacted by arsenic contamination."

The Department responded with the following:

- ADEQ appreciates the comment. The Arsenic MCL is one of the seven (7) MCLs proposed for adoption as AWQSs within the scope of the collective "AWQS Update" rulemaking. All MCLs except for Microbiological Contaminants are being adopted as AWQSs verbatim. As is detailed in this rulemaking, the Arsenic MCL is 0.010 milligrams per Liter (mg/L) which is equivalent to 10 parts per billion or (ppb). 0.010 mg/L is the AWQS for Arsenic established through this rulemaking.

The second comment came from a utility and stated the following:

- If there is significant opposition to any of the parameters does ADEQ then not proceed with that particular parameter?

The Department responded with the following:

- ADEQ appreciates the comment. The answer to that question is – not necessarily. "Substantial Opposition" is a term defined in A.R.S. § 49-223(A) as, "... information submitted to the director that explains with reasonable specificity why the [MCL] is not appropriate as an [AWQS]." Upon receipt of "substantial opposition", the Department must conduct a statutorily delineated procedure that leads to a determination of whether the MCL is "appropriate" as an AWQS. More information on that process can be found

here: https://www.azdeq.gov/rulemaking/awqs-update/resources . ADEQ did not receive substantial opposition from stakeholders on the proposal to adopt the Arsenic MCL as AWQS.

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

This specific rulemaking does not create a permit or a license.

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

The Department indicates that the rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking by the Department seeks to amend one rule regarding aquifer purification standards. The Department specifically seeks to amend the rule to bring the allowable amount of arsenic in aquifers in line with the standards set by the EPA.

The Department is seeking a standard 60-day delayed effective date.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 W. Washington St.
Suite 160
Phoenix, AZ 85007
602-771-2300

KATIE HOBBS
GOVERNOR

KAREN PETERS
DIRECTOR

March 13, 2025

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

Re: Aquifer Water Quality Standards Update Regular Rulemaking: Title 18, Environmental Quality, Chapters 9 and 11

Dear Chair Klein:

The Arizona Department of Environmental Quality (ADEQ) hereby submits this final rulemaking package to the Governor's Regulatory Review Council (GRRC) for consideration and approval at the Council Meeting scheduled for May 6th, 2025.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. §§ 41-1039, 41-1052 and A.A.C. R1-6-201:

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

(A)(1)(a) The public record closed for all rules on December 16th, 2024 at 11:59 p.m.

(A)(1)(b) The rulemaking activity does relate to a five-year review report. The report on 18 AAC 11, Articles 4 and 5 was approved on November 3rd, 2020.

(A)(1)(c) The rulemaking activity does not establish a new fee.

(A)(1)(d) The rulemaking does not contain a fee increase.

(A)(1)(e) An immediate effective date is not requested.

(A)(1)(f) The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

(A)(1)(g) The Department's preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S. § 41-1055(B)(3)(a) (*see* subheading IV, below).

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

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

(A)(2) Five (5) Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule (*see* subheading IV, below);
(A)(3) The preambles contain economic, small business, and consumer impact statements that contain the information required by A.R.S. § 41-1055 (*see* subheading IV, below);
(A)(4) The preambles contain comments received by the agency, both written and oral, concerning the proposed rule (*see* subheading IV, below);
(A)(5) No analyses were submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
(A)(6) No materials were incorporated by reference in this rulemaking;
(A)(7) The general and specific statutes authorizing the rule, including relevant statutory definitions (*see* subheading IV, below);
(A)(8) All statutes referred to in the definitions are represented in the general and specific statues authorizing the rule.

III. Governor's office approvals pursuant to A.R.S. § 41-1039:

(A) ADEQ received prior written approval from the Governor's Office twice. Once for Title 18, Chapter 11, Article 4 on August 24, 2022 and then again for Title 18, Chapter 9, Articles 1 and 2 on February 5th, 2024 (*see* subheading IV, below);
(B) ADEQ received written final approval from the Governor's Office for this rulemaking on March 11th, 2025 (*see* subheading IV, below).

IV. List of documents enclosed (25 documents total):

- One (1) Cover Letter (R1-6-201(A)(1));
  - AWQS_CL.pdf
- One (1) JLBC email (R1-6-201(A)(1)(g));
  - AWQS_JLBC.pdf
- Five (5) NFRMs (R1-6-201(A)(2));
  - AWQS_NFRM_18_AAC_9_Impl.pdf
  - AWQS_NFRM_18_AAC_11_As.pdf
  - AWQS_NFRM_18_AAC_11_U.pdf
  - AWQS_NFRM_18_AAC_11_DBP.pdf
  - AWQS_ NFRM_18_AAC_11_MBC.pdf
- Five (5) EISs (R1-6-201(A)(3));
  - AWQS_EIS_18_AAC_9_Impl.pdf
  - AWQS_EIS_18_ AAC_11_As.pdf
  - AWQS_EIS_18_ AAC_11_U.pdf
  - AWQS_EIS_18_ AAC_11_DBP.pdf
  - AWQS_EIS_18_ AAC_11_MBC.pdf
- Five (5) Public Comments Received Documents (R1-6-201(A)(4));

- AWQS_Cmts_18_AAC_9_Impl.pdf
- AWQS_Cmts_18_ AAC_11_As.pdf
- AWQS_Cmts_18_ AAC_11_U.pdf
- AWQS_Cmts_18_ AAC_11_DBP.pdf
- AWQS_Cmts_18_ AAC_11_MBC.pdf

- Five (5) General and Specific Authorizing Statutes (R1-6-201(A)(7));
  - 49-104 - Powers and duties of the department and director.pdf
  - 49-203 - Powers and duties of the director and department.pdf
  - 49-221 - Water quality standards in general; protected surface waters list.pdf
  - 49-223 - Aquifer water quality standards.pdf
  - 49-224 - Aquifer identification, classification and reclassification.pdf
- Three (3) A.R.S. § 41-1039 Governor's Approvals
  - 8_24_22_Gov_Approval.pdf
  - 2_5_24_Gov_Approval.pdf
  - 25_3_11_Gov_Approval.pdf

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

Sincerely,

Karen Peters, Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY STANDARDS

PREAMBLE

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

August 24, 2022, &

February 5, 2024

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

R18-11-406 Amend

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

Authorizing statute: A.R.S. §§ 49-221, and 49-223.

Implementing statute: A.R.S. §§ 49-221, and 49-223.

4. The effective date of the rule:

July 7, 2025

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

Not applicable.

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

Not applicable.

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

Notice of Proposed Rulemaking: 30 A.A.R. 3421, Issue Date: November 15, 2024, Issue Number: 46, File Number: R24-232.

Notice of Rulemaking Docket Opening: 30 A.A.R. 2136, Issue Date: June 28, 2024, Issue Number: 26, File Number: R24-114.

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

Name: Jon Rezabek

Title: Legal Specialist

Division: Water Quality

Address: Arizona Department of Environmental Quality

1110 W. Washington Ave.

Phoenix, AZ 85007

Telephone: (602) 771-8219

Fax: (602) 771-2366

Email: awqs@azdeq.gov

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

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

***Introduction*:**

General Explanation of the Collective Rulemaking: The Arizona Department of Environmental Quality (ADEQ) is required under A.R.S. § 49-223(A) to open a rulemaking docket for the adoption of federal drinking water maximum contaminant levels (MCLs) as state aquifer water quality standards (AWQSs) within one year of the Environmental Protection Agency's (EPA's) establishment of new or adjusted MCLs. AWQSs for Arsenic, Bromate, Chlorite, Haloacetic Acids, Microbiological Contaminants, Total Trihalomethanes and Uranium with corresponding MCLs are either unestablished as AWQSs or are established but currently have a misaligned value as the standard. MCLs for the seven (7) pollutants can be viewed at 40 *Code of Federal Regulations* (C.F.R.) 141.60 *et seq.* A.R.S. § 49-223(A) requires ADEQ to move forward with the adoption of MCLs as AWQSs through the rulemaking process unless substantial opposition to the adoption is received from stakeholders. Upon receipt of substantial opposition, ADEQ may adopt for that pollutant the verbatim MCL as an AWQS, but only upon a finding that the MCL is appropriate for adoption in Arizona as an AWQS. In making this finding, ADEQ must consider whether the assumptions used by the EPA in developing and implementing the MCLs are appropriate for establishing an Arizona state AWQSs. The listed assumptions for consideration are technology, cost, sampling and analytical methodologies and public health risk reduction. If ADEQ determines the MCL is inappropriate as an AWQS, the Department may establish an alternative AWQS for the pollutant with an MCL. The alternative AWQS must be:

(1) Based on the protection of human health and shall rely on technical protocols appropriate for the development of AWQSs, and

(2) Based on credible medical and toxicological evidence that has been subjected to peer review.

Subject Matter of this NFRM: This *Notice of Final Rulemaking* (NFRM) proposes an alternate AWQS for Microbiological Contaminants from the MCL for Microbiological Contaminants. The original MCL for Microbiological Contaminants was established through Final Rule by the Environmental Protection Agency (EPA), published in the *Federal Register* at 78 *Federal Register* 10270.

Standard Work Development: In approaching and preparing for the execution of the requirements in A.R.S. § 49-223, ADEQ developed a guidance document or "standard work" as the language of the statute leaves a number of determinations to the discretion of the Department. An example of this is whether an MCL is "appropriate" as an AWQS or relying on "technical protocols" appropriate for the development of an alternative AWQS. These statutorily-based and reasoned procedures were developed and released to the public for comment in the summer of 2023. They can be viewed at the following webpage: https://www.azdeq.gov/rulemaking/awqs-update/resources.

Substantial Opposition: ADEQ has received substantial opposition from stakeholders on the proposal to adopt the Microbiological Contaminants MCL as an AWQS. "Substantial opposition" is defined in A.R.S. § 49-223(A) as "information submitted to the director that explains with reasonable specificity why the [MCL] is not appropriate as an [AWQS]." Its functionality in the procedure laid out in A.R.S. § 49-223 is explained above in the subsection entitled, *General Explanation of the Collective Rulemaking*. The submitted opposition includes current permittees voicing concerns about the high numbers of false positive samples of Total Coliform that would have tested negative had Fecal Coliform or *E.coli* been the indicator parameter used in the standard instead. Details of the hardships encountered by the regulated community include hundreds of hours of labor in verification or repeat sampling. This, along with shipping and laboratory testing costs, amount to tens of thousands of dollars in unnecessary spending. With this series of AWQS rulemakings, ADEQ proposes to establish or align AWQSs for Arsenic, Bromate, Chlorite, Haloacetic Acids, Total Trihalomethanes and Uranium verbatim with the MCL. However, given the substantial opposition received on the Microbiological Contaminants MCL, ADEQ was prompted to follow the procedure in A.R.S. § 49-223(A) for determining whether the Microbiological Contaminants MCL is appropriate as an Arizona state AWQS. ADEQ used its newly developed "standard work" as explained above in executing this requirement. The conclusion is that the MCL is inappropriate (*See* "'Inappropriate' Determination for the Microbiological Contaminants MCL (A.R.S. § 49-223(A))" for detail below). Thereafter, ADEQ followed the procedure for establishing an alternative AWQS for Microbiological Contaminants, pursuant to A.R.S. § 49-223(B), also using the newly developed "standard work". The conclusion is that an alternative AWQS should be established, which is proposed via this NFRM (*See* "Alternative AWQS Development and Setting for Microbiological Contaminants (A.R.S. § 49-223(B))" for detail below).

What is the MCL for Microbiological Contaminants? The MCL for Microbiological Contaminants involves a sampling

procedure that can be found at 40 C.F.R. 141.63(c). The essential part of the MCL is that a system must sample for Total Coliform and *E.coli* routinely. Upon a positive result of Total Coliform, the system must sample for *E.coli*. A positive result from the *E.coli* repeat sample (following a positive Total Coliform routine sample) constitutes a violation of the standard. Furthermore, upon a positive result of a routine *E.coli* sample, the system must repeat the sample for *E.coli*. A positive result from the *E.coli* repeat sample (following a positive *E.coli* routine sample) constitutes a violation of the standard. Additionally, a system violates the standard when:

(1) it fails to take a repeat sample following an *E.coli*-positive routine sample, or

(2) it fails to test for *E.coli* when any repeat sample tests positive for Total Coliform.

What is the current AWQS for Microbiological Contaminants?

The current AWQS for Microbiological Contaminants involves a similar sampling procedure to that of the corresponding MCL. The standard can be found at A.A.C. R18-11-406(F). The essential part of the current AWQS is that a facility must sample for Total Coliform routinely. Upon a positive Total Coliform routine sample, a Total Coliform repeat sample shall be taken within two weeks of the time the sample results are reported. A positive Total Coliform repeat sample following a positive Total Coliform routine sample constitutes a violation of the standard.

Associated Rulemakings ADEQ proposes a total of five (5) NFRMs in the collective AWQS Update rulemaking. Three (3) of the five (5) NFRMs propose to establish or align the AWQSs with the MCLs in *Arizona Administrative Code*, (A.A.C.) Title 18, Chapter 11, Article 4 for pollutants Arsenic, Bromate, Chlorite, Haloacetic Acids, Total Trihalomethanes and Uranium. This NFRM's scope is limited to Microbiological Contaminants and proposes an alternative AWQS to the corresponding MCL under the procedure described in A.R.S. § 49-223 and above. A second NFRM's scope includes Arsenic. A third NFRM's scope includes Uranium. A fourth NFRM's scope includes the four (4) disinfection byproducts, which are Bromate, Chlorite, Haloacetic Acids and Total Trihalomethanes. A fifth and final NFRM includes in its scope a proposed new section and some amendments to A.A.C., Title 18, Chapter 9, Articles 1 and 2. With the fifth NFRM, ADEQ proposes a rule detailing implementation of new or adjusted AWQSs into existing Individual Aquifer Protection Program permits (APPs), along with adjacent amendments to existing rule to make way for this purpose.

What are Aquifer Water Quality Standards and what is their purpose? Aquifer Water Quality Standards or "AWQSs" are protective groundwater standards that were put in place and designated by the Arizona Legislature to preserve Arizona's aquifer quality for drinking water-protected use (*See* A.R.S. § 49-224(B)).

How are Aquifer Water Quality Standards Used? The AWQSs are used in ADEQ's Aquifer Protection Program (APP), and, to a lesser extent, remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), and elsewhere.

"Inappropriate" Determination for the Microbiological Contaminants MCL (A.R.S. § 49-223(A)) ADEQ developed a "standard work" procedure for conducting an "appropriateness" determination pursuant to A.R.S. § 49-223(A). The "standard work" can be reviewed on ADEQ's website at https://www.azdeq.gov/rulemaking/awqs-update/resources. ADEQ's review of EPA's assumptions on technology, costs, sampling and analytical methodologies and public health risk reduction resulted in significant concern for the costs, analytical methods and public health risk reduction assumptions in particular. ADEQ found that the MCL at 40 C.F.R. 141.63(c) is simply inappropriate as is for verbatim adoption as an AWQS and applicability upon the facilities regulated by the APP program, such as Wastewater Treatment Plants, Mines and Industrial facilities. One of the main reasons is that the MCL is designed for Public Water Systems, not APP type facilities. Specifically, this is because the Microbiological Contaminants MCL requires routine sampling of both Total Coliform and *E.coli* parameters. Thereafter, upon a positive result of either Total Coliform or E.coli, a repeat sample is required for both parameters. Violation occurs when a positive result is obtained from an *E. coli* repeat sample that occurs after a total coliform-positive routine sample. Violation also occurs when a positive result is obtained from a Total Coliform repeat sample that occurs after an *E. coli*-positive routine sample. ADEQ has found that the Total Coliform parameter is a very general indicator of coliforms in a sampling well, many of which occur naturally and are not indicative of a threat to human health. In particular, Total Coliform is too broad of an indicator parameter to signal fecal coliform health concerns. On the contrary, ADEQ has found that Fecal Coliform and *E.coli* are more exacting indicators or surrogates of fecal coliforms, which are dangerous to human health. Additionally, when a permittee samples for Total Coliform and receives a positive result, more often than not, the result is what is known as a "false positive", signaling non-health threatening coliforms in a sample. ADEQ notes that false positives have led to a number of permittees having to perform accelerated or more frequent monitoring intervals pursuant to the permits unnecessarily, which have associated costs.

Alternative AWQS Development and Proposal for Microbiological Contaminants (A.R.S. § 49-223(B)) After determining that the MCL for Microbiological Contaminants is inappropriate as an AWQS, ADEQ followed the "standard work" procedure for alternative AWQS development and establishment. ADEQ is proposing an appropriate alternative Microbiological Contaminants AWQS based upon the detection or non-detection of either Fecal Coliform or *E.coli* in a 100-milliliter sample (depending on the requirement of the permit). Upon detection during a routine Fecal Coliform sample, a repeat sample of either Fecal Coliform or *E.coli* with a detect result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Upon a detect result of a routine *E.coli* sample, a repeat sample of *E.coli* with a detect result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Through research and consultation, ADEQ determined that *E. coli* is a better indicator of fecal contamination than total or fecal coliforms and that total coliform positive samples are known to result in a "false positive". A "false positive" in a Total Coliform context is when a sample result is positive, but the cause of the positive result indicates a type of total coliform that does not originate in fecal contamination and is not dangerous to human health and occurs

naturally. A common "false positive" is when a positive Total Coliform sample is actually indicating rust in a well. Additionally, ADEQ considered the language of 40 C.F.R. 141.63(c), the state of existing Individual APP and Reclaimed Water permits, the Department's mission to protect human health and the environment, as well as costs to permittees, analytical methodologies and public health risk reduction. Ultimately, ADEQ determined that shifting away from Total Coliform as an indicator parameter for an alternative Microbiological Contaminants AWQS and moving towards Fecal Coliform and *E.coli* is appropriate. Specifically, Fecal Coliform and *E.coli* are more exacting at indicating a threat to human health. The decision to configure the AWQS proposal to allow permittees to utilize Fecal Coliform or *E.coli* was due to the fact that protecting human health is not diminished under any of the possible orientations and existing permittees are sampling for both parameters already in some cases. Allowing permittees to keep those sampling traditions and optimize a sampling orientation from a cost effective perspective are all factors that led to ADEQ's proposal.

Sampling and Analytical Methodologies. In the Baseline Monitoring Requirement subsection of the final rule at R18-9-A215(E)(4), the following is provided,

> "[s]ampling for each pollutant with a new or adjusted AWQS shall be conducted using Arizona Department of Health Services-approved (ADHS) methods under A.A.C. R9-14-610, including methods on the ADHS Director Approved List, if available. If an ADHS-approved method does not exist, sampling shall be conducted using an appropriate EPA-approved method or a method specified by the ADEQ Director."

At the time this NFRM was compiled, wastewater methods for some of the pollutants with new or adjusted AWQSs were not ADHS-Approved (*see* A.A.C. Title 9, Chapter 14, Article 6, Tables 6.2.A and 6.2.B). In March 2025, ADEQ formally requested that the following sampling methods be reviewed and considered for addition to ADHS's "Director Approved" list of sampling methods pursuant to A.A.C. R9-14-610, found published outside of the rule on ADHS's website, here: https://www.azdhs.gov/documents/preparedness/state-laboratory/lab-licensure-certification/environmental-laboratory/application/application-part-e.pdf

Table 1. Analytical Methods for Baseline Monitoring

Analyte	**Analytical Method**
Arsenic	EPA 200.8, SM 3113B, SM 3114B
Bromate	EPA 300.1, EPA 317.0 Rev 2.0, EPA 321.8, EPA 326.0
Chlorite	EPA 300.0, EPA 300.1, EPA 317.0 Rev 2.0, EPA 326.0
Haloacetic Acids	EPA 552.1, EPA 552.2, EPA 552.3, SM 6251B
Fecal coliform	SM 9223B
E. coli	SM 9223B
Total Trihalomethanes	EPA 502.2, EPA 524.2, EPA 551.1, SM 6251B
Uranium (Total)	EPA 200.8

* "EPA" - Environmental Protection Agency; "SM" - Standard Methods

Applicability of Microbiological Contaminants AWQS Indicator Parameters to Baseline Monitoring. The associated NFRM for Title 18, Chapter 9, Articles 1 and 2 specifies in Final Rule R18-9-A215(C) that all persons with issued individual permits as of a new or adjusted AWQS effective date shall begin Baseline Monitoring, pursuant to R18-9-A215(E), for a new or adjusted AWQS within three months. Additionally, the Final Rule or AWQS for Microbiological Contaminants in this NFRM specifies that either Fecal Coliform or *E. coli* may be used in routine monitoring as indicator parameters. ADEQ understands that for various reasons, issued APP permits may be sampling for one or both or none of these indicator parameters already. In accordance with the rule, ADEQ's expectation is that an applicable permittee may choose one or both indicator parameters for the purpose of Baseline Monitoring under Final Rule R18-9-A215.

Who are the stakeholders to this rulemaking? The stakeholders for this rulemaking are predominantly the permittees of the APP, and to a lesser extent, remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP). Other stakeholders include private well owners, community water systems and the constituents they serve, as well as all Arizonans who benefit from the state's aquifers being protected for drinking water use.

What has been the stakeholder process thus far for this rulemaking? ADEQ has conducted a number of general and specific stakeholder meetings, as well as tribal listening sessions, concerning this rulemaking. The dates of those events are as follows: 9/29/22, 6/8/23, 9/11//23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25 and others. A repository of stakeholder materials can be found published on ADEQ's website here: https://www.azdeq.gov/rulemaking/awqs-update/resources.

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

State-Based AWQS Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support:

Summary: This report provides information to the Department for the purpose of "standard work" guidance in determining an appropriate alternative AWQS for microbiological contaminants per A.R.S. § 49-223(B).

Study Resource: Provided recommendations on the establishment of an alternative AWQS to the Microbiological Contaminants MCL based on credible medical and toxicological evidence that has been subjected to peer review, as well as technical protocols appropriate in the development of an AWQS.

Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Reference: LaPat-Polasko, L., Hoagland-Stamatovski, B., and Brenton, H. (2023). State-Based AWQS Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support. Matrix New World Engineering, Land

Surveying and Landscape Architecture, PC.

MCL Assumptions Report – Microbiological Standards Aquifer Water Quality Standards Technical Support:

Summary: This report provides a review of the EPA assumptions used to establish the MCL for Microbiological Contaminants at 78 *Federal Register* 10270. The assumptions reviewed are listed in A.R.S. § 49-223(A) and include technologies, costs, sampling and analytical methodologies and public health risk reduction.

Study Resource: Provided review of the EPA assumptions used to establish the MCL for Microbiological Contaminants at 78 *Federal Register* 10270 in order to inform ADEQ further on the subject matter and its applicability in the AWQS setting.

Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Reference: LaPat-Polasko, L., Hoagland-Stamatovski, B., and Brenton, H. (2023). MCL Assumptions Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support. Matrix New World Engineering, Land Surveying and Landscape Architecture, PC.

Draft Economic Impact Statement for Microbiological Contaminants Proposed AWQS:

Summary: This report provides the Department a draft economic impact statement on the proposed Microbiological Contaminants AWQS modeled after the requirements of A.R.S. § 41-1055.

Study Resource: This report informs ADEQ on the economic impact of the subject matter of the rulemaking.

Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Reference: McClure Consulting LLC with The Natelson Dale Group, Inc. (2024). Draft Economic Impact Statement for Microbiological Contaminants Proposed AWQS. McClure Consulting LLC with The Natelson Dale Group, Inc.

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

Not applicable.

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

This Economic, Small Business, and Consumer Impact Statement (EIS) has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this EIS has the scope of an amendment to R18-11-406(F) in Title 18, Chapter 11, Article 4 of the

Arizona Administrative Code (A.A.C.) This rulemaking action is being taken by the Arizona Department of Environmental Quality (ADEQ) in order to adopt an adjustment to the Safe Drinking Water Act Maximum Contaminant Level (MCL) for Microbiological Contaminants as an Aquifer Water Quality Standard (AWQS) pursuant to Arizona Revised Statutes (A.R.S.) § 49-223. A.R.S. § 49-223 mandates that within one year after the EPA establishes or adjusts an MCL, the ADEQ Director shall open a rule making docket pursuant to A.R.S. § 41-1021 for adoption of the MCL as an AWQS. As is detailed in Section 7 of this Notice of Final Rulemaking (NFRM), ADEQ conducted the rulemaking in conformance with the statutory administrative procedure in A.R.S. Title 41, Chapter 6, and is hereby submitting this EIS, in conformance with the requirements of A.R.S. §§ 41-1055 and 41-1035. ADEQ has determined that this rulemaking will impact the regulated community, ADEQ customers, the environment, and may impact human health. This EIS was developed to evaluate the rulemaking's impacts and compare the benefits and detriments of adopting an alternative AWQS to the corresponding MCL. The AWQSs are designed to protect the State's aquifers, all of which have been designated for drinking water-protected use (*see* A.R.S. § 49-224(B)). The AWQSs are primarily used in ADEQ's Aquifer Protection Permit program (APP), and (to a lesser extent) in some remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), and elsewhere.

B. A summary of the EIS:

General & Specific Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include APP permittees, such as Mines, Industrial Facilities and Wastewater Treatment Plants, as well as rate payers to municipal drinking water systems, ADEQ, the general public and the environment. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the Microbiological Contaminants AWQS rulemaking.

Costs to permittees to meet the new AWQS for Microbiological Contaminants are None to Minimal. In fact, ADEQ expects cost savings in many cases. The proposed AWQS for microbiological contaminants does not propose a numeric change in water quality standards, but instead proposes to implement more efficient/effective monitoring protocols. In this regard, the EIS generally follows a key premise of the Matrix Report: that the primary cost impact of the proposed AWQS would be a *reduction* in permittee sampling costs due to the reduced incidence of false-positive routine testing, repeat tests and accelerated monitoring thereafter. Consistent with the Matrix Report, the EIS estimates the cost *savings* related to more efficient sampling protocols. The EIS follows the format of the cost analysis in the Matrix Report, which evaluates *incremental* changes (reductions) in permittee costs compared to baseline conditions (i.e., costs under the current AWQS compared to costs under the proposed AWQS).

In addition to creating cost savings for permittees, the proposed AWQS would potentially generate economic benefits in terms of a reduction in cases of illness and death associated with microbiological contamination. In particular, the improved sampling protocols are expected to allow for quicker identification of incidents of contamination, allowing for more timely implementation

of corrective measures (according to ADEQ staff, the higher incidence of false-positive test results under the existing protocols – and the associated need for retesting – can result in delays in identifying actual cases of contamination, potentially resulting in disease outbreaks that could otherwise be contained sooner). These potentially significant health benefits are not quantified in the EIS, as ADEQ and their consultant do not have sufficient information to develop such estimates. However, following the methodology of the Matrix Report, the EIS provides *general* estimates of the annual economic benefits attributable to regulation of Microbiological Contaminants. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).

Costs. Whereas permittees will continue to incur costs (primarily for routine and repeat sampling) to comply with the new/proposed AWQS, these costs are expected to *decrease* in comparison to the costs of complying with the current AWQS. These potential cost savings are attributable to the expectation that the routine sampling and repeat sampling requirements under the new AWQS would result in fewer "false positive" samples, thereby reducing the need for follow-up sampling and unwarranted corrective actions for facilities falsely deemed to be non-compliant. Statewide, the cost savings to permittees are estimated to range from $882,000 to $1.7 million annually (in 2023 dollars).

Benefits. Based on available time series data from ADHS and CDC, the Matrix Report estimates that regulation of Microbiological Contaminants results in 80 fewer cases of illness and 0.3 fewer deaths per year (statewide). In monetary terms, these prevented illnesses and deaths represent annual statewide benefits of $3.5 million per year (in 2023 dollars).

Specific impacts

From a total 434 Aquifer Protection permittees in Arizona, it is estimated (based on the Matrix Report) that 153 to 300 permittees annually are required to sample for Microbiological Contaminants. This subset of 153 to 300 permittees would be the impacted stakeholder group that would potentially experience cost savings under the proposed AWQS. In Arizona, the potentially affected benefiting population consists primarily of private well users throughout the state (estimated at 350,000 persons in total), although some of these will be effectively excluded from the additional benefits of the higher AWQS because existing Microbiological Contaminant levels in some wells are already zero. Benefits in the form of cost savings could also accrue to community water systems and their clientele due to a reduction of Microbiological Contaminants in the groundwater, under the proposed AWQS. As many as 1.8 million Arizonans could be potentially affected in this way.

Stakeholder Process

ADEQ has conducted a number of general and specific stakeholder meetings concerning this rulemaking, including tribal listening

sessions and rule language sessions with major industry associations and their counsel, representing a majority of the individual APP regulated parties. The dates of those events are as follows: 9/29/22, 6/8/23, 9/11//23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25 and others. A repository of stakeholder materials can be found published on ADEQ's dedicated AWQS Rulemaking website here: https://www.azdeq.gov/rulemaking/awqs-update/resources.

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

Costs to Stakeholders

Individual APP Permittees (hereinafter: "permittees") will be the primary bearers of costs associated with this rulemaking. Permittees are discussed under the following three categories:

- Mines, where treatment conditions can vary noticeably from typical urban waste processing.
- Industrial facilities, with treatment conditions that can vary according to the industrial processes involved.
- Wastewater Treatment Plants, including mostly those treating urban-related wastewater.

Other potential costs to stakeholders addressed include the following:

- Rate payers in municipal systems, where rates could conceivably increase to cover increased costs for expanded treatment.
- Regulated parties under ADEQ remediation programs such as WQARF and VRP (minimal impact).
- Some permittees are assumed to be small businesses, and are additionally addressed as a segmented category.
- ADEQ, although any additional staff efforts and other expenses associated with monitoring proposed expanded treatment requirements will generally be covered through permittees' fee increases.

Benefits to Stakeholders

Generally, the state and the constituents of the state benefit from this rulemaking through the protection of the aquifer resource as an asset for drinking water use both now and in the future, pursuant to statutory mandate at A.R.S. § 49-224. More specifically, ADEQ and its consultant have attempted to quantify the benefit of the rulemaking to the extent possible in terms of health benefits related to forgone diseases. In Arizona, the immediate health-affected population consists primarily of private well users throughout the state, under certain qualifying conditions. Private well water consumers are generally limited to areas where discharged water treatment contaminant levels would improve based on the proposed AWQSs.

Other benefit categories include the following:

- Community water systems (CWSs) and their clientele. Savings could accrue to CWSs due to reduced Microbiological Contaminants in the groundwater under the proposed AWQS. Any savings would presumably be passed on to customers.
- State costs, where some state-supported medical costs would decrease, with diseases forgone.

D. Benefit/Cost Analysis:

Not all permittees will be burdened with the requirement to alter their facility in order to come into compliance with the proposed AWQSs and thereby incur the related costs, for any one of the following reasons or combinations of reasons:

- Permittees' existing treatment methods/technologies are already adequate to meet the target standard;
- The contaminant in wastewater subject to treatment exists at a level below the proposed AWQS; and
- Ambient levels of the contaminant in groundwater exceed the proposed AWQS, in which case the permittee need only be held to a "no further degradation" standard (*see* A.A.C. R18-9-A205(C), A.R.S. § 49-243(B)(2) and (3)).

Cost impacts in this EIS relate primarily to potential cost *savings* to permittees due to the more efficient (and more effective) sampling protocols under the proposed AWQS. According to ADEQ's database of permittees, an estimated total of 434 permits are divided among the categories shown below:

Category	**# Permittees**
Mines	35
Industrial Facilities	56
Wastewater Treatment Plants	343
Total	**434**
*Small Businesses as a segmented category	135

Key modeling factors used in this analysis are the following:

Factors	**Key source references**	**Notes**
	Costs	
Total APP's	Matrix report, page 25	The Matrix Report evaluates two alternatives for a new AWQS: 1. ADEQ would adopt the EPA's MCL as the AWQS; or 2. ADEQ would develop and establish an appropriate alternative AWQS (for which the Matrix Report assumed that the routine and repeat samples would both be Fecal Coliform). Per direction of ADEQ staff, the EIS considers a proposed AWQS that would require testing *E. coli* for the routine sample, with all required repeat samples testing for *E. coli*. Where appropriate, the Matrix Report factors have been applied to the AWQS proposal considered in the EIS.
Type and number of facilities impacted by changes in AWQS	Matrix report, page 25	
Sampling frequency	Matrix report, page 25	
Coliform type(s) sampled	Matrix report (with updated assumptions provided by ADEQ staff)	
False-positive percentages by sample type	Matrix report, page 25	
Sampling costs by sample type	Matrix report, Chart 8	
Benefits		
Annual cases of illness and annual number of deaths related to microbiological contamination of drinking water in Arizona (these are assumed to be prevented by compliance with the AWQS	Matrix report, page 24	Illnesses and deaths related to microbiological contamination of drinking water are assumed to be prevented by compliance with the AWQS and are therefore interpreted as "benefits" of the AWQS. For

and are therefore interpreted as "benefits" of the AWQS) – for purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS		purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).
Average cost per case of illness caused by foodborne pathogens	Matrix report, page 25	
Value of statistical life (VSL)	Matrix report, page 25	
General		
Information about permittees by type of activity served, including size	APP Permittee Database	Categorizations of permittees and also the total number are as interpreted by ADEQ and consultant
Amounts in October 2023 $	https://data.bls.gov/cgi-bin/cpicalc.pl	

Approach to the EIS for Microbiological Contaminants. ADEQ and its consultant rely on estimates prepared by the authors of the "MCL Assumptions Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support", prepared by Matrix New World Engineering, Land Surveying and Landscape Architecture, PC. in 2023 ("Matrix Report") (*see* Heading No. 8 of this NFRM). This information was supplemented by the Matrix Report's source material (primarily from the EPA), which takes into account multiple factors affecting potential costs and benefits.

Health Risk Reduction (Benefits)

The EIS measures the economic benefits of the AWQS in terms of the monetized value of illnesses and deaths that would be prevented by compliance with the State's AWQS for Microbiological Contaminants. These calculations are based on the following steps:

- Estimate the annual number of cases of enteric disease that would occur in Arizona in the absence of effective AWQS for microbiological contaminants;
- Estimate the annual number of deaths that would result from outbreaks transmitted by water in Arizona in the absence of effective AWQS;
- Calculate the costs associated with treatment of estimated cases of enteric disease; and
- Calculate the monetary value of lives lost due to disease outbreaks transmitted by water (using "Value of Statistical Life" data).

Based on available time series data from ADHS and CDC, the Matrix Report estimates that the AWQS would create the following benefits in terms of prevented illnesses and deaths:

- Prevention of 80 cases of illness per year
- Prevention of 0.3 deaths per year
- Avoided costs of $2,397.76 per case of illness prevented

- Value of Statistical Life (VSL) of $11.1 million

Using the above factors, the Matrix Report calculates total benefits from the AWQS of $3.5 million per year. For purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).

The proposed AWQS would potentially generate economic benefits in terms of a reduction in cases of illness and death associated with microbiological contamination. In particular, the improved sampling protocols are expected to allow for quicker identification of incidents of contamination, allowing for more timely implementation of corrective measures (according to ADEQ staff, the higher incidence of false-positive test results under the existing protocols – and the associated need for retesting – can result in delays in identifying actual cases of contamination, potentially resulting in disease outbreaks that could otherwise be contained sooner). These potentially significant health benefits are not quantified in the EIS, as the consulting team does not have sufficient information to develop such estimates.

Cost Analysis

Consistent with the Matrix Report, the cost analysis provided in this EIS is based on the premise that the proposed AWQS would result in cost *reductions* (to permittees and the State) compared to the existing AWQS. The cost savings would result from revised sampling protocols intended to significantly reduce the occurrence of false-positive test results (while more quickly identifying contaminants that are of actual concern from a public health perspective). Within the framework provided in the Matrix Report, these cost savings are calculated in terms of the avoided costs of follow-up sampling compared to estimated costs under the existing AWQS protocols. As such, the calculated "costs" are negative (compared to baseline levels) and therefore can actually be interpreted as benefits rather than costs.

The Matrix report evaluates two alternatives for a new AWQS:

1. ADEQ would adopt the EPA's MCL as the AWQS; or
2. ADEQ would develop and establish an appropriate alternative AWQS (for which Matrix assumed that the routine and repeat samples would both be Fecal Coliform).

The EIS considers a proposed AWQS that would require testing *E. coli* for the routine sample, with all required repeat samples testing for *E. coli*. Where appropriate, the Matrix Report factors have been applied to the AWQS proposal considered in the EIS.

Cost factors/assumptions derived from the Matrix report are summarized below.

Costs of Sample Analysis. The Matrix Report estimated ranges of costs for the sample analysis by contacting four ADHS certified laboratories. If the contacted laboratories offered more than one analysis method, the least expensive method was used. The following are the range of costs used for the Matrix analysis (and also in the EIS):

- Total coliform: $25 - $50

- *E. coli*: $25 - $50

Costs for labor, reporting, and administrative work were assumed in the Matrix Report based on the author's knowledge and previous experience with APPs. These assumptions are outlined on the tables below.

Work Costs per False-Positive Sample

Work Category	Hours	Rate	Cost
Labor	8	$95	$760
Data analysis	4	$125	$500
Reporting	20	$100	$2,000
Administrative	4	$100	$400
TOTAL:	**36**	**--**	**$3,660**

Breakdown of Work Costs based Coliform Type per False-Positive Sample

Category	Total Coliform	*E. Coli*
Sampling Cost (labor, analysis, consumables)	$795 - $820	$795 - $820
Reporting Costs	$2,500	$2,500
Administrative Costs	$400	$400
TOTAL:	**$3,695 - $3,720**	**$3,695 - $3,720**

Note: Consumables include ice, gloves, etc. for collecting samples. Assumed to be approximately $10 per sample.

In the EIS, the factors summarized above have been applied to the proposed AWQS. The costs of sampling under the current AWQS and the proposed AWQS are calculated on the table on the next page.

Total and Incremental Sampling Costs Per Year Statewide (in 2023 dollars)

Factor	Current AWQS (Baseline)		Proposed AWQS	
	Low	High	Low	High
Total APP's	434	434	434	434
Facilities required to sample for coliforms	153	300	153	300
Sampling frequency (times per year)	4	4	4	4
Routine coliform samples per year	612	1,200	612	1,200
Coliform type sampled (routine)	Total	Total	*E. Coli*	*E. Coli*
False-positive percentage	43%	43%	4%	4%
Repeat samples triggered by false positives	263	516	24	48
Coliform type sampled (repeat)	Total	Total	*E. Coli*	*E. Coli*
Total cost per sample (by type):				
Total coliform	$3,695	$3,720	$3,695	$3,720
E. Coli	$3,695	$3,720	$3,695	$3,720
Aggregate (statewide) sampling costs/year:				
Routine samples	$2,261,340	$4,464,000	$2,261,340	$4,464,000

Repeat samples	$972,375	$1,919,520	$90,454	$178,560
Total	*$3,233,716*	*$6,383,520*	*$2,351,794*	*$4,642,560*
Cost Increase (Reduction) Compared to Baseline	***N/A***	***N/A***	***($881,923)***	***($1,740,960)***

Source: ADEQ and consultant.

1. **Part I – Benefit / Cost Stakeholder Matrix:**

Minimal	Moderate	Substantial	Significant
$500,000 or less	$500,000 to $5 million	Greater than $5 million	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Note: all benefits and cost figures in this document are in annualized amounts.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
Costs to Stakeholders			
Cost stakeholders	General: The EIS follows the format of the cost analysis in the Matrix Report, which essentially looks at *incremental* changes in permittee costs compared to baseline conditions (i.e., costs under the current AWQS compared to costs under the proposed AWQS). An underlying premise of the Matrix Report analysis (and therefore the EIS) is that more efficient sampling requirements under the proposed AWQS would result in a significantly lower occurrence of false-positive test results and would therefore *reduce* compliance costs without compromising (while potentially improving) water quality standards		Significant
Permittees, generally	In general, microbiological contaminants are more likely to be generated within Wastewater Treatment Facilities, and also in treated wastewater. Microbiological Contaminants also can enter groundwater under certain conditions		Moderate: AWQS would potentially reduce costs for routine and repeat sampling (by $882,000 to $1.7 million per year statewide)
Mines	Microbiological Contaminants are least likely to be found in mine-related water being treated, compared to other permittee types		
Industrial activities	Microbiological Contaminants would not be particularly likely to be occurring in industrial-related water being treated, compared to other permittee types		
Wastewater Treatment Plants	This category of permittee type is most likely to be dealing with Microbiological Contaminants, because of the urban-use connection		
Rate payers in municipal systems	Private citizens and businesses could potentially benefit from reduced user fees for wastewater processing, based on reduced costs to permittees under the revised AWQS. However, these benefits are likely to be minimal (given the relatively small cost savings on a per-system basis)		Proposed AWQS is expected to reduce compliance costs to permittees, which could potentially be passed on to rate payers in the form of lower rates; in practice, rate

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
			reductions are likely to be minimal Minimal. Aggregate revenues would potentially decrease in proportion to the cost savings from reduced sampling requirements. Given state-wide cost savings of $882,000 to $1.7 million per year, cost savings on a per-system basis are likely to be minimal
Small businesses as a segmented category	Coming into compliance with new standards. Small businesses are generally cost-disadvantaged when compared to larger businesses because treatment costs generally decline as the scale (processing capacity) of a processing facility increases.		Moderate. Overall, the AWQS would potentially create moderate cost savings to permittees compared to the existing AWQS
ADEQ	ADEQ believes some new costs will be incurred, despite the fact that some infrastructure for processing permits is already in place. ADEQ anticipates that hundreds of permits may need to be amended to update monitoring tables that include Microbiological Contaminant indicator parameters. Any additional costs incurred would generally be covered by increased fees paid by permittees.	Minimal	
Benefits to Stakeholders			
State of Arizona and its Constituents, generally	Savings could accrue to the people of the State of Arizona, generally, through aquifers (as a local, convenient and {in the right circumstance} inexpensive sources for drinking water) remaining a viable asset to community water portfolios and individual well users alike		Significant
Private well users, health benefits: In Arizona, the more immediately affected population consists primarily of private well users throughout the state.	Following EPA, quantified benefits are measured in terms of reduced loss of life and illness and costs associated with treatment for disease.		Moderate: Potential health benefits attributable to existing AWQS are estimated at $3.5 million per year; this benefit would not change by virtue of the proposed new AWQS Significant: Potential reduction in the impacts of disease outbreaks (by virtue of more rapid identification and mitigation of contamination

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
Community water systems (CWSs) and their clientele	Savings could potentially accrue to CWSs due to reduced microbiological contaminants in the ground water. Any savings would presumably be passed on to customers.		Significant
State costs	Some state-supported medical costs would decrease (this benefit already exists under existing AWQS and would continue under new AWQS)		Significant
State revenue effects	Reduced sampling requirements of permittees would potentially result in some loss of business (and associated reductions in employment) for firms engaged in sample analysis. The potential loss of direct jobs would in turn (in theory at least) generate additional employment losses through reductions in indirect and induced (secondary) economic activity, and subsequent tax revenues	Minimal. Lost State income taxes are estimated to be $6,700 per year due to direct and secondary losses of employment	

2. Part II – Individual Stakeholder Summaries / Calculations:

The following subsection provides an explanatory discussion of expected stakeholder costs and benefits. The subsection outlines the key factors and analysis used to determine the impact findings reported in Part 1 of subsection D, above.

***Costs to Stakeholders*:**

Permittees in General

Compared to the current AWQS, the indicated changes to the AWQS are intended to maintain the same (or better) levels of protection with respect to human health, while potentially resulting in significant cost savings to impacted permittees (due to the expectation that the modified sampling requirements would substantially reduce the incidence of "false positive" results). As such, many of the stakeholder categories that would typically be impacted by the costs of new regulation would actually benefit from *reduced* cost burdens under the proposed new AWQS.

Estimated cost savings to permittees are based on factors in the Matrix report, applied to the proposed AWQS (as defined by ADEQ staff). Consistent with the Matrix report, the EIS focuses strictly on potential cost savings related to the issue of reducing false-positive test results (due to more efficient requirements for contaminant sampling under the new AWQS); the analysis does not quantify other potential costs savings such as reduced costs for assessments and correction actions (reductions in false-positive test results would presumably reduce the incidence of unwarranted assessments).

Mines

Because mines are not necessarily associated, locationally or otherwise, with water treated for household consumption, Microbiological Contaminants are likely to be minimal compared with discharge systems that have an urban connection.

The 35 permittees operating mining facilities can be quite complex, potentially involving multiple water control structures (dams, retention areas, etc.) in conjunction with treatment processes. The concentrate leach process for extracting copper, a common practice in Arizona, is also water-intensive.

Industrial Facilities

This category of permittee is generally processing wastewater generated from an industrial process. Consequently, water treatment technology options are partially dictated by the particular type of waste created through the industrial activity. For some industrial processes, water use will involve treatments similar to those for households, therefore microbiological contamination would potentially be an issue; but other industrial processes will have minimal or no connection to microbiological contamination. The estimated number of industrial wastewater processing permittees is 56.

Wastewater Treatment Plants

The 343 permittees in this category are generally treating wastewater from typical municipal/urban-type sources, and so will typically have significant potential for microbiological contamination. Key subcategories in this group are listed below and provide a sense of the range of activities to which treatments are being applied. Some of these are tied to municipalities, and some are treating waste streams from planned communities, RV parks, correctional institutions, military installations, or similar developments that may be remote from or otherwise not connected to a central wastewater treatment collection and processing system.

- City/Town; Other Urban (subdivisions, single-purpose facilities such as schools)
- Hospitality/Travel/Recreation
- Military Base
- Prison/Jail
- Water Recharge, Other Processing

Rate payers in municipal systems (community water systems (CWSs))

Private citizens and businesses could potentially benefit from reduced user fees for wastewater processing, based on reduced costs to permittees under the revised AWQS. However, these benefits are likely to be minimal (given the relatively small cost savings on a per-system basis).

Small businesses as a segmented category

(See also subsection F below, addressing the probable effects of the proposed rulemaking on small businesses.) Cost burdens on small businesses will tend to be proportionately greater than for large businesses. Not only are they less likely to have specific expertise needed to meet proposed modified standards in-house, but also small businesses tend to be disadvantaged because

treatment costs generally decline as the scale (processing capacity) of a processing facility increases, so larger processing facilities can process wastes at a smaller unit cost.

ADEQ

ADEQ may need additional staff or staff time to address advanced treatment processes and related testing, etc. However, any such costs should be covered by fees paid by permittees for ADEQ services.

***Benefits to Stakeholders*:**

Private well users (and CWSs users)

The relevant affected group for this benefit consists of consumers of permittee-treated water that ends up in water supply chains. There are two segments to the benefiting stakeholders:

1. Some Community water systems (CWSs, or municipal water treatment utility operators), for systems in which groundwater is a water source, along with customers of those water utilities. These stakeholders are likely to jointly benefit from reduced sampling requirements and costs, with cost savings presumably passed on to customers, because groundwater quality has improved due to permittees' actions in meeting revised AWQS.
2. The population served by private wells, where there is no intermediary utility processing their water for consumption. This affected group benefits from diseases forgone due to water quality standards related to Microbiological Contaminants.

The first segment is addressed below under the section *Community water systems (CWSs) and their clientele.*

Segment 2. As more fully documented in the Matrix Report, one major purpose of fecal pollution detection is to identify the presence of pathogens related to fecal waste sources and potential health risks (from the many bacterial, protozoan, and viral enteric pathogens that can cause diseases). Water quality monitoring to detect fecal pollution usually applies microbial fecal indicators to represent numerous potential pathogens.

Based on available time series data from ADHS and CDC, the Matrix report estimates that the AWQS would create the following benefits in terms of prevented illnesses and deaths:

- Prevention of 80 cases of illness per year
- Prevention of 0.3 deaths per year

Community water systems (CWSs) and their clientele

This affected group (segment 1 as noted above) includes a portion of customers of municipal or water utility water systems. Estimates of this segment of the population, served by water sources that included groundwater, were derived from data at the Arizona Department of Water Resources website (https://www.azwater.gov/ama/ama-data) which gave quantities of water use by municipal and other user types, by source, including groundwater, along with populations served by various categories of providers. An estimated 2.04 million Arizonans would be affected in this way (by both existing and proposed AWQS).

State cost savings

The proposed AWQS would potentially create incremental health benefits compared to existing policy by allowing for more rapid identification of contamination (and therefore more proactive containment of potential disease outbreaks). Related to these potential health benefits, the proposed AWQS would potentially result in some reduction in state-supported medical costs.

E. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking:

General:

As permittees would be subject to more efficient sampling requirements under the proposed AWQS, the need for employment related to sampling and sample analysis would potentially decrease somewhat. In this EIS, this effect is simulated through the RIMS II modeling system described, as applied to this analysis (see next subsection below entitled "Regional Input-Output Modeling System (RIMS) Model Explanation"). Summarized results of the modeling process are tabulated below. Unless noted otherwise, results represent the low end of estimates where a range of potential annualized costs has been given in subsection D, above, to avoid potential confusion and overstatement related to this impact measure. The model translates expected annualized costs to employment and earnings based on relationships of those elements within the industry category that most closely matches that of the permittees (and is documented within the RIMS II system – NAICS code 2213: Water, sewage, and other systems). In the summary of the model as tabulated below for the contaminant of Microbiological Contaminants, direct employment and earnings resulting from permittees' investment in equipment are shown separately from the total multiplier (direct plus secondary) job-generating effects of this investment.

RIMS II modeling outputs and key input factors	
Annualized Costs (with financing etc.)/Increased "Output"	($881,923)
Jobs Per Million Dollars in Output	1.80
Earnings Per Dollar of Output	$0.17
New Wastewater Treatment Direct Jobs Created	(1.59)
New Annual Earnings for Direct Jobs Created	($148,229)
Total New Jobs (Direct + Secondary)	(4.87)
Effective Income Tax Rate	2.1%
Estimated Total Annual State Income Taxes (Direct and Secondary)	($6,732)

Source: RIMS II model for Arizona; ADEQ & consultant.

Regional Input-Output Modeling System (RIMS) Model Explanation:

This subsection discusses the Regional Input-Output Modeling System (RIMS II - As provided by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce) modeling analysis supporting the jobs-related economic impact of the proposed wastewater treatment investments / expansions in the State of Arizona. All impacts estimated through this analysis are provided

for the statewide level of geography and are not intended to estimate impacts for sub-state geographic areas (e.g., metropolitan statistical area [MSA], county, etc.). Results of these analyses are shown in Parts E (employment) and G (state taxes) of the document.

The analysis assumes the investments to upgrade the wastewater facilities will include installing new wastewater-specific equipment (which may also include expanding the size of the facility, although that is not addressed in this analysis), which will increase the productive capacity of these wastewater facilities. For the purposes of this analysis, the "productive capacity" is assumed to be the annualized equivalent of capital investments (and additional operating costs would also be part of this, and such costs are included in the analysis where available). Cost (and benefit) figures shown in this document are annualized, having been calculated as such by the original data providers, generally from EPA and the Matrix Report.

The annualizations generally were based on assumptions of the payback of proposed investments having a 20-year lifespan (and an installation period was sometimes included) and an annual interest rate of 7.0%. ADEQ and its consultant further assumed that wastewater treatment plants' revenues (such as user fee increases) would increase by commensurate amounts to cover the annualized costs of the proposed improvements. This increase in revenue ("Output") allows ADEQ and its consultant to apply final-demand multipliers to estimate the number of new jobs and earnings (associated with these jobs) in the state that would result from the proposed investments. The RIMS II model generates economic multipliers for jobs, earnings, and output, based on the industry NAICS code 2213: Water, sewage, and other systems, for direct, indirect, and household (induced) effects. Along with the increases in employment and earnings generated by the proposed investments, the new earnings would also generate state income tax revenue for the State. Based on data from the BEA and the Arizona Department of Revenue (ADOR), ADEQ and its consultant derived an estimated effective state income rate of 2.1% (The State flat income tax rate, at the time this EIS was prepared, is 2.5%. The net income tax rate of 2.1% reflects deductions for the average wage and salary worker and other adjustments).

F. A statement on the probable impact of the rules on small business:

Economic costs to comply with AWQSs that are borne by small businesses may be considerable. Small businesses tend to be disadvantaged because treatment costs generally decline as the scale (processing capacity) of a processing facility increases. Besides the potential need for additional personnel or additional training, permittees may need to hire technical expertise on a consulting basis to determine the most appropriate and cost-effective treatment technologies that apply to any one permittee's particular conditions.

1. An identification of the small businesses subject to the rules:

Small businesses constitute a distinct category for which the impacts of rulemaking need to be considered. For this EIS and those addressing the other contaminants, impacted small businesses will be wastewater facility permittees meeting the following criteria:

- According to A.R.S. 41-1001 and as applied in this EIS, "'Small business' means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than $4 million in its last fiscal year."
- ADEQ and its consultant used a database of permittees, which had partial flow data, to screen permittees for this measure. Lacking further operational-level data for permittees, ADEQ and its consultant also screened permittees to identify "businesses" as opposed to governmental entities, and small businesses, constituting those that did not appear to be associated with a larger entity.

Based on the screening processes described above, in which the number of permittees that are also small businesses is estimated with limited precision, ADEQ and its consultant estimated that small businesses make up just over 30% of permittees, or 135 entities in total. As noted previously in this EIS, not all of these facilities will necessarily need to incur costs to meet the proposed AWQS.

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

Permittees small and large have systems already in place for the basic administrative and other managerial duties related to compliance to existing AWQSs. To the extent that is the case, any additional duties would constitute an expansion of existing processes rather than new systems. Also, there is a possibility that permittees would need to hire a consultant for technical expertise to select and integrate new technology into existing treatment processes.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

A.R.S. § 41-1035 Methods	ADEQ Decision to use or not use and reason
1. Establishing less stringent compliance or reporting requirements in the rule for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243). ADEQ does allow permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS (*see* Chapter 9 NFRM).
2. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243). ADEQ does allow permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS (*see* Chapter 9 NFRM).
3. Consolidating or simplifying the rule's compliance or reporting requirements for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243).

A.R.S. § 41-1035 Methods	ADEQ Decision to use or not use and reason
4. Establishing performance standards for small businesses to replace design or operational standards in the rule	Not used. In administering the APP program, performance, design and operational standards are all built into a review of a facility's employment of the best available demonstrated control technologies, processes, operating methods or other alternatives. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243).
5. Exempting small businesses from any or all requirements of the law	Not used. In administering the APP program, all persons discharging a pollutant into the environment must obtain an APP permit under A.R.S. § 49-241, unless exempted through A.R.S. § 49-250. Eliminating small business from the scope of the APP program is not supported by statute and would undermine the purpose of the program, to protect the state's aquifers to a drinking water standard (*see* A.R.S. §§ 49-223, 224, 241, 243).

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

Potential savings could accrue to community water systems due to reduced Microbiological Contaminants in the groundwater under the proposed AWQS, and such savings could be substantial and would presumably be passed on to customers. As many as 1.8 million Arizonans could potentially be affected.

G. A statement of the probable effect on state revenues:

To the extent that costs to upgrade treatment facilities result in higher user fees, additional fees could be taxable within the state's transaction privilege tax system. ADEQ and its consultant have not attempted to quantify any such effect. Investments in treatment technology and processes by permittees could result in additional hires to operate equipment, which in turn would generate additional employment through indirect and induced (secondary) economic activity, and subsequent tax revenues. Employment effects are addressed in subsection D, above. As noted therein, estimated state taxes for direct and secondary employment generated by investments in Microbiological Contaminants technology (using the low end of costs where ranges are given) are approximately $6,700.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

The controlling statute at A.R.S. § 49-223 does not allow ADEQ to conduct any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking. It simply requires ADEQ to open a rule making docket pursuant to A.R.S. § 41-1021 for adoption of a new or adjusted MCL as an AWQS within one year of the MCL's establishment or adjustment.

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

Reference material used in this EIS comes mainly from the *MCL Assumptions Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support* prepared by Matrix New World Engineering, Land Surveying and Landscape Architecture, PC (Matrix Report) for ADEQ in 2023 (*see* Heading No. 8 above for citation). Other reference material was used to a lesser extent (*see* Heading No. 8 above). ADEQ and its consultant also made selective use of EPA documents addressing

specific contaminants referenced extensively by the Matrix Report. EPA documentation is the typical standard for assumed legitimacy with respect to actions assessed and implemented by ADEQ. ADEQ and its consultant reviewed the Matrix Report and engaged with Matrix principals in direct consultation regarding aspects of their documentation in the preparation of this EIS. EPA documentation was generally available online.

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

R18-11-406(F) - Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

- Replaced "presence or absence" with "detection or non-detection" as the latter terms reference the minimum detection level (MDL) of the sampling instrument or method which is more apt, more appropriate than the previous terms.

R18-11-406(F)(1) - Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

- Replaced "of" with "for" three times for non-substantive, semantic purposes.
- Replaced "exceedance" with "detection" in order to align with the change to subsection (F) explained above.

R18-11-406(F)(2) - Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

- Replaced "of" with "for" three times for non-substantive, semantic purposes.
- Replaced "exceedance" with "detection" in order to align with the change to subsection (F) explained above.

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

Comment 1: Utility

Concerning the proposed alternative AWQS for Microbiological Contaminants, our current APP monitoring table utilizes the unit Most Probable Number (MPN) with a limit of (< 2.2) for *E. coli* monitoring. Will the units stay the same with this change in standard? Will Presence / Absence (P/A) be installed instead?

ADEQ Response 1:

ADEQ appreciates the comment. No, P/A will not be used for the *E. coli* indicator parameter utilized in the proposed AWQS for microbiological contaminants. Rather, detection or non-detection of either Fecal Coliform or *E. coli* is used. This means, for *E. coli*, "detect / non-detect" is likely to appear in the applicable APP monitoring tables along with a footnote stating that "non-detect" means a result of < 2.2 MPN or < 1 CFU, depending on the unit used in the permit.

Comment 2: Utility

If there is significant opposition to any of the parameters does ADEQ then not proceed with that particular parameter?

ADEQ Response 2:

ADEQ appreciates the comment. The answer to that question is – not necessarily. "Substantial Opposition" is a term defined in

A.R.S. § 49-223(A) as, "... information submitted to the director that explains with reasonable specificity why the [MCL] is not appropriate as an [AWQS]." Upon receipt of "substantial opposition", the Department must conduct a statutorily delineated procedure that leads to a determination of whether the MCL is "appropriate" as an AWQS. More information on that process can be found here: https://www.azdeq.gov/rulemaking/awqs-update/resources . ADEQ has received substantial opposition from stakeholders on the proposal to adopt the Microbiological Contaminants MCL as an AWQS (*see* heading No. 7, subsection "Substantial Opposition" for more information).

Comment 3: Concerned Citizen

If there are any lab people on the call, can they answer if there are sampling methods associated with the proposed Microbiological Contaminants AWQS that will provide a presence/absence (P/A) result for fecal coliforms? I know P/A exists for Total Coliforms and *E. coli*. I found this statement in a Google search, "*[t]he P/A tests for the presence/absence of indicator organisms in a water sample. This is usually observed in the form of a color change after an incubation period. Two common P/A tests are: H2S-producing bacteria P/A test Total Coliform and E. coli P/A Test.*" I am not sure P/A exists for fecal coliform.

ADEQ Response 3:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed Microbiological Contaminants AWQS, ADEQ has revised the rule language, essentially swapping the "absence / presence" binary with "detection / non-detection". Under the new language, any *E. coli* detection result from routine sampling would need to be followed by a repeat *E. coli* sample within 5 days of becoming aware of the result. A repeat sample that results in a detection of *E. coli* would constitute a violation of the Microbiological Contaminants AWQS. Additionally, ADEQ conducted some research which shows that Eurofins Scientific laboratory testing services offers a Fecal Coliform testing method (SM 9222D) separately from the EPA Total Coliform method (EPA 1604). Both methods have an 8-hour holding time. Source: https://www.eurofinsus.com/media/447768/appendix-d-section-5-attachment-holdtime-container-list_2016-july.pdf.
Also, Standard Method 9222D is a membrane filtration test for fecal coliforms and is offered by local labs in Arizona.
This method can detect fecal coliforms from 20 - 60 CFU/100 mL. Source: https://www.nemi.gov/methods/method_summary/5587/. Also, please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 4: Utility

We support the proposed alternate AWQS for microbiological contaminants with the following minor edits to the language:

1. If a routine sample ~~of Fecal Coliform~~ is positive for Fecal Coliform, a 100-milliter repeat sample ~~of either Fecal Coliform or *E. coli*~~ shall be taken within five days of becoming aware of the exceedance for analysis of Fecal Coliform or *E. coli*.

2. If a routine sample ~~of *E. coli*~~ is positive for *E. coli*, a 100-milliter repeat sample ~~of *E. coli*~~ shall be taken within five days of becoming aware of the exceedance for analysis of *E. coli*…

ADEQ Response 4:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed Microbiological Contaminants AWQS, ADEQ has revised the rule language, essentially swapping the "absence / presence" binary with "detection / non-detection". Under the new language, any Fecal Coliform detection result from routine sampling would need to be followed by a repeat Fecal Coliform or *E. coli* sample within 5 days of becoming aware of the detection result. A repeat sample that results in a detection of either parameter would constitute a violation of the Microbiological Contaminants AWQS. The Fecal Coliform indicator parameter is understood by ADEQ to encompass many species of fecal-derived, potentially harmful species therein; whereas, the *E. coli* parameter is a single, potentially harmful species. *E. coli* is used in this setting as an indicator; meaning that if it is detected in a sample, other potentially harmful species are likely to be present as well. Because the Fecal Coliform parameter encompasses within its scope *E. coli* and a number of other fecal-derived species, ADEQ believes an *E. coli* repeat sample is appropriate if either Fecal Coliform or *E. coli* were sampled routinely. Please note that for the *E. coli* indicator parameter, “detect / non-detect” is likely to appear in the applicable APP monitoring tables along with a footnote stating that “non-detect” means a result of <2.2 MPN or <1 CFU, depending on the unit used in the permit. Additionally, ADEQ conducted some research which shows that Eurofins Scientific laboratory testing services offers a Fecal Coliform testing method (SM 9222D) separately from the EPA Total Coliform method (EPA 1604). Both methods have an 8-hour holding time. Source: https://www.eurofinsus.com/media/447768/appendix-d-section-5-attachment-holdtime-container-list_2016-july.pdf.
Also, Standard Method 9222D is a membrane filtration test for fecal coliforms and is offered by local labs in Arizona.
This method can detect fecal coliforms from 20 - 60 CFU/100 mL. Source:
https://www.nemi.gov/methods/method_summary/5587/. Also, please find a table in Heading No. 7, subheading “Sampling and Analytical Methodologies” explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 5: Interest Group

We are deeply concerned about the proposed deviations from U.S. Environmental Protection Agency (EPA) standards for uranium, *E. coli*, and other pollutants. Arizona’s aquifers are invaluable resources that sustain drinking water supplies, ecological systems, and cultural heritage. Protecting these resources with robust, science-based standards is essential to ensure public health and environmental sustainability. We urge ADEQ to adopt the most protective standards possible by aligning AWQS with EPA’s maximum contaminant levels (MCLs) and guidelines for all pollutants under consideration, including arsenic, uranium, and *E. coli*. Prolonged delays in adopting federal standards leave Arizona communities vulnerable to contamination and illness.

ADEQ Response 5:

ADEQ appreciates the comment. There are seven (7) MCLs proposed for adoption as AWQSs within the scope of the collective "AWQS Update" rulemaking. All MCLs except for Microbiological Contaminants are being adopted as AWQSs verbatim. This includes uranium cited by the commenter.

For the alternative Microbiological Contaminants AWQS, ADEQ believes the proposed AWQS is equally effective as the corresponding MCL, but deviates from the MCL's employment of "Total Coliform" as an indicator parameter, utilizing the more precise "Fecal Coliform" and "*E. coli*" indicator parameters instead. Pursuant to A.R.S. § 49-223, ADEQ received "substantial opposition" to adoption of the Microbiological Contaminants MCL, mostly concerning the high numbers of "false positive" samples of Total Coliform that would have tested negative had Fecal Coliform or *E. coli* been the indicator parameter used in the standard instead. Details of the hardships encountered by the regulated community include hundreds of hours of labor in verification or repeat sampling. This, along with shipping and laboratory testing costs, amount to tens of thousands of dollars in unnecessary spending.

Given the substantial opposition received on the Microbiological Contaminants MCL, ADEQ was prompted to follow the procedure in A.R.S. § 49-223(A) for determining whether the Microbiological Contaminants MCL is appropriate as an Arizona state AWQS. ADEQ used its newly developed "standard work" as explained in Heading No. 7 above. ADEQ developed this "standard work" procedure for conducting an "appropriateness" determination pursuant to A.R.S. § 49-223(A). The "standard work" can be reviewed on ADEQ's website at https://www.azdeq.gov/rulemaking/awqs-update/resources. Concerning the Microbiological Contaminants MCL, ADEQ's review of EPA's assumptions on technology, costs, sampling and analytical methodologies and public health risk reduction resulted in significant concern for the costs, analytical methods and public health risk reduction assumptions in particular. ADEQ found that the MCL at 40 C.F.R. 141.63(c) is simply inappropriate as-is for verbatim adoption as an AWQS and applicability upon the facilities regulated by Arizona's APP program, such as Wastewater Treatment Plants, Mines and Industrial facilities. One of the main reasons is that the MCL is designed for Public Water Systems, not APP type facilities. Specifically, this is because the Microbiological Contaminants MCL requires routine sampling of both Total Coliform and *E. coli* parameters. Thereafter, upon a positive result of either Total Coliform or *E. coli*, a repeat sample is required for both parameters. Violation occurs when a positive result is obtained from an *E. coli* repeat sample that occurs after a total coliform-positive routine sample. Violation also occurs when a positive result is obtained from a Total Coliform repeat sample that occurs after an *E. coli*-positive routine sample. ADEQ found that the Total Coliform parameter is a very general indicator of coliforms in a sampling well, many of which occur naturally and are not indicative of a threat to human health. In particular, Total Coliform is too broad of an indicator parameter to signal fecal coliform health concerns in an APP regulatory program setting. On the contrary, ADEQ has found that Fecal Coliform and *E. coli* are more exacting indicators or surrogates of fecal coliforms, which are dangerous to human health. Additionally, when a permittee samples for Total Coliform and receives a

positive result, more often than not, the result is what is known as a “false positive”, signaling non-health threatening coliforms in a sample. ADEQ notes that false positives have led to a number of permittees having to perform accelerated or more frequent monitoring intervals pursuant to the permits unnecessarily, which have associated costs.

After determining that the MCL for Microbiological Contaminants was inappropriate as an AWQS, ADEQ followed the “standard work” procedure for alternative AWQS development and establishment. ADEQ is proposing with this final rule an appropriate alternative Microbiological Contaminants AWQS based upon the detection or non-detection of either Fecal Coliform or *E. coli* in a 100-milliliter sample (depending on the requirement of the permit). Upon a detection result for a routine Fecal Coliform sample, a repeat sample of either Fecal Coliform or *E. coli* with a “detect” result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Upon a detection result for a routine *E. coli* sample, a repeat sample for *E. coli* with a “detect” result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Through research and consultation, ADEQ determined that *E. coli* is a better indicator of fecal contamination than total or fecal coliforms and that Total Coliform positive samples are known to result in a “false positive”. A “false positive” in a Total Coliform sampling context is when a sample result is positive, but the cause of the positive result indicates a type of total coliform that does not originate in fecal contamination, is not dangerous to human health and occurs naturally. A common “false positive” is when a positive Total Coliform sample is actually indicating rust in a well. Additionally, ADEQ considered the language of 40 C.F.R. 141.63(c), the state of existing Individual APP and Reclaimed Water permits, the Department’s mission to protect human health and the environment, as well as costs to permittees, analytical methodologies and public health risk reduction. Ultimately, ADEQ determined that shifting away from Total Coliform as an indicator parameter for an alternative Microbiological Contaminants AWQS and moving towards Fecal Coliform and *E. coli is appropriate*. Specifically, Fecal Coliform and *E. coli* are more exacting at indicating a threat to human health. The decision to configure the AWQS proposal to allow permittees to utilize Fecal Coliform or *E. coli* was due to the fact that protecting human health is not diminished under any of the possible orientations and existing permittees are sampling for both parameters already in some cases. Allowing permittees to keep those sampling traditions and optimize a sampling orientation from a cost effective perspective are all factors that led to ADEQ’s proposal.

Comment 6: Interest Group

E. coli and Fecal Coliform Standards. *E. coli* and fecal coliform serve as critical indicators of fecal contamination and pathogen presence in groundwater. EPA’s guidelines for these indicators are based on decades of rigorous research and are designed to minimize risks of gastrointestinal illness and waterborne disease outbreaks. We strongly oppose ADEQ’s proposal to adopt alternative standards for *E. coli* and fecal coliform that deviate from EPA guidelines. Such deviations are highly problematic for the following reasons:

1. Inadequate Public Health Protection: ADEQ's proposed alternative standards would allow higher concentrations of *E. coli* and fecal coliform in groundwater than EPA's established limits for recreational and potable water. This could significantly increase the risk of pathogen exposure, particularly for communities relying on groundwater for drinking and recreation.
2. Contradiction of Established Science: EPA's standards are grounded in decades of epidemiological studies that demonstrate the link between elevated *E. coli* levels and disease outbreaks. Any deviation undermines the credibility and effectiveness of Arizona's water quality protections.
3. Environmental and Ecological Risks: Groundwater contamination often affects interconnected surface water systems. Weakening *E. coli* standards could exacerbate contamination in rivers, streams, and reservoirs, threatening aquatic ecosystems and biodiversity. As Arizona's aquifers often discharge into surface waters, contaminants like fecal coliform can migrate from groundwater to surface water, compounding the public health risks and damaging ecosystems. This connectivity between groundwater and surface water underscores the importance of robust water quality standards that address all potential pathways for contamination.
4. Economic and Social Costs: Relaxed standards could result in increased public health expenses, decreased trust in water quality management, and greater costs associated with contamination events.

We strongly urge ADEQ to align *E. coli* and fecal coliform standards with EPA's protective guidelines. Ensuring consistency with federal standards will bolster public confidence in Arizona's water quality management and safeguard both human and ecological health.

ADEQ Response 6:

ADEQ appreciates the comment. Generally, please reference the response to Comment No. 5 above. It is important to understand that ADEQ's adoption of an alternative AWQS from the Microbiological Contaminants MCL deviates only slightly from the MCL and remains equally as protective. The MCL requires routine sampling of both Total Coliform and *E. coli* parameters. Thereafter, upon a positive result of either Total Coliform or *E. coli*, a repeat sample is required for both parameters. Violation occurs when a positive result is obtained from an *E. coli* repeat sample that occurs after a total coliform-positive routine sample. Violation also occurs when a positive result is obtained from a Total Coliform repeat sample that occurs after an *E. coli*-positive routine sample. ADEQ found that the Total Coliform parameter is a very general indicator of coliforms in a sampling well, many of which occur naturally and are not indicative of a threat to human health. In particular, Total Coliform is too broad of an indicator parameter to signal Fecal Coliform health concerns in the APP regulatory program setting. On the contrary, ADEQ has found that Fecal Coliform and *E. coli* are more exacting indicators or surrogates of fecal coliforms, which are dangerous to human health. Additionally, when a permittee samples for Total Coliform and receives a positive result, more often than not, the result is what is known as a "false positive", signaling non-health threatening coliforms in a sample. ADEQ notes that false positives have led to a

number of permittees having to perform accelerated or more frequent monitoring intervals pursuant to the permits unnecessarily, which have associated costs.

With this final rule, ADEQ is establishing an appropriate alternative Microbiological Contaminants AWQS based upon the detection or non-detection of either Fecal Coliform or *E. coli* in a 100-milliliter sample (depending on the requirement of the permit). Upon a detection result for a routine Fecal Coliform sample, a repeat sample of either Fecal Coliform or *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Upon a detection result for a routine *E. coli* sample, a repeat sample for *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants.

1. ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective of public health and is oriented more appropriately for the AWQS setting. Again, the MCL utilized indicator parameters Total Coliform and *E. coli* to be routinely sampled; then, upon a positive result, both repeat sampled. Upon a repeat positive, the MCL has been formally violated. Compare with the alternative AWQS, which utilizes indicator parameters Fecal Coliform and *E. coli* to be routinely sampled; then, upon a detect result, a repeat sample of one or the other parameter is required, depending on the permit. Upon a repeat "detect" result, the AWQS has been formally violated. ADEQ notes that the Fecal Coliform parameter is *more* exacting than Total Coliform when it comes to identifying a risk to public health.
2. ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective of public health and is oriented more appropriately for the AWQS setting as is demonstrated in the previous paragraph. Additionally, ADEQ engaged experts composed of epidemiologists and toxicologists, among other professionals to assist in the process of reviewing EPA's MCL development assumptions. Following statutory mandate and careful consideration of the totality of the appropriate considerations, ADEQ determined that a slight deviation from the MCL was appropriate given the statutory mandate. In making this determination, ADEQ considered the language of the MCL at 40 C.F.R. 141.63(c), the state of existing Individual APP and Reclaimed Water permits, the Department's mission to protect human health and the environment, as well as costs to permittees, analytical methodologies and public health risk reduction. Ultimately, ADEQ determined that shifting away from Total Coliform as an indicator parameter for an alternative Microbiological Contaminants AWQS and moving towards Fecal Coliform and *E. coli* is appropriate, pursuant to A.R.S. § 49-223. Specifically, indicator parameters Fecal Coliform and *E. coli* are more exacting at indicating a threat to human health. The decision to configure the AWQS proposal to allow permittees to utilize Fecal Coliform or *E. coli* was due to the fact that protecting human health is not diminished under any of the possible orientations and existing permittees are sampling for both parameters already in some cases. Allowing permittees to keep those sampling traditions and optimize a sampling orientation from a cost effective perspective are all factors that led to ADEQ's proposal.

3. As is stated and explained above, ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective as the corresponding MCL and is oriented more appropriately for the AWQS setting.

4. As is stated and explained above, ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective as the corresponding MCL and is oriented more appropriately for the AWQS setting.

In summary, ADEQ's alternative Microbiological Contaminants AWQS is oriented in a similar and equally protective manner as the corresponding MCL. Also, the alternative Microbiological Contaminants AWQS is oriented more appropriately for the AWQS setting. ADEQ believes the alternative Microbiological Contaminants AWQS is appropriately protective of public health and the environment and conforms to the mandate at A.R.S. § 49-223.

Comment 8: Utility

Overall, we commend and agree with ADEQ's approach, and anticipate efficiencies with the microbiological contaminants AWQS replacing indicator parameter Total Coliform with *E. coli*.

ADEQ Response 8:

ADEQ appreciates the comment.

Comment 9: Utility

A non-detection of *E. coli* should be specified as < 2.2 Most Probable Number (MPN)/100 ml sample. This threshold is specified on all permits.

ADEQ Response 9:

ADEQ appreciates the comment. For *E. coli*, "detect / non-detect" will appear in the applicable APP monitoring tables along with a footnote stating that "non-detect" means a result of < 2.2 MPN or < 1 CFU, depending on the unit used in the permit.

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

There are no other matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking.

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

This rulemaking does not create a requirement for a permit.

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

Federal law is not applicable to the subject matter of the rule.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the

competitiveness of business in this state to the impact on business in other states:

Not applicable.

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

Not applicable.

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

Not applicable.

16. The full text of the rule follows:

Rule text begins on the next page.

TITLE 18. DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY STANDARDS

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

Section

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

Section

R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

A. No Change

B. No Change

C. No Change

D. No Change

E. No Change

F. Aquifer water quality standard for microbiological contaminants. The aquifer water quality standard for microbiological contaminants is based upon the ~~presence or absence~~ detection or non-detection of ~~total coliforms~~ either Fecal Coliform or *E.coli* in a 100-milliliter sample, depending on the requirement in the permit. ~~If a sample is total coliform-positive, a 100-milliliter repeat sample shall be taken within two weeks of the time the sample results are reported. Any total coliform-positive repeat sample following a total coliform-positive sample constitutes a violation of the aquifer water quality standard for microbiological contaminants.~~

1. If a routine sample for Fecal Coliform results in a detection, a 100-milliliter repeat sample of either Fecal Coliform or *E.coli* shall be taken within five (5) days of becoming aware of the detection. A repeat sample for Fecal Coliform or for *E.coli* resulting in a detection following a routine Fecal Coliform sample that resulted in a detection constitutes a violation of the aquifer water quality standard for microbiological contaminants.
2. If a routine sample for *E.coli* results in a detection, a 100-milliliter repeat sample for *E.coli* shall be taken within five (5) days of becoming aware of the detection. A repeat sample for *E.coli* resulting in a detection following a routine *E.coli* sample that resulted in a detection constitutes a violation of the aquifer water quality standard for microbiological contaminants.

G. No Change

AWP NFRM Economic Impact Statement (EIS) - 18 AAC 11 - Microbiological Contaminants

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

This Economic, Small Business, and Consumer Impact Statement (EIS) has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this EIS has the scope of an amendment to R18-11-406(F) in Title 18, Chapter 11, Article 4 of the Arizona Administrative Code (A.A.C.) This rulemaking action is being taken by the Arizona Department of Environmental Quality (ADEQ) in order to adopt an adjustment to the Safe Drinking Water Act Maximum Contaminant Level (MCL) for Microbiological Contaminants as an Aquifer Water Quality Standard (AWQS) pursuant to Arizona Revised Statutes (A.R.S.) § 49-223. A.R.S. § 49-223 mandates that within one year after the EPA establishes or adjusts an MCL, the ADEQ Director shall open a rule making docket pursuant to A.R.S. § 41-1021 for adoption of the MCL as an AWQS. As is detailed in Section 7 of this Notice of Final Rulemaking (NFRM), ADEQ conducted the rulemaking in conformance with the statutory administrative procedure in A.R.S. Title 41, Chapter 6, and is hereby submitting this EIS, in conformance with the requirements of A.R.S. §§ 41-1055 and 41-1035. ADEQ has determined that this rulemaking will impact the regulated community, ADEQ customers, the environment, and may impact human health. This EIS was developed to evaluate the rulemaking's impacts and compare the benefits and detriments of adopting an alternative AWQS to the corresponding MCL. The AWQSs are designed to protect the State's aquifers, all of which have been designated for drinking water-protected use (*see* A.R.S. § 49-224(B)). The AWQSs are primarily used in ADEQ's Aquifer Protection Permit program (APP), and (to a lesser extent) in some remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), and elsewhere.

B. A summary of the EIS:

General & Specific Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include APP permittees, such as Mines, Industrial Facilities and Wastewater Treatment Plants, as well as rate payers to municipal drinking water systems, ADEQ, the general public and the environment. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the Microbiological Contaminants AWQS rulemaking.

Costs to permittees to meet the new AWQS for Microbiological Contaminants are None to Minimal. In fact, ADEQ expects cost savings in many cases. The proposed AWQS for microbiological contaminants does not propose a numeric change in water quality standards, but instead proposes to implement more efficient/effective monitoring protocols. In this regard, the EIS generally follows a key premise of the Matrix Report: that the primary cost impact of the proposed AWQS would be a *reduction* in permittee sampling costs due to the reduced incidence of false-positive routine testing, repeat tests and accelerated monitoring thereafter. Consistent with the Matrix Report, the EIS estimates the cost *savings* related to more efficient sampling protocols. The EIS follows the format of the cost analysis in the Matrix Report, which evaluates *incremental* changes (reductions) in permittee costs compared to baseline conditions (i.e., costs under the current AWQS compared to costs under the proposed AWQS).

In addition to creating cost savings for permittees, the proposed AWQS would potentially generate economic benefits in terms of a reduction in cases of illness and death associated with microbiological contamination. In particular, the improved sampling protocols are expected to allow for quicker identification of incidents of contamination, allowing for more timely implementation of corrective measures (according to ADEQ staff, the higher incidence of false-positive test results under the existing protocols – and the associated need for retesting – can result in delays in identifying actual cases of contamination, potentially resulting in disease outbreaks that could otherwise be contained sooner). These potentially significant health benefits are not quantified in the EIS, as ADEQ and their consultant do not have sufficient information to develop such estimates. However, following the methodology of the Matrix Report, the EIS provides *general* estimates of the annual economic benefits attributable to regulation of Microbiological Contaminants. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).

Costs. Whereas permittees will continue to incur costs (primarily for routine and repeat sampling) to comply with the new/proposed AWQS, these costs are expected to *decrease* in comparison to the costs of complying with the current AWQS. These potential cost savings are attributable to the expectation that the routine sampling and repeat sampling requirements under the new AWQS would result in fewer "false positive" samples, thereby reducing the need for follow-up sampling and unwarranted corrective actions for facilities falsely deemed to be non-compliant. Statewide, the cost savings to permittees are estimated to range from $882,000 to $1.7 million annually (in 2023 dollars).

Benefits. Based on available time series data from ADHS and CDC, the Matrix Report estimates that regulation of Microbiological Contaminants results in 80 fewer cases of illness and 0.3 fewer deaths per year (statewide). In monetary terms, these prevented illnesses and deaths represent annual statewide benefits of $3.5 million per year (in 2023 dollars).

Specific impacts

From a total 434 Aquifer Protection permittees in Arizona, it is estimated (based on the Matrix Report) that 153 to 300 permittees annually are required to sample for Microbiological Contaminants. This subset of 153 to 300 permittees would be the impacted stakeholder group that would potentially experience cost savings under the proposed AWQS. In Arizona, the potentially affected benefiting population consists primarily of private well users throughout the state (estimated at 350,000 persons in total), although some of these will be effectively excluded from the additional benefits of the higher AWQS because existing Microbiological Contaminant levels in some wells are already zero. Benefits in the form of cost savings could also accrue to community water systems and their clientele due to a reduction of Microbiological Contaminants in the groundwater, under the proposed AWQS. As many as 1.8 million Arizonans could be potentially affected in this way.

Stakeholder Process

ADEQ has conducted a number of general and specific stakeholder meetings concerning this rulemaking, including tribal listening sessions and rule language sessions with major industry associations and their counsel, representing a majority of the individual APP regulated parties. The dates of those events are as follows: 9/29/22, 6/8/23, 9/11//23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25 and others. A repository of stakeholder materials can be found published on ADEQ's dedicated AWQS Rulemaking website here: https://www.azdeq.gov/rulemaking/awqs-update/resources.

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

Costs to Stakeholders

Individual APP Permittees (hereinafter: "permittees") will be the primary bearers of costs associated with this rulemaking. Permittees are discussed under the following three categories:

- Mines, where treatment conditions can vary noticeably from typical urban waste processing.
- Industrial facilities, with treatment conditions that can vary according to the industrial processes involved.
- Wastewater Treatment Plants, including mostly those treating urban-related wastewater.

Other potential costs to stakeholders addressed include the following:

- Rate payers in municipal systems, where rates could conceivably increase to cover increased costs for expanded treatment.
- Regulated parties under ADEQ remediation programs such as WQARF and VRP (minimal impact).
- Some permittees are assumed to be small businesses, and are additionally addressed as a segmented category.
- ADEQ, although any additional staff efforts and other expenses associated with monitoring proposed expanded treatment requirements will generally be covered through permittees' fee increases.

Benefits to Stakeholders

Generally, the state and the constituents of the state benefit from this rulemaking through the protection of the aquifer resource as an asset for drinking water use both now and in the future, pursuant to statutory mandate at A.R.S. § 49-224. More specifically, ADEQ and its consultant have attempted to quantify the benefit of the rulemaking to the extent possible in terms of health benefits related to forgone diseases. In Arizona, the immediate health-affected population consists primarily of private well users throughout the state, under certain qualifying conditions. Private well water consumers are generally limited to areas where discharged water treatment contaminant levels would improve based on the proposed AWQSs.

Other benefit categories include the following:

- Community water systems (CWSs) and their clientele. Savings could accrue to CWSs due to reduced Microbiological Contaminants in the groundwater under the proposed AWQS. Any savings would presumably be passed on to customers.
- State costs, where some state-supported medical costs would decrease, with diseases forgone.

D. Benefit/Cost Analysis:

Not all permittees will be burdened with the requirement to alter their facility in order to come into compliance with the proposed AWQSs and thereby incur the related costs, for any one of the following reasons or combinations of reasons:

- Permittees' existing treatment methods/technologies are already adequate to meet the target standard;
- The contaminant in wastewater subject to treatment exists at a level below the proposed AWQS; and
- Ambient levels of the contaminant in groundwater exceed the proposed AWQS, in which case the permittee need only be held to a "no further degradation" standard (*see* A.A.C. R18-9-A205(C), A.R.S. § 49-243(B)(2) and (3)).

Cost impacts in this EIS relate primarily to potential cost *savings* to permittees due to the more efficient (and more effective) sampling protocols under the proposed AWQS. According to ADEQ's database of permittees, an estimated total of 434 permits are divided among the categories shown below:

Category	# Permittees
Mines	35
Industrial Facilities	56
Wastewater Treatment Plants	343
Total	**434**

Category	# Permittees
*Small Businesses as a segmented category	135

Key modeling factors used in this analysis are the following:

Factors	Key source references	Notes
Costs		
Total APP's	Matrix report, page 25	The Matrix Report evaluates two alternatives for a new AWQS: 1. ADEQ would adopt the EPA's MCL as the AWQS; or 2. ADEQ would develop and establish an appropriate alternative AWQS (for which the Matrix Report assumed that the routine and repeat samples would both be Fecal Coliform). Per direction of ADEQ staff, the EIS considers a proposed AWQS that would require testing *E. coli* for the routine sample, with all required repeat samples testing for *E. coli*. Where appropriate, the Matrix Report factors have been applied to the AWQS proposal considered in the EIS.
Type and number of facilities impacted by changes in AWQS	Matrix report, page 25	
Sampling frequency	Matrix report, page 25	
Coliform type(s) sampled	Matrix report (with updated assumptions provided by ADEQ staff)	
False-positive percentages by sample type	Matrix report, page 25	
Sampling costs by sample type	Matrix report, Chart 8	
Benefits		
Annual cases of illness and annual number of deaths related to microbiological contamination of drinking water in Arizona (these are assumed to be prevented by compliance with the AWQS and are therefore interpreted as "benefits" of the AWQS) – for purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS	Matrix report, page 24	Illnesses and deaths related to microbiological contamination of drinking water are assumed to be prevented by compliance with the AWQS and are therefore interpreted as "benefits" of the AWQS. For purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).
Average cost per case of illness caused by foodborne pathogens	Matrix report, page 25	
Value of statistical life (VSL)	Matrix report, page 25	
General		
Information about permittees by type of activity served, including size	APP Permittee Database	Categorizations of permittees and also the total number are as interpreted by ADEQ and consultant
Amounts in October 2023 $	https://data.bls.gov/cgi-bin/cpicalc.pl	

Approach to the EIS for Microbiological Contaminants. ADEQ and its consultant rely on estimates prepared by the authors of the "MCL Assumptions Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support", prepared by Matrix New World Engineering, Land Surveying and Landscape Architecture, PC. in 2023 ("Matrix Report") (*see* Heading No. 8 of this NFRM). This information was supplemented by the Matrix Report's source material (primarily from the EPA), which takes into account multiple factors affecting potential costs and benefits.

Health Risk Reduction (Benefits)

The EIS measures the economic benefits of the AWQS in terms of the monetized value of illnesses and deaths that would be prevented by compliance with the State's AWQS for Microbiological Contaminants. These calculations are based on the following steps:

- Estimate the annual number of cases of enteric disease that would occur in Arizona in the absence of effective AWQS for microbiological contaminants;
- Estimate the annual number of deaths that would result from outbreaks transmitted by water in Arizona in the absence of effective AWQS;
- Calculate the costs associated with treatment of estimated cases of enteric disease; and

- Calculate the monetary value of lives lost due to disease outbreaks transmitted by water (using "Value of Statistical Life" data).

Based on available time series data from ADHS and CDC, the Matrix Report estimates that the AWQS would create the following benefits in terms of prevented illnesses and deaths:

- Prevention of 80 cases of illness per year
- Prevention of 0.3 deaths per year
- Avoided costs of $2,397.76 per case of illness prevented
- Value of Statistical Life (VSL) of $11.1 million

Using the above factors, the Matrix Report calculates total benefits from the AWQS of $3.5 million per year. For purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).

The proposed AWQS would potentially generate economic benefits in terms of a reduction in cases of illness and death associated with microbiological contamination. In particular, the improved sampling protocols are expected to allow for quicker identification of incidents of contamination, allowing for more timely implementation of corrective measures (according to ADEQ staff, the higher incidence of false-positive test results under the existing protocols – and the associated need for retesting – can result in delays in identifying actual cases of contamination, potentially resulting in disease outbreaks that could otherwise be contained sooner). These potentially significant health benefits are not quantified in the EIS, as the consulting team does not have sufficient information to develop such estimates.

Cost Analysis

Consistent with the Matrix Report, the cost analysis provided in this EIS is based on the premise that the proposed AWQS would result in cost *reductions* (to permittees and the State) compared to the existing AWQS. The cost savings would result from revised sampling protocols intended to significantly reduce the occurrence of false-positive test results (while more quickly identifying contaminants that are of actual concern from a public health perspective). Within the framework provided in the Matrix Report, these cost savings are calculated in terms of the avoided costs of follow-up sampling compared to estimated costs under the existing AWQS protocols. As such, the calculated "costs" are negative (compared to baseline levels) and therefore can actually be interpreted as benefits rather than costs.

The Matrix report evaluates two alternatives for a new AWQS:

1. ADEQ would adopt the EPA's MCL as the AWQS; or
2. ADEQ would develop and establish an appropriate alternative AWQS (for which Matrix assumed that the routine and repeat samples would both be Fecal Coliform).

The EIS considers a proposed AWQS that would require testing *E. coli* for the routine sample, with all required repeat samples testing for *E. coli*. Where appropriate, the Matrix Report factors have been applied to the AWQS proposal considered in the EIS. Cost factors/assumptions derived from the Matrix report are summarized below.

Costs of Sample Analysis. The Matrix Report estimated ranges of costs for the sample analysis by contacting four ADHS certified laboratories. If the contacted laboratories offered more than one analysis method, the least expensive method was used. The following are the range of costs used for the Matrix analysis (and also in the EIS):

- Total coliform: $25 - $50
- *E. coli*: $25 - $50

Costs for labor, reporting, and administrative work were assumed in the Matrix Report based on the author's knowledge and previous experience with APPs. These assumptions are outlined on the tables below.

Work Costs per False-Positive Sample

Work Category	Hours	Rate	Cost
Labor	8	$95	$760
Data analysis	4	$125	$500
Reporting	20	$100	$2,000
Administrative	4	$100	$400
TOTAL:	**36**	**--**	**$3,660**

Breakdown of Work Costs based Coliform Type per False-Positive Sample

Category	Total Coliform	*E. Coli*

Sampling Cost (labor, analysis, consumables)	$795 - $820	$795 - $820
Reporting Costs	$2,500	$2,500
Administrative Costs	$400	$400
TOTAL:	**$3,695 - $3,720**	**$3,695 - $3,720**

Note: Consumables include ice, gloves, etc. for collecting samples. Assumed to be approximately $10 per sample.

In the EIS, the factors summarized above have been applied to the proposed AWQS. The costs of sampling under the current AWQS and the proposed AWQS are calculated on the table on the next page.

Total and Incremental Sampling Costs Per Year Statewide (in 2023 dollars)

Factor	Current AWQS (Baseline)		Proposed AWQS	
	Low	High	Low	High
Total APP's	434	434	434	434
Facilities required to sample for coliforms	153	300	153	300
Sampling frequency (times per year)	4	4	4	4
Routine coliform samples per year	612	1,200	612	1,200
Coliform type sampled (routine)	Total	Total	*E. Coli*	*E. Coli*
False-positive percentage	43%	43%	4%	4%
Repeat samples triggered by false positives	263	516	24	48
Coliform type sampled (repeat)	Total	Total	*E. Coli*	*E. Coli*
Total cost per sample (by type):				
Total coliform	$3,695	$3,720	$3,695	$3,720
E. Coli	$3,695	$3,720	$3,695	$3,720
Aggregate (statewide) sampling costs/year:				
Routine samples	$2,261,340	$4,464,000	$2,261,340	$4,464,000
Repeat samples	$972,375	$1,919,520	$90,454	$178,560
Total	*$3,233,716*	*$6,383,520*	*$2,351,794*	*$4,642,560*
Cost Increase (Reduction) Compared to Baseline	***N/A***	***N/A***	***($881,923)***	***($1,740,960)***

Source: ADEQ and consultant.

1. Part I – Benefit / Cost Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$500,000 or less	$500,000 to $5 million	Greater than $5 million	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Note: all benefits and cost figures in this document are in annualized amounts.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
Costs to Stakeholders			
Cost stakeholders	General: The EIS follows the format of the cost analysis in the Matrix Report, which essentially looks at *incremental* changes in permittee costs compared to baseline conditions (i.e., costs under the current AWQS compared to costs under the proposed AWQS). An underlying premise of the Matrix Report analysis (and therefore the EIS) is that more efficient sampling requirements under the proposed AWQS would result in a significantly lower occurrence of false-positive test		Significant

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
	results and would therefore *reduce* compliance costs without compromising (while potentially improving) water quality standards		
Permittees, generally	In general, microbiological contaminants are more likely to be generated within Wastewater Treatment Facilities, and also in treated wastewater. Microbiological Contaminants also can enter groundwater under certain conditions		Moderate: AWQS would potentially reduce costs for routine and repeat sampling (by $882,000 to $1.7 million per year statewide)
Mines	Microbiological Contaminants are least likely to be found in mine-related water being treated, compared to other permittee types		
Industrial activities	Microbiological Contaminants would not be particularly likely to be occurring in industrial-related water being treated, compared to other permittee types		
Wastewater Treatment Plants	This category of permittee type is most likely to be dealing with Microbiological Contaminants, because of the urban-use connection		
Rate payers in municipal systems	Private citizens and businesses could potentially benefit from reduced user fees for wastewater processing, based on reduced costs to permittees under the revised AWQS. However, these benefits are likely to be minimal (given the relatively small cost savings on a per-system basis)		Proposed AWQS is expected to reduce compliance costs to permittees, which could potentially be passed on to rate payers in the form of lower rates; in practice, rate reductions are likely to be minimal Minimal. Aggregate revenues would potentially decrease in proportion to the cost savings from reduced sampling requirements. Given state-wide cost savings of $882,000 to $1.7 million per year, cost savings on a per-system basis are likely to be minimal
Small businesses as a segmented category	Coming into compliance with new standards. Small businesses are generally cost-disadvantaged when compared to larger businesses because treatment costs generally decline as the scale (processing capacity) of a processing facility increases.		Moderate. Overall, the AWQS would potentially create moderate cost savings to permittees compared to the existing AWQS
ADEQ	ADEQ believes some new costs will be incurred, despite the fact that some infrastructure for processing permits is already in place. ADEQ anticipates that hundreds of permits may need to be amended to update monitoring tables that include Microbiological Contaminant indicator parameters. Any additional costs incurred would generally be covered by increased fees paid by permittees.	Minimal	
Benefits to Stakeholders			

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
State of Arizona and its Constituents, generally	Savings could accrue to the people of the State of Arizona, generally, through aquifers (as a local, convenient and {in the right circumstance} inexpensive sources for drinking water) remaining a viable asset to community water portfolios and individual well users alike		Significant
Private well users, health benefits: In Arizona, the more immediately affected population consists primarily of private well users throughout the state.	Following EPA, quantified benefits are measured in terms of reduced loss of life and illness and costs associated with treatment for disease.		Moderate: Potential health benefits attributable to existing AWQS are estimated at $3.5 million per year; this benefit would not change by virtue of the proposed new AWQS Significant: Potential reduction in the impacts of disease outbreaks (by virtue of more rapid identification and mitigation of contamination
Community water systems (CWSs) and their clientele	Savings could potentially accrue to CWSs due to reduced microbiological contaminants in the ground water. Any savings would presumably be passed on to customers.		Significant
State costs	Some state-supported medical costs would decrease (this benefit already exists under existing AWQS and would continue under new AWQS)		Significant
State revenue effects	Reduced sampling requirements of permittees would potentially result in some loss of business (and associated reductions in employment) for firms engaged in sample analysis. The potential loss of direct jobs would in turn (in theory at least) generate additional employment losses through reductions in indirect and induced (secondary) economic activity, and subsequent tax revenues	Minimal. Lost State income taxes are estimated to be $6,700 per year due to direct and secondary losses of employment	

2. Part II – Individual Stakeholder Summaries / Calculations:

The following subsection provides an explanatory discussion of expected stakeholder costs and benefits. The subsection outlines the key factors and analysis used to determine the impact findings reported in Part 1 of subsection D, above.

***Costs to Stakeholders*:**

Permittees in General

Compared to the current AWQS, the indicated changes to the AWQS are intended to maintain the same (or better) levels of protection with respect to human health, while potentially resulting in significant cost savings to impacted permittees (due to the expectation that the modified sampling requirements would substantially reduce the incidence of "false positive" results). As such, many of the stakeholder categories that would typically be impacted by the costs of new regulation would actually benefit from *reduced* cost burdens under the proposed new AWQS.

Estimated cost savings to permittees are based on factors in the Matrix report, applied to the proposed AWQS (as defined by ADEQ staff). Consistent with the Matrix report, the EIS focuses strictly on potential cost savings related to the issue of reducing false-positive test results (due to more efficient requirements for contaminant sampling under the new AWQS); the analysis does not quantify other potential costs savings such as reduced costs for assessments and correction actions (reductions in false-positive test results would presumably reduce the incidence of unwarranted assessments).

Mines

Because mines are not necessarily associated, locationally or otherwise, with water treated for household consumption, Microbiological Contaminants are likely to be minimal compared with discharge systems that have an urban connection.

The 35 permittees operating mining facilities can be quite complex, potentially involving multiple water control structures (dams, retention areas, etc.) in conjunction with treatment processes. The concentrate leach process for extracting copper, a common practice in Arizona, is also water-intensive.

Industrial Facilities

This category of permittee is generally processing wastewater generated from an industrial process. Consequently, water treatment technology options are partially dictated by the particular type of waste created through the industrial activity. For some industrial processes, water use will involve treatments similar to those for households, therefore microbiological contamination would potentially be an issue; but other industrial processes will have minimal or no connection to microbiological contamination. The estimated number of industrial wastewater processing permittees is 56.

Wastewater Treatment Plants

The 343 permittees in this category are generally treating wastewater from typical municipal/urban-type sources, and so will typically have significant potential for microbiological contamination. Key subcategories in this group are listed below and provide a sense of the range of activities to which treatments are being applied. Some of these are tied to municipalities, and some are treating waste streams from planned communities, RV parks, correctional institutions, military installations, or similar developments that may be remote from or otherwise not connected to a central wastewater treatment collection and processing system.

- City/Town; Other Urban (subdivisions, single-purpose facilities such as schools)
- Hospitality/Travel/Recreation
- Military Base
- Prison/Jail
- Water Recharge, Other Processing

Rate payers in municipal systems (community water systems (CWSs))

Private citizens and businesses could potentially benefit from reduced user fees for wastewater processing, based on reduced costs to permittees under the revised AWQS. However, these benefits are likely to be minimal (given the relatively small cost savings on a per-system basis).

Small businesses as a segmented category

(See also subsection F below, addressing the probable effects of the proposed rulemaking on small businesses.) Cost burdens on small businesses will tend to be proportionately greater than for large businesses. Not only are they less likely to have specific expertise needed to meet proposed modified standards in-house, but also small businesses tend to be disadvantaged because treatment costs generally decline as the scale (processing capacity) of a processing facility increases, so larger processing facilities can process wastes at a smaller unit cost.

ADEQ

ADEQ may need additional staff or staff time to address advanced treatment processes and related testing, etc. However, any such costs should be covered by fees paid by permittees for ADEQ services.

***Benefits to Stakeholders*:**

Private well users (and CWSs users)

The relevant affected group for this benefit consists of consumers of permittee-treated water that ends up in water supply chains. There are two segments to the benefiting stakeholders:

1. Some Community water systems (CWSs, or municipal water treatment utility operators), for systems in which groundwater is a water source, along with customers of those water utilities. These stakeholders are likely to jointly benefit from reduced sampling requirements and costs, with cost savings presumably passed on to customers, because groundwater quality has improved due to permittees' actions in meeting revised AWQS.
2. The population served by private wells, where there is no intermediary utility processing their water for consumption. This affected group benefits from diseases forgone due to water quality standards related to Microbiological Contaminants.

The first segment is addressed below under the section *Community water systems (CWSs) and their clientele.*
Segment 2. As more fully documented in the Matrix Report, one major purpose of fecal pollution detection is to identify the presence of pathogens related to fecal waste sources and potential health risks (from the many bacterial, protozoan, and viral enteric pathogens that can cause diseases). Water quality monitoring to detect fecal pollution usually applies microbial fecal indicators to represent numerous potential pathogens.
Based on available time series data from ADHS and CDC, the Matrix report estimates that the AWQS would create the following benefits in terms of prevented illnesses and deaths:

- Prevention of 80 cases of illness per year
- Prevention of 0.3 deaths per year

Community water systems (CWSs) and their clientele

This affected group (segment 1 as noted above) includes a portion of customers of municipal or water utility water systems. Estimates of this segment of the population, served by water sources that included groundwater, were derived

from data at the Arizona Department of Water Resources website (https://www.azwater.gov/ama/ama-data) which gave quantities of water use by municipal and other user types, by source, including groundwater, along with populations served by various categories of providers. An estimated 2.04 million Arizonans would be affected in this way (by both existing and proposed AWQS).

State cost savings

The proposed AWQS would potentially create incremental health benefits compared to existing policy by allowing for more rapid identification of contamination (and therefore more proactive containment of potential disease outbreaks). Related to these potential health benefits, the proposed AWQS would potentially result in some reduction in state-supported medical costs.

E. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking:

General:

As permittees would be subject to more efficient sampling requirements under the proposed AWQS, the need for employment related to sampling and sample analysis would potentially decrease somewhat. In this EIS, this effect is simulated through the RIMS II modeling system described, as applied to this analysis (see next subsection below entitled "Regional Input-Output Modeling System (RIMS) Model Explanation"). Summarized results of the modeling process are tabulated below. Unless noted otherwise, results represent the low end of estimates where a range of potential annualized costs has been given in subsection D, above, to avoid potential confusion and overstatement related to this impact measure. The model translates expected annualized costs to employment and earnings based on relationships of those elements within the industry category that most closely matches that of the permittees (and is documented within the RIMS II system – NAICS code 2213: Water, sewage, and other systems).

In the summary of the model as tabulated below for the contaminant of Microbiological Contaminants, direct employment and earnings resulting from permittees' investment in equipment are shown separately from the total multiplier (direct plus secondary) job-generating effects of this investment.

RIMS II modeling outputs and key input factors	
Annualized Costs (with financing etc.)/Increased "Output"	($881,923)
Jobs Per Million Dollars in Output	1.80
Earnings Per Dollar of Output	$0.17
New Wastewater Treatment Direct Jobs Created	(1.59)
New Annual Earnings for Direct Jobs Created	($148,229)
Total New Jobs (Direct + Secondary)	(4.87)
Effective Income Tax Rate	2.1%
Estimated Total Annual State Income Taxes (Direct and Secondary)	($6,732)

Source: RIMS II model for Arizona; ADEQ & consultant.

Regional Input-Output Modeling System (RIMS) Model Explanation:

This subsection discusses the Regional Input-Output Modeling System (RIMS II - As provided by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce) modeling analysis supporting the jobs-related economic impact of the proposed wastewater treatment investments / expansions in the State of Arizona. All impacts estimated through this analysis are provided for the statewide level of geography and are not intended to estimate impacts for sub-state geographic areas (e.g., metropolitan statistical area [MSA], county, etc.). Results of these analyses are shown in Parts E (employment) and G (state taxes) of the document.

The analysis assumes the investments to upgrade the wastewater facilities will include installing new wastewater-specific equipment (which may also include expanding the size of the facility, although that is not addressed in this analysis), which will increase the productive capacity of these wastewater facilities. For the purposes of this analysis, the "productive capacity" is assumed to be the annualized equivalent of capital investments (and additional operating costs would also be part of this, and such costs are included in the analysis where available). Cost (and benefit) figures shown in this document are annualized, having been calculated as such by the original data providers, generally from EPA and the Matrix Report.

The annualizations generally were based on assumptions of the payback of proposed investments having a 20-year lifespan (and an installation period was sometimes included) and an annual interest rate of 7.0%. ADEQ and its consultant further assumed that wastewater treatment plants' revenues (such as user fee increases) would increase by commensurate amounts to cover the annualized costs of the proposed improvements. This increase in revenue ("Output") allows ADEQ and its consultant to apply final-demand multipliers to estimate the number of new jobs and earnings (associated with these jobs) in the state that would result from the proposed investments. The RIMS II model generates economic multipliers for jobs, earnings, and output, based on the industry NAICS code 2213: Water, sewage, and other systems, for direct, indirect, and household (induced) effects. Along with the increases in employment and earnings

generated by the proposed investments, the new earnings would also generate state income tax revenue for the State. Based on data from the BEA and the Arizona Department of Revenue (ADOR), ADEQ and its consultant derived an estimated effective state income rate of 2.1% (The State flat income tax rate, at the time this EIS was prepared, is 2.5%. The net income tax rate of 2.1% reflects deductions for the average wage and salary worker and other adjustments).

F. A statement on the probable impact of the rules on small business:

Economic costs to comply with AWQSs that are borne by small businesses may be considerable. Small businesses tend to be disadvantaged because treatment costs generally decline as the scale (processing capacity) of a processing facility increases. Besides the potential need for additional personnel or additional training, permittees may need to hire technical expertise on a consulting basis to determine the most appropriate and cost-effective treatment technologies that apply to any one permittee's particular conditions.

1. An identification of the small businesses subject to the rules:

Small businesses constitute a distinct category for which the impacts of rulemaking need to be considered. For this EIS and those addressing the other contaminants, impacted small businesses will be wastewater facility permittees meeting the following criteria:

- According to A.R.S. 41-1001 and as applied in this EIS, "'Small business' means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than $4 million in its last fiscal year."
- ADEQ and its consultant used a database of permittees, which had partial flow data, to screen permittees for this measure. Lacking further operational-level data for permittees, ADEQ and its consultant also screened permittees to identify "businesses" as opposed to governmental entities, and small businesses, constituting those that did not appear to be associated with a larger entity.

Based on the screening processes described above, in which the number of permittees that are also small businesses is estimated with limited precision, ADEQ and its consultant estimated that small businesses make up just over 30% of permittees, or 135 entities in total. As noted previously in this EIS, not all of these facilities will necessarily need to incur costs to meet the proposed AWQS.

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

Permittees small and large have systems already in place for the basic administrative and other managerial duties related to compliance to existing AWQSs. To the extent that is the case, any additional duties would constitute an expansion of existing processes rather than new systems. Also, there is a possibility that permittees would need to hire a consultant for technical expertise to select and integrate new technology into existing treatment processes.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

A.R.S. § 41-1035 Methods	ADEQ Decision to use or not use and reason
1. Establishing less stringent compliance or reporting requirements in the rule for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243). ADEQ does allow permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS (*see* Chapter 9 NFRM).
2. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243). ADEQ does allow permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS (*see* Chapter 9 NFRM).
3. Consolidating or simplifying the rule's compliance or reporting requirements for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243).
4. Establishing performance standards for small businesses to replace design or operational standards in the rule	Not used. In administering the APP program, performance, design and operational standards are all built into a review of a facility's employment of the best available demonstrated control technologies, processes, operating methods or other alternatives. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243).

A.R.S. § 41-1035 Methods	ADEQ Decision to use or not use and reason
5. Exempting small businesses from any or all requirements of the law	Not used. In administering the APP program, all persons discharging a pollutant into the environment must obtain an APP permit under A.R.S. § 49-241, unless exempted through A.R.S. § 49-250. Eliminating small business from the scope of the APP program is not supported by statute and would undermine the purpose of the program, to protect the state's aquifers to a drinking water standard (*see* A.R.S. §§ 49-223, 224, 241, 243).

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

Potential savings could accrue to community water systems due to reduced Microbiological Contaminants in the groundwater under the proposed AWQS, and such savings could be substantial and would presumably be passed on to customers. As many as 1.8 million Arizonans could potentially be affected.

G. A statement of the probable effect on state revenues:

To the extent that costs to upgrade treatment facilities result in higher user fees, additional fees could be taxable within the state's transaction privilege tax system. ADEQ and its consultant have not attempted to quantify any such effect. Investments in treatment technology and processes by permittees could result in additional hires to operate equipment, which in turn would generate additional employment through indirect and induced (secondary) economic activity, and subsequent tax revenues. Employment effects are addressed in subsection D, above. As noted therein, estimated state taxes for direct and secondary employment generated by investments in Microbiological Contaminants technology (using the low end of costs where ranges are given) are approximately $6,700.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

The controlling statute at A.R.S. § 49-223 does not allow ADEQ to conduct any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking. It simply requires ADEQ to open a rule making docket pursuant to A.R.S. § 41-1021 for adoption of a new or adjusted MCL as an AWQS within one year of the MCL's establishment or adjustment.

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

Reference material used in this EIS comes mainly from the *MCL Assumptions Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support* prepared by Matrix New World Engineering, Land Surveying and Landscape Architecture, PC (Matrix Report) for ADEQ in 2023 (*see* Heading No. 8 above for citation). Other reference material was used to a lesser extent (*see* Heading No. 8 above). ADEQ and its consultant also made selective use of EPA documents addressing specific contaminants referenced extensively by the Matrix Report. EPA documentation is the typical standard for assumed legitimacy with respect to actions assessed and implemented by ADEQ. ADEQ and its consultant reviewed the Matrix Report and engaged with Matrix principals in direct consultation regarding aspects of their documentation in the preparation of this EIS. EPA documentation was generally available online.

AWP NFRM Public Comments - 18 AAC 11 - Microbiological Contaminants

Comment 1: Utility
Concerning the proposed alternative AWQS for Microbiological Contaminants, our current APP monitoring table utilizes the unit Most Probable Number (MPN) with a limit of (< 2.2) for *E. coli* monitoring. Will the units stay the same with this change in standard? Will Presence / Absence (P/A) be installed instead?
ADEQ Response 1:
ADEQ appreciates the comment. No, P/A will not be used for the *E. coli* indicator parameter utilized in the proposed AWQS for microbiological contaminants. Rather, detection or non-detection of either Fecal Coliform or *E. coli* is used. This means, for *E. coli*, "detect / non-detect" is likely to appear in the applicable APP monitoring tables along with a footnote stating that "non-detect" means a result of < 2.2 MPN or < 1 CFU, depending on the unit used in the permit.
Comment 2: Utility
If there is significant opposition to any of the parameters does ADEQ then not proceed with that particular parameter?
ADEQ Response 2:
ADEQ appreciates the comment. The answer to that question is – not necessarily. "Substantial Opposition" is a term defined in A.R.S. § 49-223(A) as, "... information submitted to the director that explains with reasonable specificity why the [MCL] is not appropriate as an [AWQS]." Upon receipt of "substantial opposition", the Department must conduct a statutorily delineated procedure that leads to a determination of whether the MCL is "appropriate" as an AWQS. More information on that process can be found here: https://www.azdeq.gov/rulemaking/awqs-update/resources . ADEQ has received substantial opposition from stakeholders on the proposal to adopt the Microbiological Contaminants MCL as an AWQS (*see* heading No. 7, subsection "Substantial Opposition" for more information).
Comment 3: Concerned Citizen
If there are any lab people on the call, can they answer if there are sampling methods associated with the proposed Microbiological Contaminants AWQS that will provide a presence/absence (P/A) result for fecal coliforms? I know P/A exists for Total Coliforms and *E. coli*. I found this statement in a Google search, "*[t]he P/A tests for the presence/absence of indicator organisms in a water sample. This is usually observed in the form of a color change after an incubation period. Two common P/A tests are: H2S-producing bacteria P/A test Total Coliform and E. coli P/A Test.*" I am not sure P/A exists for fecal coliform.
ADEQ Response 3:
ADEQ appreciates the comment. Due to this comment and others submitted on the proposed Microbiological Contaminants AWQS, ADEQ has revised the rule language, essentially swapping the "absence / presence" binary with "detection / non-detection". Under the new language, any *E. coli* detection result from routine sampling would need to be followed by a repeat *E. coli* sample within 5 days of becoming aware of the result. A repeat sample that results in a detection of *E. coli* would constitute a violation of the Microbiological Contaminants AWQS. Additionally, ADEQ conducted some research which shows that Eurofins Scientific laboratory testing services offers a Fecal Coliform testing method (SM 9222D) separately from the EPA Total Coliform method (EPA 1604). Both methods have an 8-hour holding time. Source:
https://www.eurofinsus.com/media/447768/appendix-d-section-5-attachment-holdtime-container-list_2016-july.pdf.
Also, Standard Method 9222D is a membrane filtration test for fecal coliforms and is offered by local labs in Arizona. This method can detect fecal coliforms from 20 - 60 CFU/100 mL. Source:
https://www.nemi.gov/methods/method_summary/5587/. Also, please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.
Comment 4: Utility
We support the proposed alternate AWQS for microbiological contaminants with the following minor edits to the language:

1. If a routine sample ~~of Fecal Coliform~~ is positive for Fecal Coliform, a 100-milliter repeat sample ~~of either Fecal Coliform or *E. coli*~~ shall be taken within five days of becoming aware of the exceedance for analysis of Fecal Coliform or *E. coli*.
2. If a routine sample ~~of *E. coli*~~ is positive for *E. coli*, a 100-milliter repeat sample ~~of *E. coli*~~ shall be taken within five days of becoming aware of the exceedance for analysis of *E. coli*…

ADEQ Response 4:
ADEQ appreciates the comment. Due to this comment and others submitted on the proposed Microbiological Contaminants AWQS, ADEQ has revised the rule language, essentially swapping the "absence / presence" binary with "detection / non-detection". Under the new language, any Fecal Coliform detection result from routine sampling would need to be followed by a repeat Fecal Coliform or *E. coli* sample within 5 days of becoming aware of the detection result. A repeat sample that results in a detection of either parameter would constitute a violation of the Microbiological Contaminants AWQS. The Fecal Coliform indicator parameter is understood by ADEQ to encompass many species of fecal-derived, potentially harmful species therein; whereas, the *E. coli* parameter is a single, potentially harmful species. *E. coli* is used in this setting as an indicator; meaning that if it is detected in a sample, other potentially harmful species are likely to be present as well. Because the Fecal Coliform parameter encompasses within its scope *E. coli* and a number

of other fecal-derived species, ADEQ believes an *E. coli* repeat sample is appropriate if either Fecal Coliform or *E. coli* were sampled routinely. Please note that for the *E. coli* indicator parameter, "detect / non-detect" is likely to appear in the applicable APP monitoring tables along with a footnote stating that "non-detect" means a result of <2.2 MPN or <1 CFU, depending on the unit used in the permit. Additionally, ADEQ conducted some research which shows that Eurofins Scientific laboratory testing services offers a Fecal Coliform testing method (SM 9222D) separately from the EPA Total Coliform method (EPA 1604). Both methods have an 8-hour holding time. Source: https://www.eurofinsus.com/media/447768/appendix-d-section-5-attachment-holdtime-container-list_2016-july.pdf. Also, Standard Method 9222D is a membrane filtration test for fecal coliforms and is offered by local labs in Arizona. This method can detect fecal coliforms from 20 - 60 CFU/100 mL. Source: https://www.nemi.gov/methods/method_summary/5587/. Also, please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 5: Interest Group

We are deeply concerned about the proposed deviations from U.S. Environmental Protection Agency (EPA) standards for uranium, *E. coli*, and other pollutants. Arizona's aquifers are invaluable resources that sustain drinking water supplies, ecological systems, and cultural heritage. Protecting these resources with robust, science-based standards is essential to ensure public health and environmental sustainability. We urge ADEQ to adopt the most protective standards possible by aligning AWQS with EPA's maximum contaminant levels (MCLs) and guidelines for all pollutants under consideration, including arsenic, uranium, and *E. coli*. Prolonged delays in adopting federal standards leave Arizona communities vulnerable to contamination and illness.

ADEQ Response 5:

ADEQ appreciates the comment. There are seven (7) MCLs proposed for adoption as AWQSs within the scope of the collective "AWQS Update" rulemaking. All MCLs except for Microbiological Contaminants are being adopted as AWQSs verbatim. This includes uranium cited by the commenter.

For the alternative Microbiological Contaminants AWQS, ADEQ believes the proposed AWQS is equally effective as the corresponding MCL, but deviates from the MCL's employment of "Total Coliform" as an indicator parameter, utilizing the more precise "Fecal Coliform" and "*E. coli*" indicator parameters instead. Pursuant to A.R.S. § 49-223, ADEQ received "substantial opposition" to adoption of the Microbiological Contaminants MCL, mostly concerning the high numbers of "false positive" samples of Total Coliform that would have tested negative had Fecal Coliform or *E. coli* been the indicator parameter used in the standard instead. Details of the hardships encountered by the regulated community include hundreds of hours of labor in verification or repeat sampling. This, along with shipping and laboratory testing costs, amount to tens of thousands of dollars in unnecessary spending.

Given the substantial opposition received on the Microbiological Contaminants MCL, ADEQ was prompted to follow the procedure in A.R.S. § 49-223(A) for determining whether the Microbiological Contaminants MCL is appropriate as an Arizona state AWQS. ADEQ used its newly developed "standard work" as explained in Heading No. 7 above. ADEQ developed this "standard work" procedure for conducting an "appropriateness" determination pursuant to A.R.S. § 49-223(A). The "standard work" can be reviewed on ADEQ's website at https://www.azdeq.gov/rulemaking/awqs-update/resources. Concerning the Microbiological Contaminants MCL, ADEQ's review of EPA's assumptions on technology, costs, sampling and analytical methodologies and public health risk reduction resulted in significant concern for the costs, analytical methods and public health risk reduction assumptions in particular. ADEQ found that the MCL at 40 C.F.R. 141.63(c) is simply inappropriate as-is for verbatim adoption as an AWQS and applicability upon the facilities regulated by Arizona's APP program, such as Wastewater Treatment Plants, Mines and Industrial facilities. One of the main reasons is that the MCL is designed for Public Water Systems, not APP type facilities. Specifically, this is because the Microbiological Contaminants MCL requires routine sampling of both Total Coliform and *E. coli* parameters. Thereafter, upon a positive result of either Total Coliform or *E. coli*, a repeat sample is required for both parameters. Violation occurs when a positive result is obtained from an *E. coli* repeat sample that occurs after a total coliform-positive routine sample. Violation also occurs when a positive result is obtained from a Total Coliform repeat sample that occurs after an *E. coli*-positive routine sample. ADEQ found that the Total Coliform parameter is a very general indicator of coliforms in a sampling well, many of which occur naturally and are not indicative of a threat to human health. In particular, Total Coliform is too broad of an indicator parameter to signal fecal coliform health concerns in an APP regulatory program setting. On the contrary, ADEQ has found that Fecal Coliform and *E. coli* are more exacting indicators or surrogates of fecal coliforms, which are dangerous to human health. Additionally, when a permittee samples for Total Coliform and receives a positive result, more often than not, the result is what is known as a "false positive", signaling non-health threatening coliforms in a sample. ADEQ notes that false positives have led to a number of permittees having to perform accelerated or more frequent monitoring intervals pursuant to the permits unnecessarily, which have associated costs.

After determining that the MCL for Microbiological Contaminants was inappropriate as an AWQS, ADEQ followed the "standard work" procedure for alternative AWQS development and establishment. ADEQ is proposing with this final rule an appropriate alternative Microbiological Contaminants AWQS based upon the detection or non-detection of either Fecal Coliform or *E. coli* in a 100-milliliter sample (depending on the requirement of the permit). Upon a detection result for a routine Fecal Coliform sample, a repeat sample of either Fecal Coliform or *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Upon a detection result for a routine *E.*

coli sample, a repeat sample for *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Through research and consultation, ADEQ determined that *E. coli* is a better indicator of fecal contamination than total or fecal coliforms and that Total Coliform positive samples are known to result in a "false positive". A "false positive" in a Total Coliform sampling context is when a sample result is positive, but the cause of the positive result indicates a type of total coliform that does not originate in fecal contamination, is not dangerous to human health and occurs naturally. A common "false positive" is when a positive Total Coliform sample is actually indicating rust in a well. Additionally, ADEQ considered the language of 40 C.F.R. 141.63(c), the state of existing Individual APP and Reclaimed Water permits, the Department's mission to protect human health and the environment, as well as costs to permittees, analytical methodologies and public health risk reduction. Ultimately, ADEQ determined that shifting away from Total Coliform as an indicator parameter for an alternative Microbiological Contaminants AWQS and moving towards Fecal Coliform and *E. coli is appropriate*. Specifically, Fecal Coliform and *E. coli* are more exacting at indicating a threat to human health. The decision to configure the AWQS proposal to allow permittees to utilize Fecal Coliform or *E. coli* was due to the fact that protecting human health is not diminished under any of the possible orientations and existing permittees are sampling for both parameters already in some cases. Allowing permittees to keep those sampling traditions and optimize a sampling orientation from a cost effective perspective are all factors that led to ADEQ's proposal.

Comment 6: Interest Group

E. coli and Fecal Coliform Standards. *E. coli* and fecal coliform serve as critical indicators of fecal contamination and pathogen presence in groundwater. EPA's guidelines for these indicators are based on decades of rigorous research and are designed to minimize risks of gastrointestinal illness and waterborne disease outbreaks. We strongly oppose ADEQ's proposal to adopt alternative standards for *E. coli* and fecal coliform that deviate from EPA guidelines. Such deviations are highly problematic for the following reasons:

1. Inadequate Public Health Protection: ADEQ's proposed alternative standards would allow higher concentrations of *E. coli* and fecal coliform in groundwater than EPA's established limits for recreational and potable water. This could significantly increase the risk of pathogen exposure, particularly for communities relying on groundwater for drinking and recreation.
2. Contradiction of Established Science: EPA's standards are grounded in decades of epidemiological studies that demonstrate the link between elevated *E. coli* levels and disease outbreaks. Any deviation undermines the credibility and effectiveness of Arizona's water quality protections.
3. Environmental and Ecological Risks: Groundwater contamination often affects interconnected surface water systems. Weakening *E. coli* standards could exacerbate contamination in rivers, streams, and reservoirs, threatening aquatic ecosystems and biodiversity. As Arizona's aquifers often discharge into surface waters, contaminants like fecal coliform can migrate from groundwater to surface water, compounding the public health risks and damaging ecosystems. This connectivity between groundwater and surface water underscores the importance of robust water quality standards that address all potential pathways for contamination.
4. Economic and Social Costs: Relaxed standards could result in increased public health expenses, decreased trust in water quality management, and greater costs associated with contamination events.

We strongly urge ADEQ to align *E. coli* and fecal coliform standards with EPA's protective guidelines. Ensuring consistency with federal standards will bolster public confidence in Arizona's water quality management and safeguard both human and ecological health.

ADEQ Response 6:

ADEQ appreciates the comment. Generally, please reference the response to Comment No. 5 above. It is important to understand that ADEQ's adoption of an alternative AWQS from the Microbiological Contaminants MCL deviates only slightly from the MCL and remains equally as protective. The MCL requires routine sampling of both Total Coliform and *E. coli* parameters. Thereafter, upon a positive result of either Total Coliform or *E. coli*, a repeat sample is required for both parameters. Violation occurs when a positive result is obtained from an *E. coli* repeat sample that occurs after a total coliform-positive routine sample. Violation also occurs when a positive result is obtained from a Total Coliform repeat sample that occurs after an *E. coli*-positive routine sample. ADEQ found that the Total Coliform parameter is a very general indicator of coliforms in a sampling well, many of which occur naturally and are not indicative of a threat to human health. In particular, Total Coliform is too broad of an indicator parameter to signal Fecal Coliform health concerns in the APP regulatory program setting. On the contrary, ADEQ has found that Fecal Coliform and *E. coli* are more exacting indicators or surrogates of fecal coliforms, which are dangerous to human health. Additionally, when a permittee samples for Total Coliform and receives a positive result, more often than not, the result is what is known as a "false positive", signaling non-health threatening coliforms in a sample. ADEQ notes that false positives have led to a number of permittees having to perform accelerated or more frequent monitoring intervals pursuant to the permits unnecessarily, which have associated costs.

With this final rule, ADEQ is establishing an appropriate alternative Microbiological Contaminants AWQS based upon the detection or non-detection of either Fecal Coliform or *E. coli* in a 100-milliliter sample (depending on the requirement of the permit). Upon a detection result for a routine Fecal Coliform sample, a repeat sample of either Fecal Coliform or *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Upon a detection result for a routine *E. coli* sample, a repeat sample for *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants.

1. ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective of public health and is oriented more appropriately for the AWQS setting. Again, the MCL utilized indicator parameters Total Coliform and *E. coli* to be routinely sampled; then, upon a positive result, both repeat sampled. Upon a repeat positive, the MCL has been formally violated. Compare with the alternative AWQS, which utilizes indicator parameters Fecal Coliform and *E. coli* to be routinely sampled; then, upon a detect result, a repeat sample of one or the other parameter is required, depending on the permit. Upon a repeat "detect" result, the AWQS has been formally violated. ADEQ notes that the Fecal Coliform parameter is *more* exacting than Total Coliform when it comes to identifying a risk to public health.
2. ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective of public health and is oriented more appropriately for the AWQS setting as is demonstrated in the previous paragraph. Additionally, ADEQ engaged experts composed of epidemiologists and toxicologists, among other professionals to assist in the process of reviewing EPA's MCL development assumptions. Following statutory mandate and careful consideration of the totality of the appropriate considerations, ADEQ determined that a slight deviation from the MCL was appropriate given the statutory mandate. In making this determination, ADEQ considered the language of the MCL at 40 C.F.R. 141.63(c), the state of existing Individual APP and Reclaimed Water permits, the Department's mission to protect human health and the environment, as well as costs to permittees, analytical methodologies and public health risk reduction. Ultimately, ADEQ determined that shifting away from Total Coliform as an indicator parameter for an alternative Microbiological Contaminants AWQS and moving towards Fecal Coliform and *E. coli* is appropriate, pursuant to A.R.S. § 49-223. Specifically, indicator parameters Fecal Coliform and *E. coli* are more exacting at indicating a threat to human health. The decision to configure the AWQS proposal to allow permittees to utilize Fecal Coliform or *E. coli* was due to the fact that protecting human health is not diminished under any of the possible orientations and existing permittees are sampling for both parameters already in some cases. Allowing permittees to keep those sampling traditions and optimize a sampling orientation from a cost effective perspective are all factors that led to ADEQ's proposal.
3. As is stated and explained above, ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective as the corresponding MCL and is oriented more appropriately for the AWQS setting.
4. As is stated and explained above, ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective as the corresponding MCL and is oriented more appropriately for the AWQS setting.

In summary, ADEQ's alternative Microbiological Contaminants AWQS is oriented in a similar and equally protective manner as the corresponding MCL. Also, the alternative Microbiological Contaminants AWQS is oriented more appropriately for the AWQS setting. ADEQ believes the alternative Microbiological Contaminants AWQS is appropriately protective of public health and the environment and conforms to the mandate at A.R.S. § 49-223.

Comment 8: Utility

Overall, we commend and agree with ADEQ's approach, and anticipate efficiencies with the microbiological contaminants AWQS replacing indicator parameter Total Coliform with *E. coli*.

ADEQ Response 8:

ADEQ appreciates the comment.

Comment 9: Utility

A non-detection of *E. coli* should be specified as < 2.2 Most Probable Number (MPN)/100 ml sample. This threshold is specified on all permits.

ADEQ Response 9:

ADEQ appreciates the comment. For *E. coli*, "detect / non-detect" will appear in the applicable APP monitoring tables along with a footnote stating that "non-detect" means a result of < 2.2 MPN or < 1 CFU, depending on the unit used in the permit.

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ADMINISTRATIVE RULES DIVISION

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of
July 1, 2023 through September 30, 2023

Questions about these rules? Contact:

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The release of this Chapter in Supp. 23-3 replaces Supp. 22-4, 1-99 pages.
Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

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ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Authority: A.R.S. §§49-202(A), 49-203(A)(1)

Supp. 23-3

CHAPTER TABLE OF CONTENTS

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

Tables in Article 1, Appendix A have been updated and now include historical notes (Supp. 16-4).

Article 1, consisting of Appendices A through C, repealed April 24, 1996 (Supp. 96-2).

Article 1, consisting of Section R18-11-103, reserved effective April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-105 and R18-11-106, and Appendices A and B, adopted April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-101 and R18-11-102, R18-11-104, R18-11-107 through R18-11-109, R18-11-111 through R18-11-113, R18-11-115, R18-11-117 and R18-11-118, R18-11-120 and R18-11-121, amended effective April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-101 through R18-11-121 and Appendices A through C, adopted effective February 18, 1992 (Supp. 92-1).

Article 1, consisting of Section R18-11-101, repealed effective February 18, 1992 (Supp. 92-1).

Article 1 consisting of Section R9-21-101 renumbered as Article 1, Section R18-11-101 (Supp. 87-3).

ARTICLE 2. WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS

Article 2, consisting of Sections R18-11-201 through R18-11-205, adopted effective February 18, 1992 (Supp. 92-1).

Article 2, consisting of Sections R18-11-201 through R18-11-214 and Appendices A and B, repealed effective February 18, 1992 (Supp. 92-1).

Article 2 consisting of Sections R9-21-201 through R9-21-214 and Appendices A and B renumbered as Article 2, Sections R18-11-201 through R18-11-214 and Appendices A and B (Supp. 87-3).

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

Article 3, consisting of Sections R18-11-301 through R18-11-309 and Table A, adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

Article 3 heading repealed effective April 24, 1996 (Supp. 96-2).

Article 3, consisting of Sections R18-11-301 through R18-11-304 repealed effective February 18, 1992 (Supp. 92-1).

Article 3 consisting of Sections R9-21-301 through R9-21-304 renumbered as Article 3, Sections R18-11-301 through R18-11-304 (Supp. 87-3).

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION

New Article 5 consisting of Sections R18-11-501 through R18-11-504 and Section R18-11-506 adopted effective October 22, 1987.

ARTICLE 6. IMPAIRED WATER IDENTIFICATION

Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

R18-11-101. Definitions

The following terms apply to this Article:

1. "Acute toxicity" means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. "Agricultural irrigation (AgI)" means the use of a surface water for crop irrigation.
3. "Agricultural livestock watering (AgL)" means the use of a surface water as a water supply for consumption by livestock.
4. "Annual mean" is the arithmetic mean of monthly values determined over a consecutive 12-month period, provided that monthly values are determined for at least three months. A monthly value is the arithmetic mean of all values determined in a calendar month.
5. "Aquatic and wildlife (cold water) (A&Wc)" means the use of a surface water by animals, plants, or other cold-water organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
6. "Aquatic and wildlife (effluent-dependent water) (A&Wedw)" means the use of an effluent-dependent water by animals, plants, or other organisms for habitation, growth, or propagation.
7. "Aquatic and wildlife (ephemeral) (A&We)" means the use of an ephemeral water by animals, plants, or other organisms, excluding fish, for habitation, growth, or propagation.
8. "Aquatic and wildlife (warm water) (A&Ww)" means the use of a surface water by animals, plants, or other warm-water organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
9. "Arizona Pollutant Discharge Elimination System (AZPDES)" means the point source discharge permitting program established under 18 A.A.C. 9, Article 9.
10. "Assimilative capacity" means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
11. "Clean Water Act" means the Federal Water Pollution Control Act [33 U.S.C. 1251 to 1387].
12. "Complete Mixing" means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.
13. "Criteria" means elements of water quality standards that are expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
14. "Critical flow conditions of the discharge" means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone's receiving water as follows:
    a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
    b. For chronic aquatic water quality standard criteria, the discharge flow critical flow condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
    c. For human health based water quality standard criteria, the discharge flow critical condition is the long-term arithmetic mean flow, averaged over several years so as to simulate long-term exposure.
15. "Critical flow conditions of the receiving water" means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
    a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day aver-age flow event expected to occur once every ten years, on average (1Q10).
    b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
    c. For human health based water quality standard criteria, in order to simulate long-term exposure, the receiving water critical flow condition is the harmonic mean flow.
16. "Deep lake" means a lake or reservoir with an average depth of more than 6 meters.
17. "Designated use" means a use specified in Appendix B of this Article for a surface water.
18. "Domestic water source (DWS)" means the use of a surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
19. "Effluent-dependent water (EDW)" means a surface water or portion of a surface water, that consists of a point source discharge without which the surface water would be ephemeral. An effluent-dependent water may be perennial or intermittent depending on the volume and frequency of the point source discharge of treated wastewater.
20. "Ephemeral water" means a surface water or portion of surface water that flows or pools only in direct response to precipitation.
21. "Existing use" means a use attained in the waterbody on or after November 28, 1975, whether or not it is included in the water quality standards.
22. "Fish consumption (FC)" means the use of a surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
23. "Full-body contact (FBC)" means the use of a surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
24. "Geometric mean" means the nth root of the product of n items or values. The geometric mean is calculated using the following formula:

$$GM_Y = \sqrt[n]{(Y_1)(Y_2)(Y_3)\ldots(Y_n)}$$

25. "Hardness" means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO3) in milligrams per liter.
26. "Igneous lake" means a lake located in volcanic, basaltic, or granite geology and soils.

27. "Intermittent water" means a surface water or portion of surface water that flows continuously during certain times of the year and more than in direct response to precipitation, such as when it receives water from a spring, elevated groundwater table or another surface source, such as melting snowpack.
28. "Mixing zone" means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
29. "Oil" means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
30. "Outstanding Arizona water (OAW)" means a surface water that is classified as an outstanding state resource water by the Director under R18-11-112.
31. "Partial-body contact (PBC)" means the recreational use of a surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
32. "Perennial water" means a surface water or portion of surface water that flows continuously throughout the year.
33. "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance. A.R.S § 49-201(29)
34. "Pollutant Minimization Program" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.
35. "Practical quantitation limit" means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
36. "Reference condition" means a set of abiotic physical stream habitat, water quality, and site selection criteria established by the Director that describe the typical characteristics of stream sites in a region that are least disturbed by environmental stressors. Reference biological assemblages of macroinvertebrates and algae are collected from these reference condition streams for calculating the Arizona Indexes of Biological Integrity thresholds.
37. "Regional Administrator" means the Regional Administrator of Region IX of the U.S. Environmental Protection Agency.
38. "Regulated discharge" means a point-source discharge regulated under an AZPDES permit, a discharge regulated by a § 404 permit, and any discharge authorized by a federal permit or license that is subject to state water quality certification under § 401 of the Clean Water Act.
39. "Riffle habitat" means a stream segment where moderate water velocity and substrate roughness produce moderately turbulent conditions that break the surface tension of the water and may produce breaking wavelets that turn the surface water into white water.
40. "Run habitat" means a stream segment where there is moderate water velocity that does not break the surface tension of the water and does not produce breaking wavelets that turn the surface water into white water.
41. "Sedimentary lake" means a lake or reservoir in sedimentary or karst geology and soils.
42. "Shallow lake" means a lake or reservoir, excluding an urban lake, with a smaller, flatter morphology and an average depth of less than 3 meters and a maximum depth of less than 4 meters.
43. "Significant degradation" means:
    a. The consumption of 20 percent or more of the available assimilative capacity for a pollutant of concern at critical flow conditions, or
    b. Any consumption of assimilative capacity beyond the cumulative cap of 50 percent of assimilative capacity.
44. "Surface water" means "WOTUS" as defined in A.R.S. § 49-201(53).
45. "Total nitrogen" means the sum of the concentrations of ammonia (NH3), ammonium ion (NH4+), nitrite (NO2), and nitrate (NO3), and dissolved and particulate organic nitrogen expressed as elemental nitrogen.
46. "Total phosphorus" means all of the phosphorus present in a sample, regardless of form, as measured by a persulfate digestion procedure.
47. "Toxic" means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.
48. "Urban lake" means a manmade lake within an urban landscape.
49. "Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of a designated use including physical, chemical, biological, and economic factors.
50. "Variance" means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the variance.
51. "Wadable" means a surface water can be safely crossed on foot and sampled without a boat.
52. "Wastewater" does not mean:
    a. Stormwater,
    b. Discharges authorized under the De Minimus General Permit,
    c. Other allowable non-stormwater discharges permitted under the Construction General Permit or the Multi-sector General Permit, or
    d. Stormwater discharges from a municipal storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
53. "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.

54. "Zone of initial dilution" means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

Historical Note

Former Section R9-21-101 repealed, new Section R9-21-101 adopted effective January 29, 1980 (Supp. 80-1). Amended effective April 17, 1984 (Supp. 84-2). Amended effective January 7, 1985 (Supp. 85-1). Amended by adding subsection (C) effective August 12, 1986 (Supp. 86-4). Former Section R9-21-101 renumbered without change as Section R18-11-101 (Supp. 87-3). Former Section R18-11-101 repealed, new Section R18-11-101 adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Deleted first definition to R18-11-101(32) "Navigable Water", previously printed in error (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Amended by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-102. Applicability

A. The water quality standards prescribed in this Article apply to surface waters.

B. The water quality standards prescribed in this Article do not apply to the following:

1. A waste treatment system, including an impoundment, pond, lagoon, or constructed wetland that is a part of the waste treatment system;
2. A man-made surface impoundment and any associated ditch and conveyance used in the extraction, beneficiation, or processing of metallic ores that is not a surface water or is located in an area that once was a surface water but is no longer a surface water because it has been and remains legally converted, including:
   a. A pit,
   b. Pregnant leach solution pond,
   c. Raffinate pond,
   d. Tailing impoundment,
   e. Decant pond,
   f. Pond or a sump in a mine pit associated with dewatering activity,
   g. Pond holding water that has come into contact with a process or product and that is being held for recycling,
   h. Spill or upset catchment pond, or
   i. A pond used for onsite remediation;
3. A man-made cooling pond that is neither created in a surface water nor results from the impoundment of a surface water; or
4. A surface water located on tribal lands.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-103. Repealed

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Repealed effective April 24, 1996 (Supp. 96-2).

R18-11-104. Designated Uses

A. The Director shall adopt or remove a designated use or subcategory of a designated use by rule.

B. Designated uses of a surface water may include full-body contact, partial-body contact, domestic water source, fish consumption, aquatic and wildlife (cold water), aquatic and wildlife (warm water), aquatic and wildlife (ephemeral), aquatic and wildlife (effluent-dependent water), agricultural irrigation, and agricultural livestock watering. The designated uses for specific surface waters are listed in Appendix B of this Article.

C. Numeric water quality criteria to maintain and protect water quality for the designated uses are prescribed in Appendix A, R18-11-109, R18-11-110, and R18-11-112. Narrative water quality standards to protect all surface waters are prescribed in R18-11-108.

D. If a surface water has more than one designated use listed in Appendix B, the most stringent water quality criterion applies.

E. The Director shall revise the designated uses of a surface water if water quality improvements result in a level of water quality that permits a use that is not currently listed as a designated use in Appendix B.

F. In designating uses of a surface water and in establishing water quality criteria to protect the designated uses, the Director shall take into consideration the applicable water quality standards for downstream surface waters and shall ensure that the water quality standards that are established for an upstream surface water also provide for the attainment and maintenance of the water quality standards of downstream surface waters.

G. A use attainability analysis shall be conducted prior to removal of a designated use or adoption of a subcategory of a designated use that requires less stringent water quality criteria.

H. The Director may remove a designated use or adopt a subcategory of a designated use that requires less stringent water quality criteria, provided the designated use is not an existing use and it is demonstrated through a use attainability analysis that attaining the designated use is not feasible for any of the following reasons:

1. A naturally-occurring pollutant concentration prevents the attainment of the use;
2. A natural, ephemeral, intermittent, or low-flow condition or water level prevents the attainment of the use;
3. A human-caused condition or source of pollution prevents the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
4. A dam, diversion, or other type of hydrologic modification precludes the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate the modification in a way that would result in attainment of the use;
5. A physical condition related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, precludes attainment of an aquatic life designated use; or
6. Controls more stringent than those required by § 301 (b) and § 306 of the Clean Water Act [33 U.S.C. § 1311 and § 1316] are necessary to attain the use and implementation

of the controls would result in substantial and widespread economic and social impact.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

R18-11-105. Tributaries; Designated Uses

The following water quality standards apply to a surface water that is not listed in Appendix B but that is a tributary to a listed surface water.

1. The aquatic and wildlife (ephemeral) and partial-body contact standards apply to an unlisted tributary that is an ephemeral water.
2. The aquatic and wildlife (cold water), full-body contact, and fish consumption standards apply to an unlisted tributary that is a perennial or intermittent surface water and is above 5000 feet in elevation.
3. The aquatic and wildlife (warm water), full-body contact, and fish consumption standards apply to an unlisted tributary that is a perennial or intermittent surface water and is below 5000 feet in elevation.

Historical Note

Adopted effective April 24, 1996 (Supp. 96-2). Section heading amended per instructions of the Department of Environmental Quality, August 9, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

R18-11-106. Net Ecological Benefit

A. The Director may, by rule, modify a water quality standard on the ground that there is a net ecological benefit associated with the discharge of effluent to support or create a riparian and aquatic habitat in an area where water resources are limited. The Director may modify a water quality standard for a pollutant if it is demonstrated that:

1. The discharge of effluent creates or supports an ecologically valuable aquatic, wetland, or riparian ecosystem in an area where these resources are limited;
2. The ecological benefits associated with the discharge of effluent under a modified water quality standard exceed the environmental costs associated with the elimination of the discharge of effluent;
3. The cost of treatment to achieve compliance with a water quality standard is so high that it is more cost effective to eliminate the discharge of effluent to the surface water. The discharger shall demonstrate that it is feasible to eliminate the discharge of effluent that creates or supports the ecologically valuable aquatic, wetland, or riparian ecosystem;
4. The discharge of effluent to the surface water will not cause or contribute to a violation of a water quality standard that has been established for a downstream surface water;
5. All practicable point source discharge control programs, including local pretreatment, waste minimization, and source reduction programs are implemented; and
6. The discharge of effluent does not produce or contribute to the concentration of a pollutant in the tissues of aquatic organisms or wildlife that is likely to be harmful to humans or wildlife through food chain concentration.

B. The Director shall not modify a water quality criterion for a pollutant to be less stringent than a technology-based effluent limitation that applies to the discharge of that effluent. The discharge of effluent shall, at a minimum, comply with applicable technology-based effluent limitations.

Historical Note

Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

R18-11-107. Antidegradation

A. The Director shall, using R18-11-107.01 and this Section, determine whether there is degradation of water quality in a surface water on a pollutant-by-pollutant basis.

B. Tier 1: The level of water quality necessary to support an existing use shall be maintained and protected. No degradation of existing water quality is permitted in a surface water where the existing water quality does not meet the applicable water quality standards.

C. Tier 2: Where existing water quality in a surface water is better than the applicable water quality standard the existing water quality shall be maintained and protected. The Director may allow degradation of existing water quality in the surface water, if the Director makes all of the following findings:

1. The water quality necessary for existing uses is fully protected and water quality is not lowered to a level that does not comply with applicable water quality standards,
2. The highest statutory and regulatory requirements for new and existing point sources are achieved,
3. All cost-effective and reasonable best management practices for nonpoint source pollution control are implemented, and
4. Allowing lower water quality is necessary to accommodate important economic or social development in the area where the surface water is located.

D. Tier 3: Existing water quality shall be maintained and protected in a surface water that is classified as an OAW under R18-11-112. Degradation of an OAW under subsection (C) is prohibited.

E. The Director shall implement this Section in a manner consistent with § 316 of the Clean Water Act [33 U.S.C. 1326] if a potential water quality impairment associated with a thermal discharge is involved.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-107.01. Antidegradation Criteria

A. Tier 1 antidegradation protection.

1. Tier 1 antidegradation protection applies to the following surface waters:
   a. A surface water listed on the 303(d) list for the pollutant that resulted in the listing,
   b. An effluent dependent water,
   c. An ephemeral water,
   d. An intermittent water, and
   e. A canal listed in Appendix B.
2. A regulated discharge shall not cause a violation of a surface water quality standard or a wasteload allocation in a total maximum daily load approved by EPA.

3. Except as provided in subsections (E) and (F), Tier 1 antidegradation review requirements are satisfied for a point-source discharge regulated under an individual AZPDES permit to an ephemeral water, effluent dependent water, intermittent water, or a canal listed in Appendix B, if water quality-based effluent limitations designed to achieve compliance with applicable surface water quality standards are established in the permit and technology-based requirements of the Clean Water Act for the point source discharge are met.

B. Tier 2 antidegradation protection.

1. Tier 2 antidegradation protection applies to a perennial water with existing water quality that is better than applicable water quality standards. A perennial water that is not listed in subsection (A)(1) nor classified as an OAW under A.A.C. R18-9-112(G) has Tier 2 antidegradation protection for all pollutants of concern.
2. A regulated discharge that meets the following criteria, at critical flow conditions, does not cause significant degradation:
   a. The regulated discharge consumes less than 20 percent of the available assimilative capacity for each pollutant of concern, and
   b. At least 50 percent of the assimilative capacity for each pollutant of concern remains available in the surface water for each pollutant of concern.
3. Antidegradation review. Any person proposing a new or expanded regulated discharge under an individual AZPDES permit that may cause significant degradation shall provide ADEQ with the following information:
   a. Baseline characterization. A person seeking authorization to discharge under an individual AZPDES permit to a perennial water shall provide baseline water quality data on pollutants of concern where no data exists or there are insufficient data to characterize baseline water quality and to determine available assimilative capacity. A discharger shall characterize baseline water quality at a location upstream of the proposed discharge location;
   b. Alternative analysis.
      i. The person seeking authorization for the discharge shall prepare and submit a written analysis of alternatives to the discharge. The analysis shall provide information on all reasonable, cost-effective, less-degrading or nondegrading discharge alternatives. Alternatives may include wastewater treatment process changes or upgrades, pollution prevention measures, source reduction, water reclamation, alternative discharge locations, groundwater recharge, land application or treatment, local pretreatment programs, improved operation and maintenance of existing systems, seasonal or controlled discharge to avoid critical flow conditions, and zero discharge;
      ii. The alternatives analysis shall include cost information on base pollution control measures associated with the regulated discharge and cost information for each alternative;
      iii. The person shall implement the alternative that is cost-effective and reasonable, results in the least degradation, and is approved by the Director. An alternative is cost-effective and reasonable if treatment costs associated with the alternative are less than a 10 percent increase above the cost of base pollution control measures;
      iv. For purposes of this subsection, "base pollution control measures" are water pollution control measures required to meet technology-based requirements of the Clean Water Act and water quality-based effluent limits designed to achieve compliance with applicable water quality standards; and
   c. Social and economic justification. The person shall demonstrate to the Director that significant degradation is necessary to accommodate important economic or social development in the local area. The person seeking authorization for the discharge shall prepare a written social and economic justification that includes a description of the following:
      i. The geographic area where significant degradation of existing water quality will occur;
      ii. The current baseline social and economic conditions in the local area;
      iii. The net positive social and economic effects of development associated with the regulated discharge and allowing significant degradation;
      iv. The negative social, environmental, and economic effects of allowing significant degradation of existing water quality; and
      v. Alternatives to the regulated discharge that do not significantly degrade water quality yet may yield comparable social and economic benefits.
4. For purposes of this Section, the term "pollutant of concern" means a pollutant with either a numeric or narrative water quality standard.
5. Public participation. The Director shall provide public notice and an opportunity to comment on an antidegradation review under subsection (B)(3) and shall provide an opportunity for a public hearing under A.A.C. R18-9-A908(B).

C. Tier 3 antidegradation protection.

1. Tier 3 antidegradation protection applies only to an OAW listed in R18-11-112(G).
2. A new or expanded point-source discharge directly to an OAW is prohibited.
3. A person seeking authorization for a regulated discharge to a tributary to, or upstream of, an OAW shall demonstrate in a permit application or in other documentation submitted to ADEQ that the regulated discharge will not degrade existing water quality in the downstream OAW.
4. A discharge regulated under a § 404 permit that may affect existing water quality of an OAW requires a determination by the Director to ensure that existing water quality is maintained and protected and any water quality impacts are temporary. Temporary water quality impacts are those impacts that occur for a period of six months or less and are not regularly occurring. The form of such a determination shall be as follows:
   a. For Corps-issued § 404 permits, an individual § 401 water quality certification.
   b. For Director-issued § 404 permits, a § 404 permit action, wherein the Director shall conduct a water quality evaluation as a part of the state's requirements for issuing § 404 permits and in accordance with this Section.

D. Antidegradation review of a § 404 permit shall be conducted as follows:

1. For a Corps-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a nationwide or regional § 404 permit as part of the § 401 water quality certification prior to issuance of the nationwide or regional permit. The Director shall conduct the antidegradation review of an individual § 404 permit if the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters. For regulated discharges that may degrade water quality in an OAW or a water that is on the 303(d) List of impaired waters, the Director shall conduct the antidegradation review as part of the § 401 water quality certification process.
2. For a Director-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a general § 404 permit as a part of its determination whether to issue a general permit in accordance with state requirements for issuing a § 404 general permit and with this Section. The Director shall conduct the antidegradation review of an individual § 404 permit as part of the § 404 permit action in accordance with state requirements for issuing a § 404 permit and in accordance with this Section.

E. Antidegradation review of an AZPDES stormwater permit. An individual stormwater permit for a municipal separate storm sewer system (MS4) meets antidegradation requirements if the permittee complies with the permit, including developing a stormwater management plan containing controls that reduce the level of pollutants in stormwater discharges to the maximum extent practicable.

F. Antidegradation review of a general permit. The Director shall conduct the antidegradation review of a regulated discharge authorized by a general permit at the time the general permit is issued or renewed. A person seeking authorization to discharge under a general permit is not required to undergo an individual antidegradation review at the time the Notice of Intent is submitted unless the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-108. Narrative Water Quality Standards

A. A surface water shall not contain pollutants in amounts or combinations that:

1. Settle to form bottom deposits that inhibit or prohibit the habitation, growth, or propagation of aquatic life;
2. Cause objectionable odor in the area in which the surface water is located;
3. Cause off-taste or odor in drinking water;
4. Cause off-flavor in aquatic organisms;
5. Are toxic to humans, animals, plants, or other organisms;
6. Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth, or propagation of other aquatic life or that impair recreational uses;
7. Cause or contribute to a violation of an aquifer water quality standard prescribed in R18-11-405 or R18-11-406; or
8. Change the color of the surface water from natural background levels of color.

B. A surface water shall not contain oil, grease, or any other pollutant that floats as debris, foam, or scum; or that causes a film or iridescent appearance on the surface of the water; or that causes a deposit on a shoreline, bank, or aquatic vegetation. The discharge of lubricating oil or gasoline associated with the normal operation of a recreational watercraft is not a violation of this narrative standard.

C. A surface water shall not contain a discharge of suspended solids in quantities or concentrations that interfere with the treatment processes at the nearest downstream potable water treatment plant or substantially increase the cost of handling solids produced at the nearest downstream potable water treatment plant.

D. A surface water shall not contain solid waste such as refuse, rubbish, demolition or construction debris, trash, garbage, motor vehicles, appliances, or tires.

E. A wadeable, perennial stream shall support and maintain a community of organisms having a taxa richness, species composition, tolerance, and functional organization comparable to that of a stream with reference conditions in Arizona.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-108.01. Narrative Biological Criteria for Wadeable, Perennial Streams

A. The narrative biological criteria in this Section apply to a wadeable, perennial stream with either an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use.

B. The biological standard in R18-11-108(E) is met when a bioassessment result, as measured by the Arizona Index of Biological Integrity (IBI), for cold or warm water is:

1. Greater than or equal to the 25th percentile of reference condition, or
2. Greater than the 10th percentile of reference condition and less than the 25th percentile of reference condition and a verification bioassessment result is greater than or equal to the 25th percentile of reference condition.

C. Arizona Index of Biological Integrity (IBI) scores:

Bioassessment Result	Index of Biological Integrity Scores	
	A&Wc	A&Ww
Greater than or equal to the 25th percentile of reference condition	≥52	≥50
Greater than the 10th and less than the 25th percentile of reference condition	46 - 51	40 - 49

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-108.02. Narrative Bottom Deposit Criteria for Wadeable, Perennial Streams

A. The narrative bottom deposit criteria in this Section apply to wadeable, perennial streams with an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use.

B. The narrative water quality standard for bottom deposits at R18-11-108(A)(1) is met when:
1. The percentage of fine sediments in the riffle habitats of a wadeable, perennial stream with an A&Wc designated use, as determined by a riffle pebble count, is less than or equal to 30 percent.
2. The percentage of fine sediments in all stream habitats of a wadeable, perennial stream with an A&Ww designated use, as determined by a reach level pebble count, is equal to or less than 50 percent.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-108.03. Narrative Nutrient Criteria for Lakes and Reservoirs

A. The narrative nutrient criteria in this Section apply to those lakes and reservoirs categorized in Appendix B.

B. The narrative water quality standard for nutrients at R18-11-108(A)(6) is met when, based on a minimum of two lake sample events conducted during the peak season based on lake productivity, the results show an average chlorophyll-*a* value below the applicable threshold for designated use and lake and reservoir category in subsection (D).
1. The mean chlorophyll-*a* concentration is less than the lower value in the target range chlorophyll-*a* for the lake and reservoir category, or
2. The mean chlorophyll-*a* concentration is within the target range for the lake and reservoir category and:
   a. The mean blue green algae count is at or below 20,000 per milliliter, and
   b. The blue green algae count is less than 50 percent of the total algae count, and
   c. There is no evidence of nutrient-related impairments such as:
      i. An exceedance of dissolved oxygen or pH standards;
      ii. A fish kill coincident with a dissolved oxygen or pH exceedance;
      iii. A fish kill or other aquatic organism mortality coincident with algal toxicity;
      iv. Secchi depth is less than the lower value prescribed for the lake and reservoir category;
      v. A nuisance algal bloom is present in the limnetic portion of the lake or reservoir; or
      vi. The concentration of total phosphorous, total nitrogen, or total Kjehldal nitrogen (TKN) is greater than the upper value in the range prescribed for the lake and reservoir category; or
3. For a shallow lake. In addition to meeting the mean chlorophyll-*a* concentrations in subsections (B)(1) or (2), submerged aquatic vegetation covers 50 percent or less of the lake bottom and there is less than a 5 mg/L swing in diel-dissolved oxygen concentration measured within the photic zone.

C. The following threshold ranges apply during the peak season for lake productivity:
1. Warm water lakes peak season, April – October;
2. Cold water lakes peak season, May – September.

D. The following table lists the numeric targets for lakes and reservoirs.

NUMERIC TARGETS FOR LAKES AND RESERVOIRS

Designated Use	Lake Category	Chl-*a* (µg/L)	Secchi Depth (m)	Total Phosphorus (µg/L)	Total Nitrogen (mg/L)	Total Kjehldal Nitrogen (TKN) (mg/L)	Blue-Green Algae (per ml)	Blue-Green Algae (% of total count)	Dissolved Oxygen (mg/L)	pH (SU)
FBC and PBC	Deep	10-15	1.5-2.5	70-90	1.2-1.4	1.0-1.1	20,000			6.5-9.0
	Shallow	10-15	1.5-2.0	70-90	1.2-1.4	1.0-1.1				
	Igneous	20-30	0.5-1.0	100-125	1.5-1.7	1.2-1.4				
	Sedimentary	20-30	1.5-2.0	100-125	1.5-1.7	1.2-1.4				
	Urban	20-30	0.5-1.0	100-125	1.5-1.7	1.2-1.4				
A&Wc	All	5-15	1.5-2.0	50-90	1.0-1.4	0.7-1.1		<50	7 (top m)	6.5-9.0
A&Ww	All (except urban lakes)	25-40	0.8-1.0	115-140	1.6-1.8	1.3-1.6			6 (top m)	
	Urban	30-50	0.7-1.0	125-160	1.7-1.9	1.4-1.7				
A&Wedw	All	30-50	0.7-1.0	125-160	1.7-1.9	1.4-1.7				6.5-9.0
DWS	All	10-20	0.5-1.5	70-100	1.2-1.5	1.0-1.2	20,000			5.0-9.0

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-109. Numeric Water Quality Standards

A. *E. coli* bacteria. The following water quality standards for *Escherichia coli* (*E. coli*) are expressed in colony forming units per 100 milliliters of water (cfu / 100 ml) or as a Most Probable Number (MPN):

E. coli	**FBC**	**PBC**
Geometric mean (minimum of four samples in 30 days)	126	126
Statistical threshold value	410	576

B. pH. The following water quality standards for pH are expressed in standard units:

pH	**DWS**	**FBC, PBC, A&W [1]**	**AgI**	**AgL**
Maximum	9.0	9.0	9.0	9.0
Minimum	5.0	6.5	4.5	6.5

Footnotes:
1. "1" Includes A&Wc, A&Ww, A&Wedw, and A&We.

C. The maximum allowable increase in ambient water temperature, due to a thermal discharge is as follows:

A&Ww	**A&Wedw**	**A&Wc**

3.0° C	3.0° C	1.0° C

D. Suspended sediment concentration.

1. The following water quality standards for suspended sediment concentration, expressed in milligrams per liter (mg/L), are expressed as a median value determined from a minimum of four samples collected at least seven days apart:

A&Wc	A&Ww
25	80

2. The Director shall not use the results of a suspended sediment concentration sample collected during or within 48 hours after a local storm event to determine the median value.

E. Dissolved oxygen. A surface water meets the water quality standard for dissolved oxygen when either:

1. The percent saturation of dissolved oxygen is equal to or greater than 90 percent, or
2. The single sample minimum concentration for the designated use, as expressed in milligrams per liter (mg/L) is as follows:

Designated Use	Single sample minimum concentration in mg/L
A&Ww	6.0
A&Wc	7.0
A&W edw for a sample taken from three hours after sunrise to sunset	3.0
A&W edw for a sample taken from sunset to three hours after sunrise	1.0

The single sample minimum concentration is the same for the designated use in a lake, but the sample must be taken from a depth no greater than one meter.

F. Nutrient criteria. The following are water quality standards for total phosphorus and total nitrogen (expressed in milligrams per liter (mg/L)) that apply to the surface waters listed below. A minimum of 10 samples, each taken at least 10 days apart in a consecutive 12-month period, are required to determine a 90th percentile. Not more than 10 percent of the samples may exceed the 90th percentile value listed below. The Director will apply these water quality standards for total phosphorus and total nitrogen to the surface waters listed below, and to their perennial tributaries, if listed. The Director may also apply these total phosphorus and total nitrogen standards to any source discharging to any tributary (ephemeral, intermittent, effluent dependent water, or perennial) of the surface waters listed below, if necessary to protect nutrient water quality in the listed surface water, based on the volume, frequency, magnitude and duration of the discharge, and distance to the downstream surface water listed below:

1. Verde River and its perennial tributaries from the Verde headwaters to Bartlett Lake:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.10	0.30	1.00
Total nitrogen	1.00	1.50	3.00

2. Black River, Tonto Creek and their perennial tributaries for any segments that are not located on tribal lands:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.10	0.20	0.80
Total nitrogen	0.50	1.00	2.00

3. Salt River and its perennial tributaries above Roosevelt Lake for any segments that are not located on tribal lands:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.12	0.30	1.00
Total nitrogen	0.60	1.20	2.00

4. Salt River below Stewart Mountain Dam to its confluence with the Verde River:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.05	–	0.20
Total nitrogen	0.60	–	3.00

5. Little Colorado River and its perennial tributaries upstream from:
   a. The headwaters to River Reservoir,
   b. South Fork of Little Colorado River at 34°00’49”/109°24’18” to above South Fork Campground at 34°04’49”/109°24’18”, and
   c. The headwaters of Water Canyon Creek to the Apache-Sitgreaves National Forest boundary:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.08	0.10	0.75
Total nitrogen	0.60	0.75	1.10

6. From the Little Colorado River and State Route 260 at 34°06’39”/109°18’55” to Lyman Lake:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.20	0.30	0.75
Total nitrogen	0.70	1.20	1.50

7. Colorado River at the Northern International Boundary near Morelos Dam:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	–	0.33	–
Total nitrogen	–	2.50	–

8. Oak Creek from its headwaters at 35°01'30"/111°44'12" to its confluence with the Verde River and the West Fork of Oak Creek from its headwaters at 35°02'44"/111°54'48" to its confluence with Oak Creek.

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.1	0.25	0.30
Total nitrogen	1.00	1.50	2.50

9. No discharge of wastewater to Show Low Creek or its perennial tributaries upstream of and including Fools Hollow Lake shall exceed 0.16 mg/L total phosphates as P.
10. No discharge of wastewater to the San Francisco River or its perennial tributaries upstream of Luna Lake Dam shall exceed 1.0 mg/L total phosphates as P.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final

rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-110. Salinity Standards for the Colorado River

A. The flow-weighted average annual salinity in the lower main stem of the Colorado River shall not exceed the following criteria:

Location	Total Dissolved Solids
Below Hoover Dam	723 mg/L
Below Parker Dam	747 mg/L
At Imperial Dam	879 mg/L

B. The plan of implementation contained in the "2014 Review, Water Quality Standards for Salinity, Colorado River System," approved October 2014, is incorporated by reference to preserve the basin-wide approach to salinity control developed by the Colorado River Basin Salinity Control Forum and to ensure compliance with the numeric criteria for salinity in subsection (A). This material does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the Colorado River Basin Salinity Control Forum, 106 West 500 South, Suite 101, Bountiful, Utah 84010-6232 or at http://www.coloradoriversalinity.org/.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

R18-11-111. Analytical Methods

A. A person conducting an analysis of a sample taken to determine compliance with a water quality standard shall use an analytical method prescribed in A.A.C. R9-14-610, 40 CFR 136.3, or an alternative analytical method approved under A.A.C. R9-14-610(C).

B. A test result from a sample taken to determine compliance with a water quality standard is valid only if the sample is analyzed by a laboratory that is licensed by the Arizona Department of Health Services, an out-of-state laboratory licensed under A.R.S. § 36-495.14, or a laboratory exempted under A.R.S. § 36-495.02, for the analysis performed.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-112. Outstanding Arizona Waters

A. The Director shall classify a surface water as an outstanding Arizona water (OAW) by rule.

B. The Director may adopt, under R18-11-115, a site-specific standard to maintain and protect existing water quality in an OAW.

C. Any person may nominate a surface water for classification as an OAW by filing a nomination with the Director. The nomination shall include:

1. A map and a description of the surface water;
2. A written statement in support of the nomination, including specific reference to the applicable criteria for an OAW classification prescribed in subsection (D);
3. Supporting evidence demonstrating that the criteria prescribed in subsection (D) are met; and
4. Available water quality data relevant to establishing the baseline water quality of the proposed OAW.

D. The Director may classify a surface water as an OAW based upon the following criteria:

1. The surface water is a perennial or intermittent water;
2. The surface water is in a free-flowing condition. For purposes of this subsection, "in a free-flowing condition" means that a surface water does not have an impoundment, diversion, channelization, rip-rapping or other bank armor, or another hydrological modification within the reach nominated for an OAW classification;
3. The surface water has good water quality. For purposes of this subsection, "good water quality" means that the surface water has water quality that meets or is better than applicable surface water quality standards. A surface water that is listed as impaired under R18-11-604(E) is ineligible for OAW classification; and
4. The surface water meets one or both of the following conditions:
   a. The surface water is of exceptional recreational or ecological significance because of its unique attributes, such as the geology, flora and fauna, water quality, aesthetic value, or the wilderness characteristic of the surface water;
   b. An endangered or threatened species is associated with the surface water and the existing water quality is essential to the species' maintenance and propagation or the surface water provides critical habitat for the threatened or endangered species. An endangered or threatened species is identified in "Endangered and Threatened Wildlife," 50 CFR 17.11 (revised 2005), and "Endangered and Threatened Plants," 50 CFR 17.12 (revised 2005). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the National Archives and Records Administration at http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1.

E. The Director shall hold at least one public meeting in the local area of a surface water that is nominated for classification as an OAW to solicit public comment on the nomination.

F. The Director shall consider the following factors when deciding whether to classify a surface water as an OAW:

1. Whether there is the ability to manage the surface water and its watershed to maintain and protect existing water quality;
2. The social and economic impact of Tier 3 antidegradation protection;
3. The public comments in support of, or in opposition to, an OAW classification;
4. The timing of the nomination relative to the triennial review of surface water quality standards;
5. The consistency of an OAW classification with applicable water quality management plans; and

6. Whether the nominated surface water is located within a national or state park, national monument, national recreation area, wilderness area, riparian conservation area, area of critical environmental concern, or it has another special use designation (for example, Wild and Scenic River).

G. The following surface waters are classified as OAWs:

1. The West Fork of the Little Colorado River, from its headwaters to Government Springs (approximately 9.1 river miles);
2. Oak Creek, from its headwaters to its confluence with the Verde River (approximately 50.3 river miles);
3. West Fork of Oak Creek, from its headwaters to its confluence with Oak Creek (approximately 15.8 river miles);
4. Peeples Canyon Creek, from its headwaters to its confluence with the Santa Maria River (approximately 8.1 river miles);
5. Burro Creek, from its headwaters to its confluence with Boulder Creek (approximately 29.5 miles);
6. Francis Creek, from its headwaters to its confluence with Burro Creek (approximately 22.9 river miles);
7. Bonita Creek, from its boundary of the San Carlos Indian Reservation to its confluence with the Gila River (approximately 14.7 river miles);
8. Cienega Creek, from its confluence with Gardner Canyon to the USGS gaging station (#09484600) (approximately 28.3 river miles);
9. Aravaipa Creek, from its confluence with Stowe Gulch to the downstream boundary of the Aravaipa Canyon Wilderness Area (approximately 15.5 river miles);
10. Cave Creek, from its headwaters to the Coronado National Forest boundary (approximately 10.4 river miles);
11. South Fork of Cave Creek, from its headwaters to its confluence with Cave Creek (approximately 8.6 river miles);
12. Buehman Canyon Creek, from its headwaters to its confluence with unnamed tributary at 32°24'31"/110°32'08" (approximately 9.8 river miles);
13. Lee Valley Creek, from its headwaters to Lee Valley Reservoir (approximately 1.6 river miles);
14. Bear Wallow Creek, from its headwaters to the boundary of the San Carlos Indian Reservation (approximately 4.25 river miles);
15. North Fork of Bear Wallow Creek, from its headwaters to its confluence with Bear Wallow Creek (approximately 3.8 river miles);
16. South Fork of Bear Wallow Creek, from its headwaters to its confluence with Bear Wallow Creek (approximately 3.8 river miles);
17. Snake Creek, from its headwaters to its confluence with the Black River (approximately 6.2 river miles);
18. Hay Creek, from its headwaters to its confluence with the West Fork of the Black River (approximately 5.5 river miles);
19. Stinky Creek, from the White Mountain Apache Indian Reservation boundary to its confluence with the West Fork of the Black River (approximately 3.0 river miles);
20. KP Creek, from its headwaters to its confluence with the Blue River (approximately 12.7 river miles);
21. Davidson Canyon, from the unnamed spring at 31°59'00"/110°38'49" to its confluence with Cienega Creek; and
22. Fossil Creek, from its headwaters at the confluence of Sandrock and Calf Pen Canyons above Fossil Springs to its confluence with the Verde River (approximately 17.2 river miles).

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Added "water quality standards" to R18-11-112, previously omitted in error (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

R18-11-113. Effluent-Dependent Waters

A. The Director shall classify a surface water as an effluent-dependent water by rule.

B. The Director may adopt, under R18-11-115, a site-specific water quality standard for an effluent-dependent water.

C. Any person may submit a petition for rule adoption requesting that the Director classify a surface water as an effluent-dependent water. The petition shall include:

1. A map and a description of the surface water;
2. Information that demonstrates that the surface water consists of a point source discharge of wastewater; and
3. Information that demonstrates that, without a point source discharge of a wastewater, the receiving water is an ephemeral water.

D. The Director shall use the water quality standards that apply to an effluent-dependent water to derive water quality-based effluent limits for a point source discharge of wastewater to an ephemeral water.

E. The Director may use aquatic and wildlife (edw) acute standards only to derive water quality based effluent limits for a sporadic, infrequent, or emergency point source discharge to an ephemeral water or to an effluent-dependent water. The Director shall consider the following factors when deciding whether to apply A&Wedw (acute) standards:

1. The amount, frequency, and duration of the discharge;
2. The length of time water may be present in the receiving water;
3. The distance to a downstream water with aquatic and wildlife chronic standards; and
4. The likelihood of chronic exposure to pollutants.

F. The Director may establish alternative water quality-based effluent limits in an AZPDES permit based on seasonal differences in the discharge.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective December 18, 1992 (Supp. 92-4). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-114. Mixing Zones

A. The Director may establish a mixing zone for a point source discharge to a surface water as a condition of an individual AZPDES permit on a pollutant-by-pollutant basis. A mixing zone is prohibited in an ephemeral water or where there is no water for dilution, or as prohibited pursuant to subsection (H).

B. The owner or operator of a point source seeking the establishment of a mixing zone shall submit a request to the Director

for a mixing zone as part of an application for an AZPDES permit. The request shall include:

1. An identification of the pollutant for which the mixing zone is requested;
2. A proposed outfall design;
3. A definition of the boundary of the proposed mixing zone. For purposes of this subsection, the boundary of a mixing zone is where complete mixing occurs; and
4. A complete and detailed description of the existing physical, biological, and chemical conditions of the receiving water and the predicted impact of the proposed mixing zone on those conditions. The description shall also address the factors listed in subsection (D) that the Director must consider when deciding to grant or deny a request and shall address the mixing zone requirements in subsection (H).

C. The Director shall consider the following factors when deciding whether to grant or deny a request for a mixing zone:

1. The assimilative capacity of the receiving water;
2. The likelihood of adverse human health effects;
3. The location of drinking water plant intakes and public swimming areas;
4. The predicted exposure of biota and the likelihood that resident biota will be adversely affected;
5. Bioaccumulation;
6. Whether there will be acute toxicity in the mixing zone, and, if so, the size of the zone of initial dilution;
7. The known or predicted safe exposure levels for the pollutant for which the mixing zone is requested;
8. The size of the mixing zone;
9. The location of the mixing zone relative to biologically sensitive areas in the surface water;
10. The concentration gradient of the pollutant within the mixing zone;
11. Sediment deposition;
12. The potential for attracting aquatic life to the mixing zone; and
13. The cumulative impacts of other mixing zones and other discharges to the surface water.

D. Director determination.

1. The Director shall deny a request to establish a mixing zone if a water quality standard will be violated outside the boundaries of the proposed mixing zone.
2. If the Director approves the request to establish a mixing zone, the Director shall establish the mixing zone as a condition of an AZPDES permit. The Director shall include any mixing zone condition in the AZPDES permit that is necessary to protect human health and the designated uses of the surface water.

E. Any person who is adversely affected by the Director's decision to grant or deny a request for a mixing zone may appeal the decision under A.R.S. § 49-321 et seq. and A.R.S. § 41-1092 et seq.

F. The Director shall reevaluate a mixing zone upon issuance, reissuance, or modification of the AZPDES permit for the point source or a modification of the outfall structure.

G. Mixing zone requirements.

1. A mixing zone shall be as small as practicable in that it shall not extend beyond the point in the waterbody at which complete mixing occurs under the critical flow conditions of the discharge and of the receiving water.
2. The total horizontal area allocated to all mixing zones on a lake shall not exceed 10 percent of the surface area of the lake.
3. Adjacent mixing zones in a lake shall not overlap or be located closer together than the greatest horizontal dimension of the largest mixing zone.
4. The design of any discharge outfall shall maximize initial dilution of the wastewater in a surface water.
5. The size of the zone of initial dilution in a mixing zone shall prevent lethality to organisms passing through the zone of initial dilution. The mixing zone shall prevent acute toxicity and lethality to organisms passing through the mixing zone.

H. The Director shall not establish a mixing zone in an AZPDES permit for the following persistent, bioaccumulative pollutants:

1. Chlordane,
2. DDT and its metabolites (DDD and DDE),
3. Dieldrin,
4. Dioxin,
5. Endrin,
6. Endrin aldehyde,
7. Heptachlor,
8. Heptachlor epoxide,
9. Lindane,
10. Mercury,
11. Polychlorinated biphenyls (PCBs), and
12. Toxaphene.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-115. Site-Specific Standards

A. The Director shall adopt a site-specific standard by rule.

B. The Director may adopt a site-specific standard based upon a request or upon the Director's initiative for any of the following reasons:

1. Local physical, chemical, or hydrological conditions of a surface water such as pH, hardness, fate and transport, or temperature alters the biological availability or toxicity of a pollutant;
2. The sensitivity of resident aquatic organisms that occur in a surface water to a pollutant differs from the sensitivity of the species used to derive the numeric water quality standards to protect aquatic life in Appendix A;
3. Resident aquatic organisms that occur in a surface water represent a narrower mix of species than those in the dataset used by ADEQ to derive numeric water quality standards to protect aquatic life in Appendix A;
4. The natural background concentration of a pollutant is greater than the numeric water quality standard to protect aquatic life prescribed in Appendix A. "Natural background" means the concentration of a pollutant in a surface water due only to non-anthropogenic sources; or
5. Other factors or combination of factors that upon review by the Director warrant changing a numeric water quality standard for a surface water.

C. Site-specific standard by request. To request that the Director adopt a site-specific standard, a person must conduct a study to support the development of a site-specific standard using a scientifically-defensible procedure.

1. Before conducting the study, a person shall submit a study outline to the Director for approval that contains the following elements:
   a. Identifies the pollutant;
   b. Describes the reach's boundaries;
   c. Uses one of the following procedures, as defined by the most recent EPA guidance documents:
      i. The recalculation procedure,
      ii. The water effects ratio for metals,
      iii. The streamlined water effects ratio, or
      iv. The Biotic ligand model.
   d. Demonstrates that all designated uses are protected.
2. Alternatively, a study outline submitted for the Director's approval must contain the following elements:
   a. Identifies the pollutant;
   b. Describes the reach's boundaries;
   c. Describes the hydrologic regime of the waterbody;
   d. Describes the scientifically-defensible procedure, which can include relevant aquatic life studies, ecological studies, laboratory tests, biological translators, fate and transport models, and risk analyses;
   e. Describes and compares the taxonomic composition, distribution and density of the aquatic biota within the reach to a reference reach and describes the basis of any major taxonomic differences;
   f. Describes the pollutant's effect on the affected species or appropriate surrogate species and on the other designated uses listed for the reach;
   g. Demonstrates that all designated uses are protected; and
   h. A person seeking to develop a site-specific standard based on natural background may use statistical or modeling approaches to determine natural background concentration. Modeling approaches include Better Assessment Science Integrating Source and Nonpoint Sources (Basins), Hydrologic Simulation Program-Fortran (HSPF), and Hydrologic Engineering Center (HEC) programs developed by the U.S. Army Corps of Engineers.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Section repealed by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-116. Resource Management Agencies

Nothing in this Article prohibits fisheries management activities by the Arizona Game and Fish Department or the U.S. Fish and Wildlife Service. This Article does not exempt fish hatcheries from AZPDES permit requirements.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-117. Canals and Urban Park Lakes

A. Nothing in this Article prevents the routine physical or mechanical maintenance of canals, drains, and the urban lakes identified in Appendix B. Physical or mechanical maintenance includes dewatering, lining, dredging, and the physical, biological, or chemical control of weeds and algae. Increases in turbidity that result from physical or mechanical maintenance activities are permitted in canals, drains, and the urban lakes identified in Appendix B.

B. The discharge of lubricating oil associated with the start-up of well pumps that discharge to canals is not a violation of R18-11-108(B).

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-118. Dams and Flood Control Structures

Increases in turbidity that result from the routine physical or mechanical maintenance of a dam or flood control structure are not violations of this Article. Nothing in this Article requires the release of water from a dam or a flood control structure.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-119. Natural background

Where the concentration of a pollutant exceeds a water quality standard and the exceedance is not caused by human activity but is due solely to naturally-occurring conditions, the exceedance shall not be considered a violation of the water quality standard.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1).

R18-11-120. Enforcement of Non-permitted Discharges

A. The Department may establish a numeric water quality standard at a concentration that is below the practical quantitation limit. Therefore, in enforcement actions pursuant to subsection (B), the water quality standard is enforceable at the practical quantitation limit.

B. Except for chronic aquatic and wildlife criteria, for non-permitted discharge violations, the Department shall determine compliance with numeric water quality standard criteria from the analytical result of a single sample, unless additional samples are required under this article. For chronic aquatic and wildlife criteria, compliance for non-permitted discharge violations shall be determined from the geometric mean of the analytical results of the last four samples taken at least 24 hours apart. For the purposes of this Section, a "non-permitted discharge violation" does not include a discharge regulated under an AZPDES permit.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-121. Schedules of Compliance

A compliance schedule in an AZPDES permit shall require the permittee to comply with a discharge limitation based upon a new or revised water quality standard as soon as possible to achieve com-

pliance. The permittee shall demonstrate that all requirements under § 301(b) and § 306 of the Clean Water Act [33 U.S.C. 1311(b) and 1316] are achieved and that the point source cannot comply with a discharge limitation based upon the new or revised water quality standard through the application of existing water pollution control technology, operational changes, or source reduction. In establishing a compliance schedule, the Director shall consider:

1. How much time the permittee has already had to meet any effluent limitations under a prior permit;
2. The extent to which the permittee has made good faith efforts to comply with the effluent limitations and other requirements in a prior permit;
3. Whether treatment facilities, operations, or measures must be modified to meet the effluent limitations;
4. How long any necessary modifications would take to implement; and
5. Whether the permittee would be expected to use the same treatment facilities, operations or other measures to meet the effluent limitations as it would have used to meet the effluent limitations in a prior permit.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

R18-11-122. Variances

A. Upon request, the Director may establish, by rule, a discharger-specific or water segment(s)-specific variance from a water quality standard if requirements pursuant to this Section are met.

B. A person who requests a variance must demonstrate all of the following information:

1. Identification of the specific pollutant and water quality standard for which a variance is sought.
2. Identification of the receiving surface water segment or segments to which the variance would apply.
3. A detailed discussion of the need for the variance, including the reasons why compliance with the water quality standard cannot be achieved over the term of the proposed variance, and any other useful information or analysis to evaluate attainability.
4. A detailed discussion of the discharge control technologies that are available for achieving compliance with the water quality standard for which a variance is sought.
5. Documentation that more advanced treatment technology than applicable technology-based effluent limitations is necessary to achieve compliance with the water quality standard for which a variance is sought.
6. A detailed description of proposed interim discharge limitations and pollutant control activities that represent the highest level of treatment achievable by a point source discharger or dischargers during the term of the variance.
7. Documentation that the proposed term is only as long as necessary to achieve the highest attainable condition.
8. Documentation that is appropriate to the type of use to which the variance would apply as follows:
   a. For a water quality standard variance to a use specified in Clean Water Act § 101(a)(2), documentation must include demonstration of at least one of the following factors that preclude attainment of the use during the term of the variance:
      i. Naturally occurring pollutant concentrations prevent attainment of the use;
      ii. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met;
      iii. That human-caused conditions or sources of pollution prevent the attainment of the water quality standard for which the variance is sought and either (1) it is not possible to remedy the conditions or sources of pollution or (2) remedying the human-caused conditions would cause more environmental damage to correct than to leave in place;
      iv. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification n a way that would result in the attainment of the use;
      v. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;
      vi. That installation and operation of each of the available discharge technologies more advanced than those required to comply with technology-based effluent limitations to achieve compliance with the water quality standard would result in substantial and widespread economic and social impact; or
      vii. Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.
   b. For a water quality standard variance to a use other than those uses specified in Clean Water Act § 101(a)(2), documentation must justify how consideration and value of the water subject to the use appropriately supports the variance and term. A demonstration consistent with (B)(8)(a) of this Section may be used to satisfy this requirement.
9. For a waterbody segment(s)-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
   a. Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and water body or waterbody segment(s) specified in the variance that could be implemented to make progress towards attaining the underlying designated use and criterion; and
   b. If any variance pursuant to subsection (B)(9)(a) previously applied to the water body or waterbody seg-

ment(s), documentation must also demonstrate whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the water quality variance and the water quality progress achieved.

10. For a discharger-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
    a. Identification of the permittee subject to the variance;
    b. For an existing point source discharge, a detailed description of the existing discharge control technologies that are used to achieve compliance with applicable water quality standards. For a new point source discharge, a detailed description of the proposed discharge control technologies that will be used to achieve compliance with applicable water quality standards; and
    c. Documentation that the existing or proposed discharge control technologies will comply with applicable technology-based effluent limitations.

C. The Director shall consider the following factors when deciding whether to grant or deny a variance request:
1. Bioaccumulation,
2. The predicted exposure of biota and the likelihood that resident biota will be adversely affected,
3. The known or predicted safe exposure levels for the pollutant for which the variance is requested, and
4. The likelihood of adverse human health effects.

D. The variance shall represent the highest attainable condition of the water body or water body segment applicable throughout the term of the variance.

E. A variance shall not result in any lowering of the currently attained ambient water quality, unless the variance is necessary for restoration activities, consistent with subsection (B)(8)(a)(vii). The Director must specify the highest attainable condition of the water body or waterbody segment as a quantifiable expression of one of the following:
1. The highest attainable interim criterion,
2. The interim effluent condition that reflects the greatest pollutant reduction achievable; or
3. If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time of the issuance of the variance, and the adoption and implementation of a Pollutant Minimization Program.

F. A variance shall not modify the underlying designated use and criterion. A variance is only a time limited exception to the underlying standard. For discharge-specific variances, other point source dischargers to the surface water that are not granted a variance shall still meet all applicable water quality standards.

G. Point source discharges shall meet all other applicable water quality standards for which a variance is not granted.

H. The Director may not grant a variance for a point source discharge to an OAW listed in R18-11-112(G).

I. Each variance established by the Director is subject to review and approval by the Regional Administrator.

J. The term of the water quality variance may only be as long as necessary to achieve the highest attainable condition and must be consistent with the supporting documentation in subsection (E). The variance term runs from the approval of the variance by the Regional Administrator.

K. The Director shall reevaluate, in its triennial review, whether each variance continues to represent the highest attainable condition. Comment on the variance shall be considered regarding whether the variance continues to represent the highest attainable condition. If the Director determines that the requirements of the variance do not represent the highest attainable condition, then the Director shall modify or repeal the variance in its triennial review rulemaking.

L. If the variance is modified by rulemaking, the requirements of the variance shall represent the highest attainable condition at the time of initial adoption of the variance, or the highest attainable condition identified during the current reevaluation, whichever is more stringent.

M. Upon expiration of a variance, point source dischargers shall comply with the water quality standard.

N. The following are discharger-specific variances adopted by the Director:

O. The following are water body and waterbody segment-specific variances adopted by the Director:

Historical Note

Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-123. Discharge Prohibitions

A. The discharge of wastewater to the following surface waters is prohibited:
1. Sabino Canyon Creek;
2. Vekol Wash, upstream of the Ak-Chin Indian Reservation; and
3. Smith Wash, upstream of the Ak-Chin Indian Reservation.

B. The discharge to Lake Powell of human body wastes and the wastes from toilets and other receptacles intended to receive or retain wastes from a vessel is prohibited.

Historical Note

Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

Appendix A. Numeric Water Quality Standards

Table 1. Water Quality Criteria By Designated Use (see f) Footnotes

Parameter	CAS NUMBER	DWS (µg/L)	FC (µg/L)	FBC (µg/L)	PBC (µg/L)	A&Wc Acute (µg/L)	A&Wc Chronic (µg/L)	A&Ww Acute (µg/L)	A&Ww Chronic (µg/L)	A&Wedw Acute| (µg/L)	A&Wedw Chronic (µg/L)	A&We Acute (µg/L)	Agl (µg/L)	AgL (µg/L)
Acenaphthene	83329	420	198	56,000	56,000	850	550	850	550	850	550			
Acrolein	107028	3.5	1.9	467	467	3	3	3	3	3	3			
Acrylonitrile	107131	0.06	0.2	3	37,333	3,800	250	3,800	250	3,800	250			
Alachlor	15972608	2		9,333	9,333	2,500	170	2,500	170	2,500	170			
Aldrin	309002	0.002	0.00005	0.08	28	3		3		3		4.5	0.003	See (b)
Alpha Particles (Gross) Radioactivity		15 pCi/L See (h)												
Ammonia	7664417					See (e) & Tables 11 (present) & 14 (absent)	See (e) & Tables 13 (present) & 17 (absent)	See (e) & Tables 12 (present) & 15 (absent)	See (e) & Tables 13 (present) & 16 (absent)	See (e) & Table 15 (absent)	See (e) & Table 16 (absent)			
Anthracene	120127	2,100	74	280,000	280,000									
Antimony	7440360	6 T	640 T	747 T	747 T	88 D	30 D	88 D	30 D	1,000 D	600 D			
Arsenic	7440382	10 T	80 T	30 T	280 T	340 D	150 D	340 D	150 D	340 D	150 D	440 D	2,000 T	200 T
Asbestos	1332214	See (a)												
Atrazine	1912249	3		32,667	32,667									
Barium	7440393	2,000 T		98,000 T	98,000 T									
Benz(a)anthracene	56553	0.005	0.02	0.2	0.2									
Benzene	71432	5	140	93	3,733	2,700	180	2,700	180	8,800	560			
Benzo[b]fluoranthene	205992	0.005	0.02	1.9	1.9									
Benzidine	92875	0.0002	0.0002	0.01	2,800	1,300	89	1,300	89	1,300	89	10,000	0.01	0.01
Benzo(a)pyrene	50328	0.2	0.02	0.2	0.2									
Benzo(k)fluoranthene	207089	0.005	0.02	1.9	1.9									
Beryllium	7440417	4 T	84 T	1,867 T	1,867 T	65 D	5.3 D	65 D	5.3 D	65 D	5.3 D			
Beta particles and photon emitters		4 millirems / year See (i)												
Bis(2-chloroethyl) ether	111444	0.03	0.5	1	1	120,000	6,700	120,000	6,700	120,000	6,700			
Bis(2-chloroisopropyl) ether	108601	280	3,441	37,333	37,333									
Boron	7440428	1,400 T		186,667 T	186,667 T								1,000 T	
Bromodichloromethane	75274	TTHM See (g)	17	TTHM	18,667									
4-Bromophenyl phenyl ether	101553					180	14	180	14	180	14			
Bromoform	75252	TTHM See (g)	133	180	18,667	15,000	10,000	15,000	10,000	15,000	10,000			
Bromomethane	74839	9.8	299	1,307	1,307	5,500	360	5,500	360	5,500	360			
Butyl benzyl phthalate	85687	1,400	386	186,667	186,667	1,700	130	1,700	130	1,700	130			
Cadmium	7440439	5 T	84 T	700 T	700 T	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	50	50
Carbaryl	63252					2.1	2.1	2.1	2.1	2.1	2.1	2.1		
Carbofuran	1563662	40		4,667	4,667	650	50	650	50	650	50			
Carbon tetrachloride	56235	5	2	11	980	18,000	1,100	18,000	1,100	18,000	1,100			
Chlordane	57749	2	0.0008	4	467	2.4	0.004	2.4	0.2	2.4	0.2	3.2		
Chlorine (total residual)	7782505	4,000		4,000	4,000	19	11	19	11	19	11			
Chlorobenzene	108907	100	1,553	18,667	18,667	3,800	260	3,800	260	3,800	260			
2-Chloroethyl vinyl ether	110758					180,000	9,800	180,000	9,800	180,000	9,800			
Chloroform	67663	TTHM See (g)	470	230	9,333	14,000	900	14,000	900	14,000	900			
p-Chloro-m-cresol	59507					15	4.7	15	4.7	15	4.7	48,000		
Chloromethane	74873					270,000	15,000	270,000	15,000	270,000	15,000			
beta-Chloronaphthalene	91587	560	1267 317	74,667	74,667									
2-Chlorophenol	95578	35	30	4,667	4,667	2,200	150	2,200	150	2,200	150			
Chloropyrifos	2921882	21		2,800	2,800	0.08	0.04	0.08	0.04	0.08	0.04			
Chromium III	16065831		75,000 T	1,400,000 T	1,400,000 T	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4		
Chromium VI	18540299	21 T	150 T	2,800 T	2,800 T	16 D	11 D	16 D	11 D	16 D	11 D	34 D		
Chromium (Total)	7440473	100 T											1,000	1,000
Chrysene	218019	0.005	0.02	19	19									
Copper	7440508	1,300 T		1,300 T	1,300 T	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	5,000 T	500 T
Cyanide (as free cyanide)	57125	200 T	16,000 T	18,667 T	18,667 T	22 T	5.2 T	41 T	9.7 T	41 T	9.7 T	84 T		200 T
Dalapon	75990	200	8,000	28,000	28,000									
DDT and its breakdown products	50293	0.1	0.0002	4	467	1.1	0.001	1.1	0.001	1.1	0.001	1.1	0.001	0.001
Demeton	8065483						0.1		0.1		0.1			
Diazinon	333415					0.17	0.17	0.17	0.17	0.17	0.17	0.17		
Dibenz (ah) anthracene	53703	0.005	0.02	1.9	1.9									
Dibromochloromethane	124481	TTHM See (g)	13	TTHM	18,667									
1,2-Dibromo-3-chloropropane	96128	0.2		2,800	2,800									
1,2-Dibromoethane	106934	0.05		8,400	8,400									
Dibutyl phthalate	84742	700	899	93,333	93,333	470	35	470	35	470	35	1,100		
1,2-Dichlorobenzene	95501	600	205	84,000	84,000	790	300	1,200	470	1,200	470	5,900		
1,3-Dichlorobenzene	541731					2,500	970	2,500	970	2,500	970			
1,4-Dichlorobenzene	106467	75	5755	373,333	373,333	560	210	2,000	780	2,000	780	6,500		
3,3'-Dichlorobenzidine	91941	0.08	0.03	3	3									
1,2-Dichloroethane	107062	5	37	15	186,667	59,000	41,000	59,000	41,000	59,000	41,000			

1,1-Dichloroethylene	75354	7	7,143	46,667	46,667	15,000	950	15,000	950	15,000	950			
1,2-cis-Dichloroethylene	156592	70		70	70									
1,2-trans-Dichloroethylene	156605	100	10,127	18,667	18,667	68,000	3,900	68,000	3,900	68,000	3,900			
Dichloromethane	75092	5	593	190	56,000	97,000	5,500	97,000	5,500	97,000	5,500			
2,4-Dichlorophenol	120832	21	59	2,800	2,800	1,000	88	1,000	88	1,000	88			
2,4-Dichlorophenoxyacetic acid (2,4-D)	94757	70		9,333	9,333									
1,2-Dichloropropane	78875	5	17,518	84,000	84,000	26,000	9,200	26,000	9,200	26,000	9,200			
1,3-Dichloropropene	542756	0.7	42	420	28,000	3,000	1,100	3,000	1,100	3,000	1,100			
Dieldrin	60571	0.002	0.00005	0.09	47	0.2	0.06	0.2	0.06	0.2	0.06	4	0.003	See (b)
Diethyl phthalate	84662	5,600	8,767	746,667	746,667	26,000	1,600	26,000	1,600	26,000	1,600			
Di (2-ethylhexyl) adipate	103231	400		560,000	560,000									
Di (2-ethylhexyl) phthalate	117817	6	3	100	18,667	400	360	400	360	400	360	3,100		
2,4-Dimethylphenol	105679	140	171	18,667	18,667	1,000	310	1,000	310	1,000	310	150,000		
Dimethyl phthalate	131113					17,000	1,000	17,000	1,000	17,000	1,000			
4,6-Dinitro-o-cresol	534521	28	582	3,733	3,733	310	24	310	24	310	24			
2,4-Dinitrophenol	51285	14	1,067	1,867	1,867	110	9.2	110	9.2	110	9.2			
2,4-Dinitrotoluene	121142	14	421	1,867	1,867	14,000	860	14,000	860	14,000	860			
2,6-Dinitrotoluene	606202	0.05		2	3,733									
Di-n-octyl phthalate	117840	2,800		373,333	373,333									
Dinoseb	88857	7		933	933									
1,2-Diphenylhydrazine	122667	0.04	0.2	1.8	1.8	130	11	130	11	130	11			
Diquat	85007	20		2,053	2,053									
Endosulfan sulfate	1031078	42	18	5,600	5,600	0.2	0.06	0.2	0.06	0.2	0.06	3		
Endosulfan (Total)	115297	42	18	5,600	5,600	0.2	0.06	0.2	0.06	0.2	0.06	3		
Endothall	145733	100		18,667	18,667									
Endrin	72208	2	0.06	280	280	0.09	0.04	0.09	0.04	0.09	0.04	0.7	0.004	0.004
Endrin aldehyde	7421934					0.09	0.04	0.09	0.04	0.09	0.04	0.7		
Ethylbenzene	100414	700	2,133	93,333	93,333	23,000	1,400	23,000	1,400	23,000	1,400			
Fluoranthene	206440	280	28	37,333	37,333	2,000	1,600	2,000	1,600	2,000	1,600			
Fluorene	86737	280	1,067	37,333	37,333									
Fluoride	7782414	4,000		140,000	140,000									
Glyphosate	1071836	700	266,667	93,333	93,333									
Guthion	86500						0.01		0.01		0.01			
Heptachlor	76448	0.4	0.00008	0.4	467	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Heptachlor epoxide	1024573	0.2	0.00004	0.2	12	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Hexachlorobenzene	118741	1	0.0003	1	747	6	3.7	6	3.7	6	3.7			
Hexachlorobutadiene	87683	0.4	18	18	187	45	8.2	45	8.2	45	8.2			
Hexachlorocyclohexane alpha	319846	0.006	0.005	0.22	7,467	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane beta	319857	0.02	0.02	0.78	560	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane delta	319868					1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane gamma (lindane)	58899	0.2	1.8	280	280	1	0.08	1	0.28	1	0.61	11		
Hexachlorocyclopentadiene	77474	50	580	9,800	9,800	3.5	0.3	3.5	0.3	3.5	0.3			
Hexachloroethane	67721	2.5	3.3	100	933	490	350	490	350	490	350	850		
Hydrogen sulfide	7783064						2 See (c)		2 See (c)		2 See (c)			
Indeno (1,2,3-cd) pyrene	193395	0.05	0.49	1.9	1.9									
Iron	7439896						1,000 D		1,000 D		1,000 D			
Isophorone	78591	37	961	1,500	186,667	59,000	43,000	59,000	43,000	59,000	43,000			
Lead	7439921	15 T		15 T	15 T	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	10,000 T	100 T
Malathion	121755	140		18,667	18,667		0.1		0.1		0.1			
Manganese	7439965	980		130,667	130,667								10,000	
Mercury	7439976	2 T		280 T	280 T	2.4 D	0.01 D	2.4 D	0.01 D	2.4 D	0.01 D	5 D		10 T
Methoxychlor	72435	40		4,667	4,667		0.03		0.03		0.03			
Methylmercury	22967926		0.3 mg/ kg											
Mirex	2385855	1		187	187		0.001		0.001		0.001			
Naphthalene	91203	140	1,524	18,667	18,667	1,100	210	3,200	580	3,200	580			
Nickel	7440020	140 T	4,600 T	28,000 T	28,000 T	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7		
Nitrate	14797558	10,000		3,733,333	3,733,333									
Nitrite	14797650	1,000		233,333	233,333									
Nitrate + Nitrite		10,000												
Nitrobenzene	98953	3.5	138	467	467	1,300	850	1,300	850	1,300	850			
p-Nitrophenol	100027					4,100	3,000	4,100	3,000	4,100	3,000			
N-nitrosodimethylamine	62759	0.001	3	0.03	0.03									
N-Nitrosodiphenylamine	86306	7.1	6	290	290	2,900	200	2,900	200	2,900	200			
N-nitrosodi-n-propylamine	621647	0.005	0.5	0.2	88,667									
Nonylphenol	104405					28	6.6	28	6.6	28	6.6	28		
Oxamyl	23135220	200		23,333	23,333									
Parathion	56382					0.07	0.01	0.07	0.01	0.07	0.01			
Paraquat	1910425	32		4,200	4,200	100	54	100	54	100	54			
Pentachlorophenol	87865	1	1,000	12	28,000	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10		
Permethrin	52645531	350		46,667	46,667	0.3	0.2	0.3	0.2	0.3	0.2			
Phenanthrene	85018					30	6.3	30	6.3	30	6.3			
Phenol	108952	2,100	37	280,000	280,000	5,100	730	7,000	1,000	7,000	1,000	180,000		
Picloram	1918021	500	2,710	65,333	65,333									

Polychlorinatedbiphenyls (PCBs)	1336363	0.5	0.00006	19	19	2	0.01	2	0.02	2	0.02	11	0.001	0.001
Pyrene	129000	210	800	28,000	28,000									
Radium 226 + Radium 228		5 pCi/L												
Selenium	7782492	50 T	667 T	4,667 T	4,667 T		2 T		2 T		2 T	33 T	20 T	50 T
Silver	7440224	35 T	8,000 T	4,667 T	4,667 T	See (d) & Table 8		See (d) & Table 8		See (d) & Table 8		See (d) & Table 8		
Simazine	112349	4		4,667	4,667									
Strontium	7440246	8 pCi/L												
Styrene	100425	100		186,667	186,667	5,600	370	5,600	370	5,600	370			
Sulfides												100		
2,3,7,8-Tetrachlorod- ibenzo-p-dioxin (2,3,7,8-TCDD)	1746016	0.00003	5x10-9	0.00003	0.0009	0.01	0.005	0.01	0.005	0.01	0.005	0.1		
1,1,2,2-Tetrachloroethane	79345	0.2	4	7	56,000	4,700	3,200	4,700	3,200	4,700	3,200			
Tetrachloroethylene	127184	5	261	9,333	9,333	2,600	280	6,500	680	6,500	680	15,000		
Thallium	7440280	2 T	7.2 T	75 T	75 T	700 D	150 D	700 D	150 D	700 D	150 D			
Toluene	108883	1,000	201,000	280,000	280,000	8,700	180	8,700	180	8,700	180			
Toxaphene	8001352	3	0.0003	1.3	933	0.7	0.0002	0.7	0.0002	0.7	0.0002	11	0.005	0.005
Tributyltin						0.5	0.07	0.5	0.07	0.5	0.07			
1,2,4-Trichlorobenzene	120821	70	70	9,333	9,333	750	130	1,700	300	1,700	300			
1,1,1-Trichloroethane	71556	200	428,571	1,866,667	1,866,667	2,600	1,600	2,600	1,600	2,600	1,600		1,000	
1,1,2-Trichloroethane	79005	5	16	25	3,733	18,000	12,000	18,000	12,000	18,000	12,000			
Trichloroethylene	79016	5	29	280,000	280	20,000	1,300	20,000	1,300	20,000	1,300			
2,4,6-Trichlorophenol	88062	3.2	2	130	130	160	25	160	25	160	25	3,000		
2,4,5-Trichlorophenoxy pro-prionic acid (2,4,5-TP)	93721	50		7,467	7,467									
Trihalomethanes (T)		80												
Tritium	10028178	20,000 pCi/L												
Uranium	7440611	30 D		2,800	2,800									
Vinyl chloride	75014	2	5	2	2,800									
Xylenes (T)	1330207	10,000		186,667	186,667									
Zinc	7440666	2,100 T	5,106 T	280,000 T	280,000 T	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	10,000 T	25,000 T

Footnotes

a. The asbestos standard is 7 million fibers (longer than 10 micrometers) per liter.
b. The aldrin/dieldrin standard is exceeded when the sum of the two compounds exceeds 0.003 µg/L.
c. In lakes, the acute criteria for hydrogen sulfide apply only to water samples taken from the epilimnion, or the upper layer of a lake or reservoir.
d. Hardness, expressed as mg/L $CaCO_3$, is determined according to the following criteria:
   i. If the receiving water body has an A&Wc or A&Ww designated use, then hardness is based on the hardness of the receiving water body from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L $CaCO_3$.
   ii. If the receiving water has an A&Wedw or A&We designated use, then the hardness is based on the hardness of the effluent from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L $CaCO_3$.
   iii. The mathematical equations for the hardness-dependent parameter represent the water quality standards. Examples of criteria for the hardness-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
e. pH is determined according to the following criteria:
   i. If the receiving water has an A&Wc or A&Ww designated use, then pH is based on the pH of the receiving water body from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
   ii. If the receiving water body has an A&Wedw or A&We designated use, then the pH is based on the pH of the effluent from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
   iii. The mathematical equations for ammonia represent the water quality standards. Examples of criteria for ammonia have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
f. Table 1 abbreviations.
   i. µg/L = micrograms per liter,
   ii. mg/kg = milligrams per kilogram,
   iii. pCi/L = picocuries per liter,
   iv. D = dissolved,
   v. T = total recoverable,
   vi. TTHM indicates that the chemical is a trihalomethane.
g. The total trihalomethane (TTHM) standard is exceeded when the sum of these four compounds exceeds 80 µg/L, as a rolling annual average.
h. The concentration of gross alpha particle activity includes radium-226, but excludes radon and uranium.
i. The average annual concentration of beta particle activity and photon emitters from manmade radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirems per year.
j. The mathematical equations for the pH-dependent parameters represent the water quality standards. Examples of criteria for the pH-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
k. Abbreviations for the mathematical equations are as follows:
   e = the base of the natural logarithm and is a mathematical constant equal to 2.71828
   LN = is the natural logarithm
   CMC = Criterion Maximum Concentration (acute)
   CCC= Criterion Continuous Concentration (chronic)

Historical Note

Appendix A repealed; new Appendix A, Table 1 adopted effective April 24, 1996 (Supp. 96-2). Appendix A, Table 1 amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 1 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 1 repealed; new Appendix A, Table 1 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 1 amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Amended by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 2. Acute Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife coldwater		Aquatic and Wildlife warm water, and edw		Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L.**
20	0.40	20	2.1	20	4.9
100	1.8	100	9.4	100	22
400	6.5	400	34	400	80
$_{e}$(0.9789*LN(Hardness)-3.866)*(1.136672-LN(Hardness)*0.041838)		$_{e}$(0.9789*LN(Hardness)-2.208)*(1.136672-LN(Hardness)*0.041838)		$_{e}$(0.9789*LN(Hardness)-1.363)(1.136672-LN(Hardness)*0.041838)	

Historical Note

Appendix A repealed; new Appendix A, Table 2 adopted effective April 24, 1996 (Supp. 96-2). Appendix A, Table 2 amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 2 amended to correct references to footnotes (Supp. 02-4). Appendix A, Table 2 footnotes amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 2 repealed; new Appendix A, Table 2 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 2 repealed; new Table 2 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 3. Chronic Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife coldwater, warmwater, and edw	
Hard. mg/L	**Std. µg/L**
20	0.21
100	0.72
400	2.0
$_{e}$(0.7977*LN(Hardness)-3.909)*(1.101672-LN(Hardness)*0.041838)	

Historical Note

Appendix A, Table 3 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 3 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 3 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 3 repealed; new Table 3 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 4. Water Quality Standards for Dissolved Chromium III

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	152	20	19.8	20	512
100	570	100	74.1	100	1,912
400	1,773	400	231	400	5,950
$_{e}$(0.819*LN(Hardness)+3.7256)*(0.316)		$_{e}$(0.819*LN(Hardness)+0.6848)*(0.86)		$_{e}$(0.819*LN(Hardness)+4.9361) * (0.316)	

Historical Note

Appendix A, Table 4 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 4 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 4 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 4 repealed; new Table 4 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 5. Water Quality Standards for Dissolved Copper

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	2.9	20	2.3	20	5.1
100	13	100	9.0	100	23
400	50	400	29	400	86
$_{e}$(0.9422*LN(Hardness)-1.702)*(0.96)		$_{e}$(0.8545*LN(Hardness)-1.702)*(0.96)		$_{e}$(0.9422*LN(Hardness)-1.1514)*(0.96)	

Historical Note

Appendix A, Table 5 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 5 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 5 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 5 repealed; new Table 5 made by final

rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 6. Water Quality Standards for Dissolved Lead

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	10.8	20	0.42	20	22.8
100	64.6	100	2.5	100	136.3
400	281	400	10.9	400	592.7
$_{e}$(1.273*LN(Hardness)-1.46)*(1.46203-(LN(Hardness))*(0.145712))		$_{e}$(1.273*LN(Hardness)-4.705) *(1.46203-(LN(Hardness))*(0.145712))		$_{e}$(1.273*(LN(Hardness))-0.7131) *(1.46203-(LN(Hardness))*(0.145712))	

Historical Note

Appendix A, Table 6 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 6 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 6 renumbered to Table 9; new Table 6 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 6 repealed; new Table 6 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 7. Water Quality Standards for Dissolved Nickel

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	120.0	20	13.3	20	1066
100	468	100	52.0	100	4158
400	1513	400	168	400	13436
$_{e}$(0.846*LN(Hardness)+2.255)*(0.998)		$_{e}$(0.846*LN(Hardness)+0.0584)*(0.997)		$_{e}$(0.846*LN(Hardness)+4.4389)*(0.998)	

Historical Note

Appendix A, Table 7 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 7 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 7 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 7 repealed; new Table 7 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 8. Water Quality Standards for Dissolved Silver

Acute Aquatic and Wildlife coldwater, warmwater, edw, and ephemeral	
Hard. mg/L	**Std. µg/L**
20	0.20
100	3.2
400	34.9
$_{e}$(1.72*LN(Hardness)-6.59)*(0.85)	

Historical Note

Appendix A, Table 8 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 8 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 8 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 8 repealed; new Table 8 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 9. Water Quality Standards for Dissolved Zinc

Acute and Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	30.0	20	284
100	117	100	1112
400	379	400	3599
$_{e}$(0.8473*LN(Hardness)+0.884)*(0.978)		$_{e}$(0.8473*LN(Hardness)+3.1342)*(0.978)	

Historical Note

Appendix A, Table 9 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 9 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 9 renumbered to Table 11; new Table 9 renumbered from Table 6 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 9 repealed; new Table 9 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 10. Water Quality Standards for Pentachlorophenol

Acute Aquatic and Wildlife coldwater, warmwater and edw			Chronic Aquatic and Wildlife coldwater, warmwater and edw			Acute Aquatic and Wildlife ephemeral	
pH	**µg/L**		**pH**	**µg/L**		**pH**	**µg/L**
3	0.16		3	0.1		3	0.66
6	3.3		6	2.1		6	13.5
9	67.7		9	42.7		9	274
$_{e}$(1.005*(pH)-4.83)			$_{e}$(1.005*(pH)-5.29)			$_{e}$(1.005*(pH)-3.4306)	

Historical Note

Appendix A, Table 10 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 10 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 10 renumbered to Table 12; new Table 10 renumbered from Table 11 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 10 repealed; new Table 10 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 11. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater, Unionid Mussels Present

For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	33	33	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	31	31	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	30	30	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	28	28	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	26	26	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	24	24	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	8	7.3
7.1	22	22	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	20	20	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	18	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	15	15	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	11	11	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	9.6	9.6	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	3
7.8	8.1	8.1	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	6.8	6.8	6.6	6	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	5.6	5.6	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	4.6	4.6	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	3.8	3.8	3.7	3.5	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	3.1	3.1	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	2.6	2.6	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	2.1	2.1	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	1.8	1.8	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.59	0.54
8.7	1.5	1.5	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.2	1.2	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1	1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9	0.88	0.88	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

$$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(23.12\times 10^{0.036\times(20-T)}\right)\right)\right)$$

Historical Note

Appendix A, Table 11 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 11 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 11 renumbered to Table

10; new Table 11 renumbered from Table 9 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 11 repealed; new Table 11 renumbered from Table 25 and amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 11 repealed; new Appendix A, Table 11 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 12. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater, Unionid Mussels Present

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																				
pH	**0-10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9	7.3
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	3	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	8.8	8.2	7.6	7	6.4	5.9	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	6	5.6	5.2	4.8	4.4	4	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

$$0.7249 \times \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}}\right) \times MIN(51.93, 23.12 \times 10^{0.036\times(20-T)})$$

Historical Note

Appendix A, Table 12 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 12 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 12 renumbered to Table 18; new Table 12 renumbered from Table 10 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 12 repealed; new Table 12 renumbered from Table 26 and amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 11 repealed; new Appendix A, Table 11 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Appendix A, Table 12 repealed; new Appendix A, Table 12 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 13. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater and warmwater, Unionid Mussels Present

For the aquatic and wildlife cold and warm water uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																							
pH	**0-7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.5	1.4	1.3	1.2	1.1
6.6	4.8	4.5	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1
6.7	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1
6.8	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1
6.9	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1
7	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99
7.1	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95
7.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9
7.3	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85
7.4	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79
7.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73
7.6	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.4	1.4	1.3	1.2	1.1	1.1	0.98	0.92	0.86	0.81	0.76	0.71	0.67
7.7	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6
7.8	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53
7.9	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47
8	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6	0.56	0.53	0.5	0.44	0.44	0.41
8.1	1.5	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81	0.76	0.71	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35
8.2	1.3	1.2	1.2	1.1	1	0.96	0.9	0.84	0.79	0.74	0.7	0.65	0.61	0.57	0.54	0.5	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3
8.3	1.1	1.1	0.99	0.93	0.87	0.82	0.76	0.72	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26
8.4	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47	0.44	0.41	0.39	0.36	0.34	0.32	0.3	0.28	0.26	0.25	0.23	0.22
8.5	0.8	0.75	0.71	0.67	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31	0.29	0.27	0.25	0.24	0.22	0.21	0.2	0.18
8.6	0.68	0.64	0.6	0.56	0.53	0.49	0.46	0.43	0.41	0.38	0.36	0.33	0.31	0.29	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.16	0.15
8.7	0.57	0.54	0.51	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13
8.8	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26	0.24	0.23	0.21	0.2	0.19	0.17	0.16	0.15	0.14	0.13	0.13	0.12	0.11
8.9	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.12	0.11	0.1	0.09
9	0.36	0.34	0.32	0.3	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.11	0.1	0.09	0.09	0.08

$$0.8876 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(2.126 \times 10^{0.028 \times (20-MAX(T,7))}\right)$$

Historical Note

Appendix A, Table 13 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 13 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 13 renumbered to Table 15; new Table 13 renumbered from Table 14 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 13 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 13 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 14. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater, Unionid Mussels Absent

For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	33	33	33	33	33	33	33	33	33	33	33	33	33	33	31	29	27
6.6	31	31	31	31	31	31	31	31	31	31	31	31	31	31	30	28	26
6.7	30	30	30	30	30	30	30	30	30	30	30	30	30	30	29	26	24
6.8	28	28	28	28	28	28	28	28	28	28	28	28	28	28	27	25	23
6.9	26	26	26	26	26	26	26	26	26	26	26	26	26	26	25	23	21
7	24	24	24	24	24	24	24	24	24	24	24	24	24	24	23	21	20
7.1	22	22	22	22	22	22	22	22	22	22	22	22	22	22	21	19	18
7.2	20	20	20	20	20	20	20	20	20	20	20	20	20	20	19	17	16
7.3	18	18	18	18	18	18	18	18	18	18	18	18	18	18	17	16	14
7.4	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	14	13
7.5	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	12	11
7.6	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	10	9.3
7.7	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.3	8.6	7.9
7.8	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	7.8	7.2	6.6
7.9	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.5	6	5.5
8	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.6
8.1	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.5	4.1	3.8
8.2	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.7	3.4	3.1
8.3	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3	2.8	2.6
8.4	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.5	2.3	2.1
8.5	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	1.9	1.8
8.6	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.6	1.4
8.7	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.4	1.3	1.2
8.8	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1
8.9	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0.92	0.85
9	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.85	0.78	0.72

$$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(62.15\times 10^{0.036\times(20-T)}\right)\right)\right.$$

Historical Note

Appendix A, Table 14 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 14 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 14 renumbered to Table 13; new Table 14 renumbered from Table 15 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 14 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 14 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 15. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	51	51	51	51	51	51	51	51	48	44	40	37	34	31	29	27
6.6	49	49	49	49	49	49	49	49	49	46	42	39	36	33	30	28	26
6.7	46	46	46	46	46	46	46	46	46	43	40	37	34	31	29	26	24
6.8	44	44	44	44	44	44	44	44	44	41	38	35	32	29	27	25	23
6.9	41	41	41	41	41	41	41	41	41	38	35	32	30	27	25	23	21
7	38	38	38	38	38	38	38	38	38	35	32	30	27	25	23	21	20
7.1	34	34	34	34	34	34	34	34	34	32	29	27	25	23	21	19	18
7.2	31	31	31	31	31	31	31	31	31	29	26	24	22	21	19	17	16
7.3	27	27	27	27	27	27	27	27	27	26	23	22	20	18	17	16	14
7.4	24	24	24	24	24	24	24	24	24	22	21	19	17	16	15	14	13
7.5	21	21	21	21	21	21	21	21	21	19	18	16	15	14	13	12	11
7.6	18	18	18	18	18	18	18	18	18	17	15	14	13	12	11	10	9.3
7.7	15	15	15	15	15	15	15	15	15	14	13	12	11	10	9.3	8.6	7.9
7.8	13	13	13	13	13	13	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6
7.9	11	11	11	11	11	11	11	11	11	9.9	9.1	8.4	7.7	7.1	6.5	6	5.5
8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.2	7.5	6.9	6.4	5.9	5.4	5	4.6
8.1	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	6.8	6.2	5.7	5.3	4.9	4.5	4.1	3.8
8.2	6	6	6	6	6	6	6	6	6	5.6	5.1	4.7	4.4	4	3.7	3.4	3.1
8.3	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6
8.4	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	3.8	3.4	3.2	3	2.7	2.5	2.3	2.1
8.5	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.1	2.9	2.6	2.4	2.2	2.1	1.9	1.8
8.6	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4
8.7	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2	1.8	1.7	1.5	1.4	1.3	1.2
8.8	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1
8.9	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.4	1.3	1.2	1.1	1	0.92	0.85
9	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1	0.93	0.85	0.78	0.72

$$0.7249 \times \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}}\right) \times MIN\left(51.93, \left(62.15 \times 10^{0.036\times(20-T)}\right)\right)$$

Historical Note

Appendix A, Table 15 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 15 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 15 renumbered to Table 14; new Table 15 renumbered from Table 13 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 15 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 14 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 16. Chronic Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

	Temperature (°C)																							
pH	0-7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	19	17	16	15	14	13	13	12	11	10	9.7	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	18	17	16	15	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
6.7	18	17	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
6.8	17	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
6.9	17	16	15	14	13	12	12	11	10	9.5	8.9	8.4	7.8	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
7	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.9	5.5	5.1	4.8	4.5	4.2	4	3.7
7.1	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	15	14	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
7.3	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	12	11	11	10	9.4	8.8	8.2	7.7	7.2	6.8	6.4	6	5.6	5.2	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	11	10	10	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	9.9	9.3	8.7	8.1	7.7	7.2	6.8	6.3	5.9	5.6	5.2	4.9	4.6	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	8.8	8.3	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	6.8	6.3	6	5.6	5.2	4.9	4.6	4.3	4	3.8	3.6	3.3	3.1	2.9	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3
8.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3	2.8	2.6	2.5	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81
8.5	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	2.6	2.4	2.2	2.1	2	1.9	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.93	0.88	0.82	0.77	0.72	0.68	0.63	0.6	0.56	0.52	0.49
8.8	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79	0.74	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49	0.46	0.43	0.4	0.38	0.36
9	1.4	1.3	1.2	1.1	1	0.98	0.92	0.86	0.81	0.76	0.71	0.66	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(7.547 \times 10^{0.028 \times (20 - MAX(T,7))}\right)$$

Historical Note

Appendix A, Table 16 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 16 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 16 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 16 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 16 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 17. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, Unionid Mussels Absent

For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
6.7	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
6.8	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.6	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
6.9	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
7	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7
7.1	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
7.3	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3
8.2	2	2	2	2	2	2	2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.1	0.99	0.93	0.87	0.81
8.5	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	1	1	1	1	1	1	1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49
8.8	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.6	0.56	0.52	0.49	0.46	0.43	0.41	0.38	0.36
9	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times MIN\left(6.920, \left(7.547 \times 10^{0.028\times(20-T)}\right)\right)$$

Historical Note

Appendix A, Table 17 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 17 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 17 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 17 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 16 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 18. Repealed

Historical Note

Appendix A, Table 18 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 18 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 18 repealed; new Table 18 renumbered from Table 12 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 18 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 19. Repealed

Historical Note

Appendix A, Table 19 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

Appendix A, Table 19 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 19 renumbered to Table 21; new Table 19 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 19 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 20. Repealed

Historical Note

Appendix A, Table 20 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 20 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 20 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 20 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 21. Repealed

Historical Note

Appendix A, Table 21 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 21 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 21 renumbered to Table 22; new Table 21 renumbered from Table 19 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 21 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 22. Repealed

Historical Note

Appendix A, Table 22 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 22 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 22 renumbered to Table 23; new Table 22 renumbered from Table 21 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 22 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 23. Repealed

Historical Note

Appendix A, Table 23 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 23 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 23 renumbered to Table 24; new Table 23 renumbered from Table 22 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 23 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 24. Repealed

Historical Note

Appendix A, Table 24 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 24 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 24 renumbered to Table 25; new Table 24 renumbered from Table 23 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 24 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 25. Renumbered

Historical Note

Appendix A, Table 25 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 25 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 25 renumbered to Table 26; new Table 25 renumbered from Table 24 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 25 renumbered to Table 11 by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 26. Renumbered

Historical Note

Appendix A, Table 26 renumbered from Table 25 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 26 renumbered to Table 12 by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Appendix B. Surface Waters and Designated Uses

(Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the Appendix B table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.)

Watersheds:

BW = Bill Williams
CG = Colorado – Grand Canyon
CL = Colorado – Lower Gila
LC = Little Colorado
MG = Middle Gila
SC = Santa Cruz – Rio Magdelena – Rio Sonoyta
SP = San Pedro – Willcox Playa – Rio Yaqui
SR = Salt River
UG = Upper Gila
VR = Verde River

Other Abbreviations:

WWTP = Wastewater Treatment Plant
Km = kilometers

		Segment Description and Location (Latitude and	Lake	Aquatic and Wildlife				Human Health				Agricultural	
Watershed	Surface Waters	Longitudes are in NAD 83)	Category	A&Wc	A&Ww	A&We	A&Wedw	FBC	PBC	DWS	FC	AgI	AgL
BW	Alamo Lake	34°14'06"/113°35'00"	Deep		A&Ww			FBC			FC		AgL
BW	Big Sandy River	Headwaters to Alamo Lake			A&Ww			FBC			FC		AgL
BW	Bill Williams River	Alamo Lake to confluence with Colorado River			A&Ww			FBC			FC		AgL
BW	Blue Tank	34°40'14"/112°58'17"			A&Ww			FBC			FC		AgL
BW	Boulder Creek	Headwaters to confluence with unnamed tributary at 34°41'13"/ 113°03'37"		A&Wc				FBC			FC		AgL
BW	Boulder Creek	Below confluence with unnamed tributary to confluence with Burro Creek			A&Ww			FBC			FC		AgL
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek			A&Ww			FBC			FC		AgL
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River			A&Ww			FBC			FC		AgL
BW	Carter Tank	34°52'27"/112°57'31"			A&Ww			FBC			FC		AgL
BW	Conger Creek	Headwaters to confluence with unnamed tributary at 34°45'15"/ 113°05'46"		A&Wc				FBC			FC		AgL
BW	Conger Creek	Below confluence with unnamed tributary to confluence with Burro Creek			A&Ww			FBC			FC		AgL
BW	Copper Basin Wash	Headwaters to confluence with unnamed tributary at 34°28'12"/ 112°35'33"		A&Wc				FBC			FC		AgL
BW	Copper Basin Wash	Below confluence with unnamed tributary to confluence with Skull Valley Wash				A&We			PBC				AgL
BW	Cottonwood Canyon	Headwaters to Bear Trap Spring		A&Wc				FBC			FC		AgL
BW	Cottonwood Canyon	Below Bear Trap Spring to confluence at Sycamore Creek			A&Ww			FBC			FC		AgL
BW	Date Creek	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC		AgL
BW	Francis Creek (OAW)	Headwaters to confluence with Burro Creek			A&Ww			FBC		DWS	FC	AgI	AgL
BW	Kirkland Creek	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC	AgI	AgL
BW	Knight Creek	Headwaters to confluence with Big Sandy River			A&Ww			FBC			FC		AgL
BW	Peeples Canyon (OAW)	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC		AgL
BW	Red Lake	35°12'18"/113°03'57"	Sedimentary		A&Ww			FBC			FC		AgL
BW	Santa Maria River	Headwaters to Alamo Lake			A&Ww			FBC			FC	AgI	AgL
BW	Trout Creek	Headwaters to confluence with unnamed tributary at 35°06'47"/ 113°13'01"		A&Wc				FBC			FC		AgL
BW	Trout Creek	Below confluence with unnamed tributary to confluence with Knight Creek			A&Ww			FBC			FC		AgL
CG	Agate Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Beaver Dam Wash	Headwaters to confluence with the Virgin River			A&Ww			FBC			FC		AgL
CG	Big Springs Tank	36°36'08"/112°21'01"		A&Wc				FBC			FC		AgL
CG	Boucher Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Bright Angel Creek	Headwaters to confluence with Roaring Springs Creek		A&Wc				FBC			FC		
CG	Bright Angel Creek	Below Roaring Spring Springs Creek to confluence with Colorado River			A&Ww			FBC			FC		
CG	Bright Angel Wash	Headwaters to Grand Canyon National Park South Rim WWTP outfall at 36°02'59"/112°09'02"				A&We			PBC				
CG	Bright Angel Wash (EDW)	Grand Canyon National Park South Rim WWTP outfall to Coconino Wash					A&Wedw		PBC				AgL
CG	Bulrush Canyon Wash	Headwaters to confluence with Kanab Creek				A&We			PBC				
CG	Cataract Creek	Headwaters to Santa Fe Reservoir		A&Wc				FBC		DWS	FC	AgI	AgL
CG	Cataract Creek	Santa Fe Reservoir to City of Williams WWTP outfall at 35°14'40"/ 112°11'18"		A&Wc				FBC			FC	AgI	AgL
CG	Cataract Creek (EDW)	City of Williams WWTP outfall to 1 km downstream					A&Wedw		PBC				
CG	Cataract Creek	Red Lake Wash to Havasupai Indian Reservation boundary				A&We			PBC				AgL
CG	Cataract Lake	35°15'04"/112°12'58"	Igneous	A&Wc				FBC		DWS	FC		AgL
CG	Chuar Creek	Headwaters to confluence with unnamed tributary at 36°11'35"/ 111°52'20"		A&Wc				FBC			FC		
CG	Chuar Creek	Below unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		

CG	City Reservoir	35°13'57"/112°11'25"	Igneous	A&Wc				FBC		DWS	FC		
CG	Clear Creek	Headwaters to confluence with unnamed tributary at 36°07'33"/ 112°00'03"		A&Wc				FBC			FC		
CG	Clear Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Coconino Wash (EDW)	South Grand Canyon Sanitary District Tusayan WRF outfall at 35°58'39"/112°08'25" to 1 km downstream					A&Wedw		PBC				
CG	Colorado River	Lake Powell to Lake Mead		A&Wc				FBC		DWS	FC	AgI	AgL
CG	Crystal Creek	Headwaters to confluence with unnamed tributary at 36°13'41"/ 112°11'49"		A&Wc				FBC			FC		
CG	Crystal Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Deer Creek	Headwaters to confluence with unnamed tributary at 36°26'15"/ 112°28'20"		A&Wc				FBC			FC		
CG	Deer Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Detrital Wash	Headwaters to Lake Mead				A&We			PBC				
CG	Dogtown Reservoir	35°12'40"/112°07'54"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Dragon Creek	Headwaters to confluence with Milk Creek		A&Wc				FBC			FC		
CG	Dragon Creek	Below confluence with Milk Creek to confluence with Crystal Creek			A&Ww			FBC			FC		
CG	Garden Creek	Headwaters to confluence with Pipe Creek			A&Ww			FBC			FC		
CG	Gonzalez Lake	35°15'26"/112°12'09"	Shallow		A&Ww			FBC			FC	AgI	AgL
CG	Grand Wash	Headwaters to Colorado River				A&We			PBC				
CG	Grapevine Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Grapevine Wash	Headwaters to Colorado River				A&We			PBC				
CG	Hakatai Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Hance Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Havasu Creek	From the Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Hermit Creek	Headwaters to Hermit Pack Trail crossing at 36°03'38"/112°14'00"		A&Wc				FBC			FC		
CG	Hermit Creek	Below Hermit Pack Trail crossing to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Horn Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Hualapai Wash	Headwaters to Lake Mead				A&We			PBC				
CG	Jacob Lake	36°42'27"/112°13'50"	Sedimentary	A&Wc				FBC			FC		
CG	Kaibab Lake	35°17'04"/112°09'32"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Kanab Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC		DWS	FC		AgL
CG	Kwagunt Creek	Headwaters to confluence with unnamed tributary at 36°13'37"/ 111°54'50"		A&Wc				FBC			FC		
CG	Kwagunt Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Lake Mead	36°06'18"/114°26'33"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Lake Powell	36°59'53"/111°08'17"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Lonetree Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Matkatamiba Creek	Below Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Monument Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Nankoweap Creek	Headwaters to confluence with unnamed tributary at 36°15'29"/ 111°57'26"		A&Wc				FBC			FC		
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	National Canyon Creek	Headwaters to Hualapai Indian Reservation boundary at 36°15'15"/ 112°52'34"			A&Ww			FBC			FC		
CG	North Canyon Creek	Headwaters to confluence with unnamed tributary at 36°33'58"/ 111°55'41"		A&Wc				FBC			FC		
CG	North Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Olo Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Parashant Canyon	Headwaters to confluence with unnamed tributary at 36°21'02"/ 113°27'56"		A&Wc				FBC			FC		
CG	Parashant Canyon	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Paria River	Utah border to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Phantom Creek	Headwaters to confluence with unnamed tributary at 36°09'29"/ 112°08'13"		A&Wc				FBC			FC		
CG	Phantom Creek	Below confluence with unnamed tributary to confluence with Bright Angel Creek			A&Ww			FBC			FC		
CG	Pipe Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Red Canyon Creek	Headwaters to confluence with the Colorado River '			A&Ww			FBC			FC		
CG	Roaring Springs	36°11'45"/112°02'06"		A&Wc				FBC		DWS	FC		
CG	Roaring Springs Creek	Headwaters to confluence with Bright Angel Creek		A&Wc				FBC			FC		
CG	Royal Arch Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Ruby Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Russell Tank	35°52'21"/111°52'45"		A&Wc				FBC			FC		AgL
CG	Saddle Canyon Creek	Headwaters to confluence with unnamed tributary at 36°21'36"/ 112°22'43"		A&Wc				FBC			FC		
CG	Saddle Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Santa Fe Reservoir	35°14'31"/112°11'10"	Igneous	A&Wc				FBC		DWS	FC		
CG	Sapphire Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Serpentine Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Shinumo Creek	Headwaters to confluence with unnamed tributary at 36°18'18"/ 112°18'07"		A&Wc				FBC			FC		

CG	Shinumo Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Short Creek	Headwaters to confluence with Fort Pearce Wash				A&We			PBC				
CG	Slate Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Spring Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Stone Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Tapeats Creek	Headwaters to confluence with the Colorado River		A&Wc				FBC			FC		
CG	Thunder River	Headwaters to confluence with Tapeats Creek		A&Wc				FBC			FC		
CG	Trail Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Transept Canyon	Headwaters to Grand Canyon National Park North Rim WWTP outfall at 36°12'20"/112°03'35"				A&We			PBC				
CG	Transept Canyon (EDW)	Grand Canyon National Park North Rim WWTP outfall to 1 km downstream					A&Wedw		PBC				
CG	Transept Canyon	From 1 km downstream of the Grand Canyon National Park North Rim WWTP outfall to confluence with Bright Angel Creek				A&We			PBC				
CG	Travertine Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Turquoise Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Unkar Creek	Below confluence with unnamed tributary at 36°07'54"/111°54'06" to confluence with Colorado River			A&Ww			FBC			FC		
CG	Unnamed Wash (EDW)	Grand Canyon National Park Desert View WWTP outfall at 36°02'06"/ 111°49'13" to confluence with Cedar Canyon					A&Wedw		PBC				
CG	Unnamed Wash (EDW)	Valle Airpark WRF outfall at 35°38'34"/112°09'22" to confluence with Spring Valley Wash					A&Wedw		PBC				
CG	Vasey's Paradise	A spring at 36°29'52"/111°51'26"		A&Wc				FBC			FC		
CG	Virgin River	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC	AgI	AgL
CG	Vishnu Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Warm Springs Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	West Cataract Creek	Headwaters to confluence with Cataract Creek		A&Wc				FBC			FC		AgL
CG	White Creek	Headwaters to confluence with unnamed tributary at 36°18'45"/ 112°21'03"		A&Wc				FBC			FC		
CG	White Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CL	A10 Backwater	33°31'45"/114°33'19"	Shallow		A&Ww			FBC			FC		
CL	A7 Backwater	33°34'27"/114°32'04"	Shallow		A&Ww			FBC			FC		
CL	Adobe Lake	33°02'36"/114°39'26"	Shallow		A&Ww			FBC			FC		
CL	Cibola Lake	33°14'01"/114°40'31"	Shallow		A&Ww			FBC			FC		
CL	Clear Lake	33°01'59"/114°31'19"	Shallow		A&Ww			FBC			FC		
CL	Columbus Wash	Headwaters to confluence with the Gila River				A&We			PBC				
CL	Colorado River	Lake Mead to Topock Marsh		A&Wc				FBC		DWS	FC	AgI	AgL
CL	Colorado River	Topock Marsh to Morelos Dam			A&Ww			FBC		DWS	FC	AgI	AgL
CL	Gila River	Painted Rock Dam to confluence with the Colorado River			A&Ww			FBC			FC	AgI	AgL
CL	Holy Moses Wash	Headwaters to City of Kingman Downtown WWTP outfall at 35°10'33"/114°03'46"				A&We			PBC				
CL	Holy Moses Wash (EDW)	City of Kingman Downtown WWTP outfall to 3 km downstream					A&Wedw		PBC				
CL	Holy Moses Wash	From 3 km downstream of City of Kingman Downtown WWTP outfall to confluence with Sawmill Wash				A&We			PBC				
CL	Hunter's Hole Backwater	32°31'13"/114°48'07"	Shallow		A&Ww			FBC			FC		AgL
CL	Imperial Reservoir	32°53'02"/114°27'54"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Island Lake	33°01'44"/114°36'42"	Shallow		A&Ww			FBC			FC		
CL	Laguna Reservoir	32°51'35"/114°28'29"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Lake Havasu	34°35'18"/114°25'47"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Lake Mohave	35°26'58"/114°38'30"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CL	Martinez Lake	32°58'49"/114°28'09"	Shallow		A&Ww			FBC			FC	AgI	AgL
CL	Mittry Lake	32°49'17"/114°27'54"	Shallow		A&Ww			FBC			FC		
CL	Mohave Wash	Headwaters to Lower Colorado River				A&We			PBC				
CL	Nortons Lake	33°02'30"/114°37'59"	Shallow		A&Ww			FBC			FC		
CL	Painted Rock (Borrow Pit) Lake	33°04'55"/113°01'17"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
CL	Pretty Water Lake	33°19'51"/114°42'19"	Shallow		A&Ww			FBC			FC		
CL	Quigley Pond	32°43'40"/113°57'44"	Shallow		A&Ww			FBC			FC		
CL	Redondo Lake	32°44'32"/114°29'03"	Shallow		A&Ww			FBC			FC		
CL	Sacramento Wash	Headwaters to Topock Marsh				A&We			PBC				
CL	Sawmill Canyon	Headwaters to abandoned gaging station at 35°09'45"/113°57'56"			A&Ww			FBC			FC		AgL
CL	Sawmill Canyon	Below abandoned gaging station to confluence with Holy Moses Wash				A&We			PBC				AgL
CL	Topock Marsh	34°43'27"/114°28'59"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Tyson Wash (EDW)	Town of Quartzsite WWTP outfall at 33°42'39"/ 114°13'10" to 1 km downstream					A&Wedw		PBC				
CL	Wellton Canal	Wellton-Mohawk Irrigation District								DWS		AgI	AgL
CL	Yuma Area Canals	Above municipal water treatment plant intakes								DWS		AgI	AgL
CL	Yuma Area Canals	Below municipal water treatment plant intakes and all drains										AgI	AgL
LC	Als Lake	35°02'10"/111°25'17"	Igneous		A&Ww			FBC			FC		AgL
LC	Ashurst Lake	35°01'06"/111°24'18"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Atcheson Reservoir	33°59'59"/109°20'43"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Auger Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Barbershop Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC			FC		AgL
LC	Bear Canyon Creek	Headwaters to confluence with General Springs Canyon		A&Wc				FBC			FC		AgL
LC	Bear Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc				FBC			FC		AgL
LC	Bear Canyon Lake	34°24'00"/111°00'06"	Sedimentary	A&Wc				FBC			FC	AgI	AgL

LC	Becker Lake	34°09'11"/109°18'23"	Shallow	A&Wc				FBC			FC		AgL
LC	Billy Creek	Headwaters to confluence with Show Low Creek		A&Wc				FBC			FC		AgL
LC	Black Canyon	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC	AgI	AgL
LC	Black Canyon Lake	34°20'32"/110°40'13"	Sedimentary	A&Wc				FBC		DWS	FC	AgI	AgL
LC	Bow and Arrow Wash	Headwaters to confluence with Rio de Flag				A&We			PBC				
LC	Buck Springs Canyon Creek	Headwaters to confluence with Leonard Canyon Creek		A&Wc				FBC			FC		AgL
LC	Bunch Reservoir	34°02'20"/109°26'48"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Carnero Lake	34°06'57"/109°31'42"	Shallow	A&Wc				FBC			FC		AgL
LC	Chevelon Canyon Lake	34°29'18"/110°49'30"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Chevelon Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Chevelon Creek, West Fork	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Chilson Tank	34°51'43"/111°22'54"	Igneous		A&Ww			FBC			FC		AgL
LC	Clear Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC		DWS	FC		AgL
LC	Clear Creek Reservoir	34°57'09"/110°39'14"	Shallow	A&Wc				FBC		DWS	FC	AgI	AgL
LC	Coconino Reservoir	35°00'05"/111°24'10"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Colter Reservoir	33°56'39"/109°28'53"	Shallow	A&Wc				FBC			FC		AgL
LC	Concho Creek	Headwaters to confluence with Carrizo Wash		A&Wc				FBC			FC		AgL
LC	Concho Lake	34°26'37"/109°37'40"	Shallow	A&Wc				FBC			FC	AgI	AgL
LC	Cow Lake	34°53'14"/111°18'51"	Igneous		A&Ww			FBC			FC		AgL
LC	Coyote Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Cragin Reservoir (formerly Blue Ridge Reservoir)	34°32'40"/111°11'33"	Deep	A&Wc				FBC			FC	AgI	AgL
LC	Crisis Lake (Snake Tank #2)	34°47'51"/111°17'32"			A&Ww			FBC			FC		AgL
LC	Dane Canyon Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc				FBC			FC		AgL
LC	Daves Tank	34°44'22"/111°17'15"			A&Ww			FBC			FC		AgL
LC	Deep Lake	35°03'34"/111°25'00"	Igneous		A&Ww			FBC			FC		AgL
LC	Ducksnest Lake	34°59'14"/111°23'57"			A&Ww			FBC			FC		AgL
LC	East Clear Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC	AgI	AgL
LC	Ellis Wiltbank Reservoir	34°05'25"/109°28'25"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Estates at Pine Canyon lakes (EDW)	35°09'32"/111°38'26"	EDW				A&Wedw		PBC				
LC	Fish Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Fool's Hollow Lake	34°16'30"/110°03'43"	Igneous	A&Wc				FBC			FC		AgL
LC	General Springs Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC			FC		AgL
LC	Geneva Reservoir	34°01'45"/109°31'46"	Igneous		A&Ww			FBC			FC		AgL
LC	Hall Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Hart Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc				FBC			FC		AgL
LC	Hay Lake	34°00'11"/109°25'57"	Igneous	A&Wc				FBC			FC		AgL
LC	Hog Wallow Lake	33°58'57"/109°25'39"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Horse Lake	35°03'55"/111°27'50"			A&Ww			FBC			FC		AgL
LC	Hulsey Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Hulsey Lake	33°55'58"/109°09'40"	Sedimentary	A&Wc				FBC			FC		AgL
LC	Indian Lake	35°00'39"/111°22'41"			A&Ww			FBC			FC		AgL
LC	Jacks Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Jarvis Lake	33°58'59"/109°12'36"	Sedimentary		A&Ww			FBC			FC		AgL
LC	Kinnikinick Lake	34°53'53"/111°18'18"	Igneous	A&Wc				FBC			FC		AgL
LC	Knoll Lake	34°25'38"/111°05'13"	Sedimentary	A&Wc				FBC			FC		AgL
LC	Lake Humphreys (EDW)	35°11'51"/111°35'19"	EDW				A&Wedw		PBC				
LC	Lake Mary, Lower	35°06'21"/111°34'38"	Igneous	A&Wc				FBC		DWS	FC		AgL
LC	Lake Mary, Upper	35°03'23"/111°28'34"	Igneous	A&Wc				FBC		DWS	FC		AgL
LC	Lake of the Woods	34°09'40"/109°58'47"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Lee Valley Creek (OAW)	Headwaters to Lee Valley Reservoir		A&Wc				FBC			FC		
LC	Lee Valley Creek	From Lee Valley Reservoir to confluence with the East Fork of the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Lee Valley Reservoir	33°56'29"/109°30'04"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Leonard Canyon Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, East Fork	Headwaters to confluence with Leonard Canyon Creek		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, Middle Fork	Headwaters to confluence with Leonard Canyon, West Fork		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, West Fork	Headwaters to confluence with Leonard Canyon, East Fork		A&Wc				FBC			FC		AgL
LC	Lily Creek	Headwaters to confluence with Coyote Creek		A&Wc				FBC			FC		AgL
LC	Little Colorado River	Headwaters to Lyman Reservoir		A&Wc				FBC			FC	AgI	AgL
LC	Little Colorado River	Below Lyman Reservoir to confluence with the Puerco River		A&Wc				FBC		DWS	FC	AgI	AgL
LC	Little Colorado River	Below Puerco River confluence to the Colorado River, excluding segments on Native American Lands			A&Ww			FBC		DWS	FC	AgI	AgL
LC	Little Colorado River, East Fork	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little Colorado River, South Fork	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little Colorado River, West Fork (OAW)	Headwaters to Government Springs		A&Wc				FBC			FC		

LC	Little Colorado River, West Fork	Below Government Springs to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little George Reservoir	34°00'37"/109°19'15"	Igneous		A&Ww			FBC			FC	AgI	
LC	Little Mormon Lake	34°17'00"/109°58'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Long Lake, Lower	34°47'16"/111°12'40"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Long Lake, Upper	35°00'08"/111°21'23"	Igneous	A&Wc				FBC			FC		AgL
LC	Long Tom Tank	34°20'35"/110°49'22"		A&Wc				FBC			FC		AgL
LC	Lower Walnut Canyon Lake (EDW)	35°12'04"/111°34'07"	EDW				A&Wedw		PBC				
LC	Lyman Reservoir	34°21'21"/109°21'35"	Deep	A&Wc				FBC			FC	AgI	AgL
LC	Mamie Creek	Headwaters to confluence with Coyote Creek		A&Wc				FBC			FC		AgL
LC	Marshall Lake	35°07'18"/111°32'07"	Igneous	A&Wc				FBC			FC		AgL
LC	McKay Reservoir	34°01'27"/109°13'48"		A&Wc				FBC			FC	AgI	AgL
LC	Merritt Draw Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc				FBC			FC		AgL
LC	Mexican Hay Lake	34°01'58"/109°21'25"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Milk Creek	Headwaters to confluence with Hulsey Creek		A&Wc				FBC			FC		AgL
LC	Miller Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC			FC		AgL
LC	Miller Canyon Creek, East Fork	Headwaters to confluence with Miller Canyon Creek		A&Wc				FBC			FC		AgL
LC	Morton Lake	34°53'37"/111°17'41"	Igneous	A&Wc				FBC			FC		AgL
LC	Mud Lake	34°55'19"/111°21'29"	Shallow		A&Ww			FBC			FC		AgL
LC	Ned Lake (EDW)	34°17'17"/110°03'22"	EDW				A&Wedw		PBC				
LC	Nelson Reservoir	34°02'52"/109°11'19"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Norton Reservoir	34°03'57"/109°31'27"	Igneous		A&Ww			FBC			FC		AgL
LC	Nutrioso Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Paddy Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Pierce Seep	34°23'39"/110°31'17"		A&Wc					PBC				
LC	Pine Tank	34°46'49"/111°17'21"	Igneous		A&Ww			FBC			FC		AgL
LC	Pintail Lake (EDW)	34°18'05"/110°01'21"	EDW				A&Wedw		PBC				
LC	Porter Creek	Headwaters to confluence with Show Low Creek		A&Wc				FBC			FC		AgL
LC	Puerco River	Headwaters to confluence with the Little Colorado River			A&Ww			FBC		DWS	FC	AgI	AgL
LC	Puerco River (EDW)	Sanders Unified School District WWTP outfall at 35°12'52"/ 109°19'40" to 0.5 km downstream					A&Wedw		PBC				
LC	Rainbow Lake	34°09'00"/109°59'09"	Shallow Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Reagan Reservoir	34°02'09"/109°08'41"	Igneous		A&Ww			FBC			FC		AgL
LC	Rio de Flag	Headwaters to City of Flagstaff WWTP outfall at 35°12'21"/111°39'17"				A&We			PBC				
LC	Rio de Flag (EDW)	From City of Flagstaff WWTP outfall to the confluence with San Francisco Wash					A&Wedw		PBC				
LC	River Reservoir	34°02'01"/109°26'07"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Rogers Reservoir	33°56'30"/109°16'20"	Igneous		A&Ww			FBC			FC		AgL
LC	Rudd Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Russel Reservoir	33°59'29"/109°20'01"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	San Salvador Reservoir	33°58'51"/109°19'55"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Scott Reservoir	34°10'31"/109°57'31"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Show Low Creek	Headwaters to confluence with Silver Creek		A&Wc				FBC			FC	AgI	AgL
LC	Show Low Lake	34°11'36"/110°00'12"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Silver Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Slade Reservoir	33°59'41"/109°20'26"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Soldiers Annex Lake	34°47'15"/111°13'51"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Soldiers Lake	34°47'47"/111°14'04"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Spaulding Tank	34°30'17"/111°02'06"			A&Ww			FBC			FC		AgL
LC	St Johns Reservoir (Little Reservoir)	34°29'10"/109°22'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Telephone Lake (EDW)	34°17'35"/110°02'42"	EDW				A&Wedw		PBC				
LC	Tremaine Lake	34°46'02"/111°13'51"	Igneous	A&Wc				FBC			FC		AgL
LC	Tunnel Reservoir	34°01'53"/109°26'34"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Turkey Draw (EDW)	High Country Pines II WWTP outfall at 33°25'35"/ 110°38'13" to confluence with Black Canyon Creek					A&Wedw		PBC				
LC	Unnamed Wash (EDW)	Bison Ranch WWTP outfall at 34°23'31"/110°31'29" to Pierce Seep					A&Wedw		PBC				
LC	Walnut Creek	Headwaters to confluence with Billy Creek		A&Wc				FBC			FC		AgL
LC	Water Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Whale Lake (EDW)	35°11'13"/111°35'21"	EDW				A&Wedw		PBC				
LC	Whipple Lake	'34°16'49"/109°58'29"	Igneous		A&Ww			FBC			FC		AgL
LC	White Mountain Lake	34°21'57"/109°59'21"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	White Mountain Reservoir	34°00'12"/109°30'39"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Willow Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC		AgL
LC	Willow Springs Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Willow Springs Lake	34°18'13"/110°52'16"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Woodland Reservoir	34°07'35"/109°57'01"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Woods Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Woods Canyon Lake	34°20'09"/110°56'45"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Zuni River	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
MG	Agua Fria River	Headwaters to confluence with unnamed tributary at 34°35'14"/ 112°16'18"				A&We			PBC				AgL
MG	Agua Fria River (EDW)	Below confluence with unnamed tributary to State Route 169					A&Wedw		PBC				AgL
MG	Agua Fria River	From State Route 169 to Lake Pleasant			A&Ww			FBC		DWS	FC	AgI	AgL

MG	Agua Fria River	Below Lake Pleasant to the City of El Mirage WWTP at ' 33°34'20"/ 112°18'32"				A&We			PBC				AgL
MG	Agua Fria River (EDW)	From City of El Mirage WWTP outfall to 2 km downstream					A&Wedw		PBC				
MG	Agua Fria River	Below 2 km downstream of the City of El Mirage WWTP to City of Avondale WWTP outfall at 33°23'55"/112°21'16"				A&We			PBC				
MG	Agua Fria River	From City of Avondale WWTP outfall to confluence with Gila River					A&Wedw		PBC				
MG	Andorra Wash	Headwaters to confluence with Cave Creek Wash				A&We			PBC				
MG	Antelope Creek	Headwaters to confluence with Martinez Creek			A&Ww			FBC			FC		AgL
MG	Arlington Canal	From Gila River at 33°20'54"/112°35'39" to Gila River at 33°13'44"/ 112°46'15"											AgL
MG	Ash Creek	Headwaters to confluence with Tex Canyon		A&Wc				FBC			FC	AgI	AgL
MG	Ash Creek	Below confluence with Tex Canyon to confluence with Agua Fria River			A&Ww			FBC			FC	AgI	AgL
MG	Beehive Tank	32°52'37"/111°02'20"			A&Ww			FBC			FC		AgL
MG	Big Bug Creek	Headwaters to confluence with Eugene Gulch		A&Wc				FBC			FC	AgI	AgL
MG	Big Bug Creek	Below confluence with Eugene Gulch to confluence with Agua Fria River			A&Ww			FBC			FC	AgI	AgL
MG	Black Canyon Creek	Headwaters to confluence with the Agua Fria River			A&Ww			FBC			FC		AgL
MG	Blind Indian Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC		AgL
MG	Cave Creek	Headwaters to the Cave Creek Dam			A&Ww			FBC			FC		AgL
MG	Cave Creek	Cave Creek Dam to the Arizona Canal				A&We			PBC				
MG	Centennial Wash	Headwaters to confluence with the Gila River at 33°16'32"/112°48'08"				A&We			PBC				AgL
MG	Centennial Wash Ponds	33°54'52"/113°23'47"			A&Ww			FBC			FC		AgL
MG	Chaparral Park Lake	Hayden Road & Chaparral Road, Scottsdale at 33°30'40"/111°54'27"	Urban		A&Ww				PBC		FC	AgI	
MG	Devils Canyon	Headwaters to confluence with Mineral Creek			A&Ww				FBC		FC		AgL
MG	East Maricopa Floodway	From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary			A&We				PBS				AgL
MG	Eldorado Park Lake	Miller Road & Oak Street, Tempe at 33°28'25"/ 111°54'53"	Urban		A&Ww				PBC		FC		
MG	Fain Lake	Town of Prescott Valley Park Lake 34°34'29"/ 112°21'06"	Urban		A&Ww				PBC		FC		
MG	French Gulch	Headwaters to confluence with Hassayampa River			A&Ww				PBC				AgL
MG	Galena Gulch	Headwaters to confluence with the Agua Fria River				A&We			PBC				AgL
MG	Galloway Wash (EDW)	Town of Cave Creek WWTP outfall at 33°50'15"/ 111°57'35" to confluence with Cave Creek					A&Wedw		PBC				
MG	Gila River	San Carlos Indian Reservation boundary to the Ashurst-Hayden Dam			A&Ww			FBC			FC	AgI	AgL
MG	Gila River	Ashurst-Hayden Dam to the Town of Florence WWTP outfall at 33°02'20"/111°24'19"				A&We			PBC				AgL
MG	Gila River (EDW)	Town of Florence WWTP outfall to Felix Road					A&Wedw		PBC				
MG	Gila River	Felix Road to the Gila River Indian Reservation boundary				A&We			PBC				AgL
MG	Gila River (EDW)	From the confluence with the Salt River to Gillespie Dam					A&Wedw		PBC		FC	AgI	AgL
MG	Gila River	Gillespie Dam to confluence with Painted Rock Dam			A&Ww			FBC			FC	AgI	AgL
MG	Groom Creek	Headwaters to confluence with the Hassayampa River		A&Wc				FBC		DWS	FC		AgL
MG	Hassayampa Lake	34°25'45"/112°25'33"	Igneous	A&Wc				FBC		DWS	FC		
MG	Hassayampa River	Headwaters to confluence with unnamed tributary at 34°26'09"/ 112°30'32"		A&Wc				FBC			FC	AgI	AgL
MG	Hassayampa River	Below confluence with unnamed tributary to confluence with unnamed tributary at 33°51"52"/112°39'56"			A&Ww			FBC			FC	AgI	AgL
MG	Hassayampa River	Below unnamed tributary to the Buckeye Irrigation Company Canal				A&We			PBC				AgL
MG	Hassayampa River	Below Buckeye Irrigation Company canal to the Gila River			A&Ww			FBC			FC		AgL
MG	Horsethief Lake	34°09'42"/112°17'57"	Igneous	A&Wc				FBC		DWS	FC		AgL
MG	Indian Bend Wash	Headwaters to confluence with the Salt River				A&We			PBC				
MG	Indian Bend Wash Lakes	Scottsdale at 33°30'32"/111°54'24"	Urban		A&Ww				PBC		FC		
MG	Indian School Park Lake	Indian School Road & Hayden Road, Scottsdale at 33°29'39"/ 111°54'37"	Urban		A&Ww				PBC		FC		
MG	Kiwanis Park Lake	6000 South Mill Avenue, Tempe at 33°22'27"/ 111°56'22"	Urban		A&Ww				PBC		FC	AgI	
MG	Lake Pleasant	33°53'46"/112°16'29"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
MG	Lake Pleasant, Lower	33°50'32"/112°16'03"			A&Ww			FBC			FC	AgI	AgL
MG	Lion Canyon	Headwaters to confluence with Weaver Creek			A&Ww			FBC			FC		AgL
MG	Little Ash Creek	Headwaters to confluence with Ash Creek at			A&Ww			FBC			FC		AgL
MG	Lynx Creek	Headwaters to confluence with unnamed tributary at 34°34'29"/ 112°21'07"		A&Wc				FBC			FC		AgL
MG	Lynx Creek	Below confluence with unnamed tributary at 34°34'29"/112°21'07" to confluence with Agua Fria River			A&Ww			FBC			FC		AgL
MG	Lynx Lake	34°31'07"/112°23'07"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
MG	Martinez Canyon	Headwaters to confluence with Box Canyon			A&Ww			FBC			FC		AgL
MG	Martinez Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC	AgI	AgL
MG	McKellips Park Lake	Miller Road & McKellips Road, Scottsdale at 33°27'14"/111°54'49"	Urban		A&Ww				PBC		FC	AgI	
MG	McMicken Wash (EDW)	City of Peoria Jomax WWTP outfall at 33°43'31"/ 112°20'15" to confluence with Agua Fria River					A&Wedw		PBC				
MG	Mineral Creek	Headwaters to 33°12'34"/110°59'58"			A&Ww			FBC			FC		AgL
MG	Mineral Creek (diversion tunnel and lined channel)	33°12'24"/110°59'58" to 33°07'56"/110°58'34"						PBC					
MG	Mineral Creek	End of diversion channel to confluence with Gila River			A&Ww			FBC			FC		AgL
MG	Minnehaha Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC		AgL
MG	New River	Headwaters to Interstate 17 at 33°54'19.5"/112°08'46"			A&Ww			FBC			FC	AgI	AgL
MG	New River	Below Interstate 17 to confluence with Agua Fria River				A&We			PBC				AgL
MG	Painted Rock Reservoir	33°04'23"/113°00'38"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
MG	Papago Park Ponds	Galvin Parkway, Phoenix at 33°27'15"/111°56'45"	Urban		A&Ww				PBC		FC		
MG	Papago Park South Pond	Curry Road, Tempe 33°26'22"/111°55'55"	Urban		A&Ww				PBC		FC		
MG	Perry Mesa Tank	34°11'03"/112°02'01"			A&Ww			FBC			FC		AgL

MG	Phoenix Area Canals	Granite Reef Dam to all municipal WTP intakes								DWS		AgI	AgL
MG	Phoenix Area Canals	Below municipal WTP intakes and all other locations										AgI	AgL
MG	Picacho Reservoir	32°51'10"/111°28'25"	Shallow		A&Ww			FBC			FC	AgI	AgL
MG	Poland Creek	Headwaters to confluence with Lorena Gulch		A&Wc				FBC			FC		AgL
MG	Poland Creek	Below confluence with Lorena Gulch to confluence with Black Canyon Creek			A&Ww			FBC			FC		AgL
MG	Queen Creek	Headwaters to the Town of Superior WWTP outfall at 33°16'33"/ 111°07'44"			A&Ww				PBC		FC		AgL
MG	Queen Creek (EDW)	Below Town of Superior WWTP outfall to confluence with Potts Canyon					A&Wedw		PBC				
MG	Queen Creek	Below Potts Canyon to Whitlow Dam			A&Ww			FBC			FC		AgL
MG	Queen Creek	Below Whitlow Dam to confluence with Gila River				A&We			PBC				
MG	Salt River	Verde River to 2 km below Granite Reef Dam			A&Ww			FBC		DWS	FC	AgI	AgL
MG	Salt River	2 km below Granite Reef Dam to City of Mesa NW WRF outfall at 33°26'22"/111°53'14"				A&We			PBC				
MG	Salt River (EDW)	City of Mesa NW WRF outfall to Tempe Town Lake					A&Wedw		PBC				
MG	Salt River	Below Tempe Town Lake to Interstate 10 bridge				A&We			PBC				
MG	Salt River	Below Interstate 10 bridge to the City of Phoenix 23rd Avenue WWTP outfall at 33°24'44"/ 112°07'59"			A&Ww				PBC		FC		
MG	Salt River (EDW)	From City of Phoenix 23rd Avenue WWTP outfall to confluence with Gila River					A&Wedw		PBC		FC	AgI	AgL
MG	Siphon Draw (EDW)	Superstition Mountains CFD WWTP outfall at 33°21'40"/111°33'30" to 6 km downstream					A&Wedw		PBC				
MG	Sycamore Creek	Headwaters to confluence with Tank Canyon		A&Wc				FBC			FC		AgL
MG	Sycamore Creek	Below confluence with Tank Canyon to confluence with Agua Fria River			A&Ww			FBC			FC		AgL
MG	Tempe Town Lake	At Mill Avenue Bridge at 33°26'00"/111°56'26"	Urban		A&Ww			FBC			FC		
MG	The Lake Tank	32°54'14"/111°04'15"			A&Ww			FBC			FC		AgL
MG	Tule Creek	Headwaters to confluence with the Agua Fria River			A&Ww			FBC			FC		AgL
MG	Turkey Creek	Headwaters to confluence with unnamed tributary at 34°19'28"/ 112°21'33"		A&Wc				FBC			FC	AgI	AgL
MG	Turkey Creek	Below confluence with unnamed tributary to confluence with Poland Creek			A&Ww			FBC			FC	AgI	AgL
MG	Unnamed Wash (EDW)	Gila Bend WWTP outfall to confluence with the Gila River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Luke Air Force Base WWTP outfall at 33°32'21"/112°19'15" to confluence with the Agua Fria River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	North Florence WWTP outfall at 33°03'50"/ 111°23'13" to confluence with Gila River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Town of Prescott Valley WWTP outfall at34°35'16"/ 112°16'18" to confluence with the Agua Fria River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Town of Cave Creek WRF outfall at 33°48'02"/ 111°59'22" to confluence with Cave Creek					A&Wedw		PBC				
MG	Wagner Wash (EDW)	City of Buckeye Festival Ranch WRF outfall at 33°39'14"/112°40'18" to 2 km downstream					A&Wedw		PBC				
MG	Walnut Canyon Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
MG	Weaver Creek	Headwaters to confluence with Antelope Creek, tributary to Martinez Creek			A&Ww			FBC			FC		AgL
MG	White Canyon Creek	Headwaters to confluence with Walnut Canyon Creek			A&Ww			FBC			FC		AgL
MG	Yavapai Lake (EDW)	Town of Prescott Valley WWTP outfall 002 at 34°36'07"/112°18'48" to Navajo Wash	EDW				A&Wedw		PBC				
SC	Agua Caliente Lake	12325 East Roger Road, Tucson 32°16'51"/ 110°43'52"	Urban		A&Ww				PBC		FC		
SC	Agua Caliente Wash	Headwaters to confluence with Soldier Trail			A&Ww			FBC			FC		AgL
SC	Agua Caliente Wash	Below Soldier Trail to confluence with Tanque Verde Creek				A&We			PBC				AgL
SC	Aguirre Wash	From the Tohono O'odham Indian Reservation boundary to 32°28'38"/111°46'51"				A&We			PBC				
SC	Alambre Wash	Headwaters to confluence with Brawley Wash				A&We			PBC				
SC	Alamo Wash	Headwaters to confluence with Rillito Creek				A&We			PBC				
SC	Altar Wash	Headwaters to confluence with Brawley Wash				A&We			PBC				
SC	Alum Gulch	Headwaters to 31°28'20"/110°43'51"				A&We			PBC				AgL
SC	Alum Gulch	From 31°28'20"/110°43'51" to 31°29'17"/110°44'25"			A&Ww			FBC			FC		AgL
SC	Alum Gulch	Below 31°29'17"/110°44'25" to confluence with Sonoita Creek				A&We			PBC				AgL
SC	Arivaca Creek	Headwaters to confluence with Altar Wash			A&Ww			FBC			FC		AgL
SC	Arivaca Lake	31°31'52"/111°15'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
SC	Atterbury Wash	Headwaters to confluence with Pantano Wash				A&We			PBC				AgL
SC	Bear Grass Tank	31°33'01"/111°11'03"			A&Ww			FBC			FC		AgL
SC	Big Wash	Headwaters to confluence with Cañada del Oro				A&We			PBC				
SC	Black Wash (EDW)	Pima County WWMD Avra Valley WWTP outfall at 32°09'58"/ 111°11'17" to confluence with Brawley Wash					A&Wedw		PBC				
SC	Bog Hole Tank	31°28'36"/110°37'09"			A&Ww			FBC			FC		AgL
SC	Brawley Wash	Headwaters to confluence with Los Robles Wash				A&We			PBC				
SC	California Gulch	Headwaters To U.S./Mexico border			A&Ww			FBC			FC		AgL
SC	Cañada del Oro	Headwaters to State Route 77			A&Ww			FBC			FC	AgI	AgL
SC	Cañada del Oro	Below State Route 77 to confluence with the Santa Cruz River				A&We			PBC				AgL
SC	Cienega Creek	Headwaters to confluence with Gardner Canyon			A&Ww			FBC			FC		AgL
SC	Cienega Creek (OAW)	From confluence with Gardner Canyon to USGS gaging station (#09484600)			A&Ww			FBC			FC		AgL
SC	Davidson Canyon	Headwaters to unnamed spring at 31°59'00"/ 110°38'49"				A&We			PBC				AgL
SC	Davidson Canyon (OAW)	From unnamed Spring to confluence with unnamed tributary at 31°59'09"/110°38'44"			A&Ww			FBC			FC		AgL
SC	Davidson Canyon (OAW)	Below confluence with unnamed tributary to unnamed spring at 32°00'40"/110°38'36"				A&We			PBC				AgL

SC	Davidson Canyon (OAW)	From unnamed spring to confluence with Cienega Creek			A&Ww			FBC			FC		AgL
SC	Empire Gulch	Headwaters to unnamed spring at 31°47'18"/ 110°38'17"				A&We			PBC				
SC	Empire Gulch	From 31°47'18"/110°38'17" to 31°47'03"/110°37'35"			A&Ww			FBC			FC		
SC	Empire Gulch	From 31°47'03"/110°37'35" to 31°47'05"/ 110°36'58"				A&We			PBC				AgL
SC	Empire Gulch	From 31°47'05"/110°36'58" to confluence with Cienega Creek			A&Ww			FBC			FC		
SC	Flux Canyon	Headwaters to confluence with Alum Gulch				A&We			PBC				AgL
SC	Gardner Canyon Creek	Headwaters to confluence with Sawmill Canyon		A&Wc				FBC			FC		
SC	Gardner Canyon Creek	Below Sawmill Canyon to confluence with Cienega Creek			A&Ww			FBC			FC		
SC	Greene Wash	Santa Cruz River to the Tohono O'odham Indian Reservation boundary				A&We			PBC				
SC	Greene Wash	Tohono O'odham Indian Reservation boundary to confluence with Santa Rosa Wash at 32°53'52"/ 111°56'48"				A&We			PBC				
SC	Harshaw Creek	Headwaters to confluence with Sonoita Creek at				A&We			PBC				AgL
SC	Hit Tank	32°43'57"/111°03'18"			A&Ww			FBC			FC		AgL
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border			A&Ww			FBC			FC		
SC	Huachuca Tank	31°21'11"/110°30'18"			A&Ww			FBC			FC		AgL
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River				A&We			PBC				
SC	Kennedy Lake	Mission Road & Ajo Road, Tucson at 32°10'49"/ 111°00'27"	Urban		A&Ww				PBC		FC		
SC	Lakeside Lake	8300 East Stella Road, Tucson at 32°11'11"/ 110°49'00"	Urban		A&Ww				PBC		FC		
SC	Lemmon Canyon Creek	Headwaters to confluence with unnamed tributary at 32°23'48"/ 110°47'49"		A&Wc				FBC			FC		
SC	Lemmon Canyon Creek	Below unnamed tributary at 32°23'48"/110°47'49" to confluence with Sabino Canyon Creek			A&Ww			FBC			FC		
SC	Los Robles Wash	Headwaters to confluence with the Santa Cruz River				A&We			PBC				
SC	Madera Canyon Creek	Headwaters to confluence with unnamed tributary at 31°43'42"/ 110°52'51"		A&Wc				FBC			FC		AgL
SC	Madera Canyon Creek	Below unnamed tributary at 31°43'42"/110°52'51 to confluence with the Santa Cruz River			A&Ww			FBC			FC		AgL
SC	Mattie Canyon	Headwaters to confluence with Cienega Creek			A&Ww			FBC			FC		AgL
SC	Nogales Wash	Headwaters to confluence with Potrero Creek			A&Ww				PBC		FC		
SC	Oak Tree Canyon	Headwaters to confluence with Cienega Creek				A&We			PBC				
SC	Palisade Canyon	Headwaters to confluence with unnamed tributary at 32°22'33"/ 110°45'31"		A&Wc				FBC			FC		
SC	Palisade Canyon	Below 32°22'33"/110°45'31" to unnamed tributary of Sabino Canyon			A&Ww			FBC			FC		
SC	Pantano Wash	Headwaters to confluence with Tanque Verde Creek				A&We			PBC				
SC	Parker Canyon Creek	Headwaters to confluence with unnamed tributary at 31°24'17"/ 110°28'47"	A&Wc					FBC			FC		
SC	Parker Canyon Creek	Below unnamed tributary to U.S./Mexico border			A&Ww			FBC			FC		
SC	Parker Canyon Lake	31°25'35"/110°27'15"	Deep	A&Wc				FBC			FC	AgI	AgL
SC	Patagonia Lake	31°29'56"/110°50'49"	Deep		A&Ww			FBC			FC	AgI	AgL
SC	Peña Blanca Lake	31°24'15"/111°05'12"	Igneous		A&Ww			FBC			FC	AgI	AgL
SC	Potrero Creek	Headwaters to Interstate 19				A&We			PBC				AgL
SC	Potrero Creek	Below Interstate 19 to confluence with Santa Cruz River			A&Ww			FBC			FC		AgL
SC	Puertocito Wash	Headwaters to confluence with Altar Wash				A&We			PBC				
SC	Quitobaquito Spring	(Pond and Springs) 31°56'39"/113°01'06"			A&Ww			FBC			FC		AgL
SC	Redrock Canyon Creek	Headwaters to confluence with Harshaw Creek			A&Ww			FBC			FC		
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River				A&We			PBC				AgL
SC	Romero Canyon Creek	Headwaters to confluence with unnamed tributary at 32°24'29"/ 110°50'39"		A&Wc				FBC			FC		
SC	Romero Canyon Creek	Below unnamed tributary to confluence with Sutherland Wash			A&Ww			FBC			FC		
SC	Rose Canyon Creek	Headwaters to confluence with Sycamore Canyon		A&Wc				FBC			FC		
SC	Rose Canyon Lake	32°23'13"/110°42'38"	Igneous	A&Wc				FBC			FC		AgL
SC	Ruby Lakes	31°26'29"/111°14'22"	Igneous		A&Ww			FBC			FC		AgL
SC	Sabino Canyon	Headwaters to 32°23'20"/110°47'06"		A&Wc				FBC		DWS	FC	AgI	
SC	Sabino Canyon	Below 32°23'20"/110°47'06" to confluence with Tanque Verde River			A&Ww			FBC		DWS	FC	AgI	
SC	Salero Ranch Tank	31°35'43"/110°53'25"			A&Ww			FBC			FC		AgL
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border			A&Ww			FBC			FC	AgI	AgL
SC	Santa Cruz River	U.S./Mexico border to the Nogales International WWTP outfall at 31°27'25"/110°58'04"			A&Ww			FBC		DWS	FC	AgI	AgL
SC	Santa Cruz River (EDW)	Nogales International WWTP outfall to the Tubac Bridge					A&Wedw		PBC				AgL
SC	Santa Cruz River	Tubac Bridge to Agua Nueva WRF outfall at 32°17'04"/111°01'45"				A&We			PBC				AgL
SC	Santa Cruz River (EDW)	Agua Nueva WRF outfall to Baumgartner Road					A&Wedw		PBC				
SC	Santa Cruz River, West Branch	Headwaters to the confluence with Santa Cruz River				A&We			PBC				AgL
SC	Santa Cruz River	Baumgartner Road to the Ak Chin Indian Reservation boundary				A&We			PBC				AgL
SC	Santa Cruz Wash, North Branch	Headwaters to City of Casa Grande WRF outfall at 32°54'57"/ 111°47'13"				A&We			PBC				
SC	Santa Cruz Wash, North Branch (EDW)	City of Casa Grande WRF outfall to 1 km downstream					A&Wedw		PBC				
SC	Santa Rosa Wash	Below Tohono O'odham Indian Reservation to the Ak Chin Indian Reservation				A&We			PBC				
SC	Santa Rosa Wash (EDW)	Palo Verde Utilities CO-WRF outfall at 33°04'20"/ 112°01'47" to the Chin Indian Reservation					A&Wedw		PBC				
SC	Soldier Tank	32°25'34"/110°44'43"		A&Wc				FBC			FC		AgL
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/ 110°45'31"				A&We			PBC				AgL
SC	Sonoita Creek (EDW)	Town of Patagonia WWTP outfall to permanent groundwater upwelling point approximately 1600 feet downstream of outfall					A&Wedw		PBC				AgL

SC	Sonoita Creek	Below 1600 feet downstream of Town of Patagonia WWTP outfall groundwater upwelling point to confluence with the Santa Cruz River			A&Ww			FBC			FC	AgI	AgL
SC	Split Tank	31°28'11"/111°05'12"			A&Ww			FBC			FC		AgL
SC	Sutherland Wash	Headwaters to confluence with Cañada del Oro			A&Ww			FBC			FC		
SC	Sycamore Canyon	Headwaters to 32°21'60" / 110°44'48"		A&Wc				FBC			FC		
SC	Sycamore Canyon	From 32°21'60" / 110°44'48" to Sycamore Reservoir			A&Ww			FBC			FC		
SC	Sycamore Canyon	Headwaters to the U.S./Mexico border			A&Ww			FBC			FC		AgL
SC	Sycamore Reservoir	32°20'57"/110°47'38"		A&Wc				FBC			FC		AgL
SC	Tanque Verde Creek	Headwaters to Houghton Road			A&Ww			FBC			FC		AgL
SC	Tanque Verde Creek	Below Houghton Road to confluence with Rillito Creek				A&We			PBC				AgL
SC	Three R Canyon	Headwaters to Unnamed Trib to Three R Canyon at 31°28'26"/ 110°46'04"				A&We			PBC				AgL
SC	Three R Canyon	From 31°28'26"/110°46'04" to 31°28'28"/110°47'15" (Cox Gulch)			A&Ww			FBC			FC		AgL
SC	Three R Canyon	From (Cox Gulch) 31°28'28"/110°47'15" to confluence with Sonoita Creek				A&We			PBC				AgL
SC	Tinaja Wash	Headwaters to confluence with the Santa Cruz River				A&We			PBC				AgL
SC	Unnamed Wash (EDW)	Oracle Sanitary District WWTP outfall at 32°36'54"/ 110°48'02" to 5 km downstream					A&Wedw		PBC				
SC	Unnamed Wash (EDW)	Arizona City Sanitary District WWTP outfall at 32°45'43"/111°44'24" to confluence with Santa Cruz Wash					A&Wedw		PBC				
SC	Unnamed Wash (EDW)	Saddlebrook WWTP outfall at 32°32'00"/110°53'01" to confluence with Cañada del Oro					A&Wedw		PBC				
SC	Vekol Wash	Headwater to Santa Cruz Wash: Those reaches not located on the Ak-Chin, Tohono O'odham and Gila River Indian Reservations				A&We			PBC				
SC	Wakefield Canyon	Headwaters to confluence with unnamed tributary at 31°52'48"/ 110°26'27"		A&Wc				FBC			FC		AgL
SC	Wakefield Canyon	Below confluence with unnamed tributary to confluence with Cienega Creek			A&Ww			FBC			FC		AgL
SC	Wild Burro Canyon	Headwaters to confluence with unnamed tributary at 32°27'43"/ 111°05'47"			A&Ww			FBC			FC		AgL
SC	Wild Burro Canyon	Below confluence with unnamed tributary to confluence with Santa Cruz River				A&We			PBC				AgL
SP	Abbot Canyon	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Aravaipa Creek	Headwaters to confluence with Stowe Gulch			A&Ww			FBC			FC		AgL
SP	Aravaipa Creek (OAW)	Stowe Gulch to downstream boundary of Aravaipa Canyon Wilderness Area			A&Ww			FBC			FC		AgL
SP	Aravaipa Creek	Below downstream boundary of Aravaipa Canyon Wilderness Area to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Ash Creek	Headwaters to 31°50'28"/109°40'04"			A&Ww			FBC			FC	AgI	AgL
SP	Babocomari River	Headwaters to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Bass Canyon Creek	Headwaters to confluence with unnamed tributary at 32°26'06"/ 110°13'22"		A&Wc				FBC			FC		AgL
SP	Bass Canyon Creek	Below confluence with unnamed tributary to confluence with Hot Springs Canyon Creek			A&Ww			FBC			FC		AgL
SP	Bass Canyon Tank	32°24'00"/110°13'00"			A&Ww			FBC			FC		AgL
SP	Bear Creek	Headwaters to U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Blacktail Pond	Fort Huachuca Military Reservation at 31°31'04"/110°24'47", headwater lake in Blacktail Canyon			A&Ww			FBC			FC		
SP	Black Draw	Headwaters to the U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Booger Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Buck Canyon	Headwaters to confluence with Buck Creek Tank			A&Ww			FBC			FC		AgL
SP	Buck Canyon	Below Buck Creek Tank to confluence with Dry Creek				A&We			PBC				AgL
SP	Buehman Canyon Creek (OAW)	Headwaters to confluence with unnamed tributary at 32°24'54"/ 110°32'10"			A&Ww			FBC			FC		AgL
SP	Buehman Canyon Creek	Below confluence with unnamed tributary to confluence with San Pedro River			A&Ww			FBC			FC		AgL
SP	Bullock Canyon	Headwaters to confluence with Buehman Canyon			A&Ww			FBC			FC		AgL
SP	Carr Canyon Creek	Headwaters to confluence with unnamed tributary at 31°27'01"/ 110°15'48"		A&Wc				FBC			FC		AgL
SP	Carr Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Copper Creek	Headwaters to confluence with Prospect Canyon			A&Ww			FBC			FC		AgL
SP	Copper Creek	Below confluence with Prospect Canyon to confluence with the San Pedro River				A&We			PBC				AgL
SP	Deer Creek	Headwaters to confluence with unnamed tributary at 32°59'57"/ 110°20'11"		A&Wc				FBC			FC		AgL
SP	Deer Creek	Below confluence with unnamed tributary to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Dixie Canyon	Headwaters to confluence with Mexican Canyon			A&Ww			FBC			FC		AgL
SP	Double R Canyon Creek	Headwaters to confluence with Bass Canyon			A&Ww			FBC			FC		
SP	Dry Canyon	Headwaters to confluence with Whitewater draw			A&Ww			FBC			FC		AgL
SP	East Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'54"/ 110°19'44"	Sedimentary		A&Ww			FBC			FC		
SP	Espiritu Canyon Creek	Headwaters to confluence with Soza Wash			A&Ww			FBC			FC		AgL
SP	Fourmile Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Fourmile Canyon, Left Prong	Headwaters to confluence with unnamed tributary at 32°43'15"/ 110°23'46"		A&Wc				FBC			FC		AgL
SP	Fourmile Canyon, Left Prong	Below confluence with unnamed tributary to confluence with Fourmile Canyon Creek			A&Ww			FBC			FC		AgL
SP	Fourmile Canyon, Right Prong	Headwaters to confluence with Fourmile Canyon			A&Ww			FBC			FC		AgL
SP	Gadwell Canyon	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Garden Canyon Creek	Headwaters to confluence with unnamed tributary at 31°29'01"/ 110°19'44"		A&Wc				FBC		DWS	FC	AgI	

SP	Garden Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC		DWS	FC	AgI	
SP	Glance Creek	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Gold Gulch	Headwaters to U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'52"/ 110°19'49"	Sedimentary		A&Ww			FBC			FC		
SP	Greenbush Draw	From U.S./Mexico border to confluence with San Pedro River				A&We			PBC				
SP	Hidden Pond	Fort Huachuca Military Reservation at 32°30'30"/ 109°22'17"			A&Ww			FBC			FC		
SP	Horse Camp Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Hot Springs Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Johnson Canyon	Headwaters to Whitewater Draw at 31°32'46"/ 109°43'32"			A&Ww			FBC			FC		AgL
SP	Leslie Canyon Creek	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Lower Garden Canyon Pond	Fort Huachuca Military Reservation at 31°29'39"/ 110°18'34"			A&Ww			FBC			FC		
SP	Mexican Canyon	Headwaters to confluence with Dixie Canyon			A&Ww			FBC			FC		AgL
SP	Miller Canyon	Headwaters to Broken Arrow Ranch Road at 31°25'35"/110°15'04"		A&Wc				FBC		DWS	FC		AgL
SP	Miller Canyon	Below Broken Arrow Ranch Road to confluence with the San Pedro River			A&Ww			FBC		DWS	FC		AgL
SP	Mountain View Golf Course Pond	Fort Huachuca Military Reservation at 31°32'14"/ 110°18'52"	Sedimentary		A&Ww				PBC		FC		
SP	Mule Gulch	Headwaters to the Lavender Pit at 31°26'11"/ 109°54'02"			A&Ww				PBC		FC		
SP	Mule Gulch	The Lavender Pit to the' Highway 80 bridge at 31°26'30"/109°49'28"				A&We			PBC				
SP	Mule Gulch	Below the Highway 80 bridge to confluence with Whitewater Draw				A&We			PBC				AgL
SP	Oak Grove Canyon	Headwaters to confluence with Turkey Creek			A&Ww			FBC			FC		AgL
SP	Officers Club Pond	Fort Huachuca Military Reservation at 31°32'51"/ 110°21'37"	Sedimentary		A&Ww				PBC		FC		
SP	Paige Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Parsons Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Ramsey Canyon Creek	Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"		A&Wc				FBC			FC	AgI	AgL
SP	Ramsey Canyon Creek	Below Forest Service Road #110 to confluence with Carr Wash			A&Ww			FBC			FC	AgI	AgL
SP	Rattlesnake Creek	Headwaters to confluence with Brush Canyon		A&Wc				FBC			FC		AgL
SP	Rattlesnake Creek	Below confluence with Brush Canyon to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Redfield Canyon	Headwaters to confluence with unnamed tributary at 32°33'40"/ 110°18'42"		A&Wc				FBC			FC		AgL
SP	Redfield Canyon	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Rucker Canyon	Headwaters to confluence with Whitewater Draw		A&Wc				FBC			FC		AgL
SP	Rucker Canyon Lake	31°46'46"/109°18'30"	Shallow	A&Wc				FBC			FC		AgL
SP	San Pedro River	U.S./ Mexico Border to Buehman Canyon			A&Ww			FBC			FC	AgI	AgL
SP	San Pedro River	From Buehman canyon to confluence with the Gila River			A&Ww			FBC			FC		AgL
SP	Soto Canyon	Headwaters to confluence with Dixie Canyon			A&Ww			FBC			FC		AgL
SP	Swamp Springs Canyon	Headwaters to confluence with Redfield Canyon			A&Ww			FBC			FC		AgL
SP	Sycamore Pond I	Fort Huachuca Military Reservation at 31°35'12"/ 110°26'11"	Sedimentary		A&Ww			FBC			FC		
SP	Sycamore Pond II	Fort Huachuca Military Reservation at 31°34'39"/ 110°26'10"	Sedimentary		A&Ww			FBC			FC		
SP	Turkey Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Unnamed Wash (EDW)	Mt. Lemmon WWTP outfall at 32°26'51"/110°45'08" to 0.25 km downstream					A&Wedw		PBC				
SP	Virgus Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Walnut Gulch	Headwaters to Tombstone WWTP outfall at 31°43'47"/110°04'06"				A&We			PBC				
SP	Walnut Gulch (EDW)	Tombstone WWTP outfall to the confluence with Tombstone Wash					A&Wedw		PBC				
SP	Walnut Gulch	Tombstone Wash to confluence with San Pedro River				A&We			PBC				
SP	Whitewater Draw	Headwaters to confluence with unnamed tributary at 31°20'36"/ 109°43'48"				A&We			PBC				AgL
SP	Whitewater Draw	Below confluence with unnamed tributary to U.S./ Mexico border			A&Ww			FBC			FC		AgL
SP	Woodcutters Pond	Fort Huachuca Military Reservation at 31°30'09"/ 110°20'12"	Igneous		A&Ww			FBC			FC		
SR	Ackre Lake	33°37'01"/109°20'40"		A&Wc				FBC			FC	AgI	AgL
SR	Apache Lake	33°37'23"/111°12'26"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Barnhard Creek	Headwaters to confluence with unnamed tributary at 34°05'37/ 111°26'40"		A&Wc				FBC			FC		AgL
SR	Barnhardt Creek	Below confluence with unnamed tributary to confluence with Rye Creek			A&Ww			FBC			FC		AgL
SR	Basin Lake	33°55'00"/109°26'09"	Igneous		A&Ww			FBC			FC		AgL
SR	Bear Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Bear Wallow Creek (OAW)	Headwaters to confluence with the Black River		A&Wc				FBC			FC		AgL
SR	Bear Wallow Creek, North Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc				FBC			FC		AgL
SR	Bear Wallow Creek, South Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc				FBC			FC		AgL
SR	Beaver Creek	Headwaters to confluence with Black River		A&Wc				FBC			FC	AgI	AgL
SR	Big Lake	33°52'36"/109°25'33"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River	Headwaters to confluence with Salt River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, East Fork	From 33°51'19"/109°18'54" to confluence with the Black River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, North Fork of East Fork	Headwaters to confluence with Boneyard Creek		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, West Fork	Headwaters to confluence with the Black River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Bloody Tanks Wash	Headwaters to Schultze Ranch Road				A&We			PBC				AgL
SR	Bloody Tanks Wash	Schultze Ranch Road to confluence with Miami Wash				A&We			PBC				
SR	Boggy Creek	Headwaters to confluence with Centerfire Creek		A&Wc				FBC			FC	AgI	AgL
SR	Boneyard Creek	Headwaters to confluence with Black River, East Fork		A&Wc				FBC			FC	AgI	AgL
SR	Boulder Creek	Headwaters to confluence with LaBarge Creek			A&Ww			FBC			FC		
SR	Campaign Creek	Headwaters to Roosevelt Lake			A&Ww			FBC			FC		AgL

SR	Canyon Creek	Headwaters to the White Mountain Apache Reservation boundary		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Canyon Lake	33°32'44"/111°26'19"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Centerfire Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Chambers Draw Creek	Headwaters to confluence with the North Fork of the East Fork of Black River		A&Wc				FBC			FC		AgL
SR	Cherry Creek	Headwaters to confluence with unnamed tributary at 34°05'09"/110°56'07"		A&Wc				FBC			FC	AgI	AgL
SR	Cherry Creek	Below unnamed tributary to confluence with the Salt River			A&Ww			FBC			FC	AgI	AgL
SR	Christopher Creek	Headwaters to confluence with Tonto Creek		A&Wc				FBC			FC	AgI	AgL
SR	Cold Spring Canyon Creek	Headwaters to confluence with unnamed tributary at 33°49'50"/ 110°52'58"		A&Wc				FBC			FC		AgL
SR	Cold Spring Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Conklin Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Coon Creek	Headwaters to confluence with unnamed tributary at 33°46'41"/ 110°54'26"		A&Wc				FBC			FC		AgL
SR	Coon Creek	Below confluence with unnamed tributary to confluence with Salt River			A&Ww			FBC			FC		AgL
SR	Corduroy Creek	Headwaters to confluence with Fish Creek		A&Wc				FBC			FC	AgI	AgL
SR	Coyote Creek	Headwaters to confluence with the Black River, East Fork		A&Wc				FBC			FC	AgI	AgL
SR	Crescent Lake	33°54'38"/109°25'18"	Shallow	A&Wc				FBC			FC	AgI	AgL
SR	Deer Creek	Headwaters to confluence with the Black River, East Fork		A&Wc				FBC			FC		AgL
SR	Del Shay Creek	Headwaters to confluence with Gun Creek			A&Ww			FBC			FC		AgL
SR	Devils Chasm Creek	Headwaters to confluence with unnamed tributary at 33°48'46" / 110°52'35"		A&Wc				FBC			FC		AgL
SR	Devils Chasm Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Dipping Vat Reservoir	33°55'47"/109°25'31"	Igneous		A&Ww			FBC			FC		AgL
SR	Double Cienega Creek	Headwaters to confluence with Fish Creek		A&Wc				FBC			FC		AgL
SR	Fish Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Fish Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC		
SR	Gold Creek	Headwaters to confluence with unnamed tributary at 33°59'47"/ 111°25'10"		A&Wc				FBC			FC		AgL
SR	Gold Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Gordon Canyon Creek	Headwaters to confluence with Hog Canyon		A&Wc				FBC			FC		AgL
SR	Gordon Canyon Creek	Below confluence with Hog Canyon to confluence with Haigler Creek			A&Ww			FBC			FC		AgL
SR	Greenback Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Haigler Creek	Headwaters to confluence with unnamed tributary at 34°12'23"/ 111°00'15"		A&Wc				FBC			FC	AgI	AgL
SR	Haigler Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww			FBC			FC	AgI	AgL
SR	Hannagan Creek	Headwaters to confluence with Beaver Creek		A&Wc				FBC			FC		AgL
SR	Hay Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Home Creek	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Horse Creek	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Horse Camp Creek	Headwaters to confluence with unnamed tributary at 33°54'00"/ 110°50'07"		A&Wc				FBC			FC		AgL
SR	Horse Camp Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Horton Creek	Headwaters to confluence with Tonto Creek		A&Wc				FBC			FC	AgI	AgL
SR	Houston Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Hunter Creek	Headwaters to confluence with Christopher Creek		A&Wc				FBC			FC		AgL
SR	LaBarge Creek	Headwaters to Canyon Lake			A&Ww			FBC			FC		
SR	Lake Sierra Blanca	33°52'25"/109°16'05"		A&Wc				FBC			FC	AgI	AgL
SR	Miami Wash	Headwaters to confluence with Pinal Creek				A&We			PBC				
SR	Mule Creek	Headwaters to confluence with Canyon Creek		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Open Draw Creek	Headwaters to confluence with the East Fork of Black River		A&Wc				FBC			FC		AgL
SR	P B Creek	Headwaters to Forest Service Road #203 at 33°57'08"/110°56'12"		A&Wc				FBC			FC		AgL
SR	P B Creek	Below Forest Service Road #203 to Cherry Creek			A&Ww			FBC			FC		AgL
SR	Pinal Creek	Headwaters to confluence with unnamed EDW wash (Globe WWTP) at 33°25'29"/110°48'20"				A&We			PBC				AgL
SR	Pinal Creek (EDW)	Confluence with unnamed EDW wash (Globe WWTP) to 33°26'55"/ 110°49' 25"					A&Wedw		PBC				
SR	Pinal Creek	From 33°26'55"/110°49'25" to Lower Pinal Creek water treatment plant outfall #001 at 33°31'04"/ 110°51'55"				A&We			PBC				AgL
SR	Pinal Creek	From Lower Pinal Creek WTP outfall # to See Ranch Crossing at 33°32'25"/110°52'28"					A&Wedw		PBC				
SR	Pinal Creek	From See Ranch Crossing to confluence with unnamed tributary at 33°35'28"/110°54'31"			A&Ww			FBC					
SR	Pinal Creek	From unnamed tributary to confluence with Salt River			A&Ww			FBC			FC		
SR	Pine Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC		
SR	Pinto Creek	Headwaters to confluence with unnamed tributary at 33°19'27"/ 110°54'58"		A&Wc				FBC			FC	AgI	AgL
SR	Pinto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww			FBC			FC	AgI	AgL
SR	Pole Corral Lake	33°30'38"/110°00'15"	Igneous		A&Ww			FBC			FC	AgI	AgL
SR	Pueblo Canyon Creek	Headwaters to confluence with unnamed tributary at 33°50'23"/ 110°51'37"		A&Wc				FBC			FC		AgL
SR	Pueblo Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Reevis Creek	Headwaters to confluence with Pine Creek			A&Ww			FBC			FC		
SR	Reservation Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC		AgL
SR	Reynolds Creek	Headwaters to confluence with Workman Creek		A&Wc				FBC			FC		AgL

SR	Roosevelt Lake	33°52'17"/111°00'17"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Russell Gulch	From Headwaters to confluence with Miami Wash				A&We			PBC				
SR	Rye Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Saguaro Lake	33°33'44"/111°30'55"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Salome Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC	AgI	AgL
SR	Salt House Lake	33°57'04"/109°20'11"	Igneous		A&Ww			FBC			FC		AgL
SR	Salt River	White Mountain Apache Reservation Boundary at 33°48'52"/ 110°31'33" to Roosevelt Lake			A&Ww			FBC			FC		AgL
SR	Salt River	Theodore Roosevelt Dam to 2 km below Granite Reef Dam			A&Ww			FBC		DWS	FC	AgI	AgL
SR	Slate Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Snake Creek (OAW)	Headwaters to confluence with the Black River		A&Wc				FBC			FC		AgL
SR	Spring Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Stinky Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Thomas Creek	Headwaters to confluence with Beaver Creek		A&Wc				FBC			FC		AgL
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River		A&Wc				FBC			FC		AgL
SR	Tonto Creek	Headwaters to confluence with unnamed tributary at 34°18'11"/ 111°04'18"		A&Wc				FBC			FC	AgI	AgL
SR	Tonto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww			FBC			FC	AgI	AgL
SR	Turkey Creek	Headwaters to confluence with Rock Creek		A&Wc				FBC			FC		
SR	Wildcat Creek	Headwaters to confluence with Centerfire Creek		A&Wc				FBC			FC		AgL
SR	Willow Creek	Headwaters to confluence with Beaver Creek		A&Wc				FBC			FC		AgL
SR	Workman Creek	Headwaters to confluence with Reynolds Creek		A&Wc				FBC			FC	AgI	AgL
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek			A&Ww			FBC			FC	AgI	AgL
UG	Apache Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Ash Creek	Headwaters to confluence with unnamed tributary at 32°46'15"/ 109°51'45"		A&Wc				FBC			FC		AgL
UG	Ash Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Bennett Wash	Headwaters to the Gila River				A&We			PBC				
UG	Bitter Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		
UG	Blue River	Headwaters to confluence with Strayhorse Creek at 33°29'02"/ 109°12'14"		A&Wc				FBC			FC	AgI	AgL
UG	Blue River	Below confluence with Strayhorse Creek to confluence with San Francisco River			A&Ww			FBC			FC	AgI	AgL
UG	Bonita Creek (OAW)	San Carlos Indian Reservation boundary to confluence with the Gila River			A&Ww			FBC		DWS	FC		AgL
UG	Buckelew Creek	Headwaters to confluence with Castle Creek		A&Wc				FBC			FC		AgL
UG	Campbell Blue Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Castle Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
UG	Cave Creek (OAW)	Headwaters to confluence with South Fork Cave Creek		A&Wc				FBC			FC	AgI	AgL
UG	Cave Creek (OAW)	Below confluence with South Fork Cave Creek to Coronado National Forest boundary			A&Ww			FBC			FC	AgI	AgL
UG	Cave Creek	Below Coronado National Forest boundary to New Mexico border			A&Ww			FBC			FC	AgI	AgL
UG	Cave Creek, South Fork	Headwaters to confluence with Cave Creek		A&Wc				FBC			FC	AgI	AgL
UG	Chase Creek	Headwaters to the Phelps-Dodge Morenci Mine			A&Ww			FBC			FC		AgL
UG	Chase Creek	Below the Phelps-Dodge Morenci Mine to confluence with San Francisco River				A&We			PBC		FC		
UG	Chitty Canyon Creek	Headwaters to confluence with Salt House Creek		A&Wc				FBC			FC		AgL
UG	Cima Creek	Headwaters to confluence with Cave Creek		A&Wc				FBC			FC		AgL
UG	Cluff Reservoir #1	32°48'55"/109°50'46"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Cluff Reservoir #3	32°48'21"/109°51'46"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Coleman Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
UG	Dankworth Lake	32°43'13"/109°42'17"	Sedimentary	A&Wc				FBC			FC		
UG	Deadman Canyon Creek	Headwaters to confluence with unnamed tributary at 32°43'50"/ 109°49'03"		A&Wc				FBC		DWS	FC		AgL
UG	Deadman Canyon Creek	Below confluence with unnamed tributary to confluence with Graveyard Wash			A&Ww			FBC		DWS	FC		AgL
UG	Eagle Creek	Headwaters to confluence with unnamed tributary at 33°22'32"/ 109°29'43"		A&Wc				FBC		DWS	FC	AgI	AgL
UG	Eagle Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww			FBC		DWS	FC	AgI	AgL
UG	East Eagle Creek	Headwaters to confluence with Eagle Creek		A&Wc				FBC			FC		AgL
UG	East Turkey Creek	Headwaters to confluence with unnamed tributary at 31°58'22"/ 109°12'20"		A&Wc				FBC			FC		AgL
UG	East Turkey Creek	Below confluence with unnamed tributary to terminus near San Simon River			A&Ww			FBC			FC		AgL
UG	East Whitetail	Headwaters to terminus near San Simon River			A&Ww			FBC			FC		AgL
UG	Emigrant Canyon	Headwaters to terminus near San Simon River			A&Ww			FBC			FC		AgL
UG	Evans Pond #1	32°49'19"/109°51'12"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Evans Pond #2	32°49'14"/109°51'09"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Fishhook Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Foote Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Frye Canyon Creek	Headwaters to Frye Mesa Reservoir		A&Wc				FBC		DWS	FC		AgL
UG	Frye Canyon Creek	Frye Mesa reservoir to terminus at Highline Canal.			A&Ww			FBC			FC		AgL
UG	Frye Mesa Reservoir	32°45'14"/109°50'02"	Igneous	A&Wc				FBC		DWS	FC		
UG	Gibson Creek	Headwaters to confluence with Marijilda Creek		A&Wc				FBC			FC		AgL
UG	Gila River	New Mexico border to the San Carlos Indian Reservation boundary			A&Ww			FBC			FC	AgI	AgL
UG	Grant Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Judd Lake	33°51'15"/109°09'35"	Sedimentary	A&Wc				FBC			FC		
UG	K P Creek (OAW)	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL

UG	Lanphier Canyon Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Little Blue Creek	Headwaters to confluence with Dutch Blue Creek		A&Wc				FBC			FC		AgL
UG	Little Blue Creek	Below confluence with Dutch Blue Creek to confluence with Blue Creek			A&Ww			FBC			FC		AgL
UG	Little Creek	Headwaters to confluence with the San Francisco River		A&Wc				FBC			FC		
UG	Georges Tank	33°51'24"/109°08'30"	Sedimentary	A&Wc				FBC			FC		AgL
UG	Luna Lake	33°49'50"/109°05'06"	Sedimentary	A&Wc				FBC			FC		AgL
UG	Marijilda Creek	Headwaters to confluence with Gibson Creek		A&Wc				FBC			FC		AgL
UG	Marijilda Creek	Below confluence with Gibson Creek to confluence with Stockton Wash			A&Ww			FBC			FC	AgI	AgL
UG	Markham Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Pigeon Creek	Headwaters to confluence with the Blue River			A&Ww			FBC			FC		AgL
UG	Raspberry Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		
UG	Roper Lake	32°45'23"/109°42'14"	Sedimentary		A&Ww			FBC			FC		
UG	San Francisco River	Headwaters to the New Mexico border		A&Wc				FBC			FC	AgI	AgL
UG	San Francisco River	New Mexico border to confluence with the Gila River			A&Ww			FBC			FC	AgI	AgL
UG	San Simon River	Headwaters to confluence with the Gila River				A&We			PBC				AgL
UG	Sheep Tank	32°46'14"/109°48'09"	Sedimentary		A&Ww			FBC			FC		AgL
UG	Smith Pond	32°49'15"/109°50'36"	Sedimentary		A&Ww			FBC			FC		
UG	Squaw Creek	Headwaters to confluence with Thomas Creek		A&Wc				FBC			FC		AgL
UG	Stone Creek	Headwaters to confluence with the San Francisco River		A&Wc				FBC			FC	AgI	AgL
UG	Strayhorse Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		
UG	Thomas Creek	Headwaters to confluence with Rousensock Creek		A&Wc				FBC			FC		AgL
UG	Thomas Creek	Below confluence with Rousensock Creek to confluence with Blue River			A&Ww			FBC			FC		AgL
UG	Tinny Pond	33°47'49"/109°04'27"	Sedimentary		A&Ww			FBC			FC		AgL
UG	Turkey Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
VR	American Gulch	Headwaters to the Northern Gila County Sanitary District WWTP outfall at 34°14'02"/111°22'14"			A&Ww			FBC			FC	AgI	AgL
VR	American Gulch (EDW)	Below Northern Gila County Sanitary District WWTP outfall to confluence with the East Verde River					A&Wedw		PBC				
VR	Apache Creek	Headwaters to confluence with Walnut Creek			A&Ww			FBC			FC		AgL
VR	Ashbrook Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Aspen Creek	Headwaters to confluence with Granite Creek			A&Ww			FBC			FC		
VR	Bar Cross Tank	35°00'41"/112°05'39"			A&Ww			FBC			FC		AgL
VR	Barrata Tank	35°02'43"/112°24'21"			A&Ww			FBC			FC		AgL
VR	Bartlett Lake	33°49'52"/111°37'44"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
VR	Beaver Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Big Chino Wash	Headwaters to confluence with Sullivan Lake				A&We			PBC				AgL
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"				A&We			PBC				AgL
VR	Bitter Creek (EDW)	Jerome WWTP outfall to the Yavapai Apache Indian Reservation boundary					A&Wedw		PBC				AgL
VR	Bitter Creek	Below the Yavapai Apache Indian Reservation boundary to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Black Canyon Creek	Headwaters to confluence with unnamed tributary at 34°39'20"/ 112°05'06"		A&Wc				FBC			FC		AgL
VR	Black Canyon Creek	Below confluence with unnamed tributary to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Bonita Creek	Headwaters to confluence with Ellison Creek		A&Wc				FBC		DWS	FC		
VR	Bray Creek	Headwaters to confluence with Webber Creek		A&Wc				FBC			FC		AgL
VR	Camp Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Cereus Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Chase Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC		DWS	FC		
VR	Clover Creek	Headwaters to confluence with Headwaters of West Clear Creek		A&Wc				FBC			FC		AgL
VR	Coffee Creek	Headwaters to confluence with Spring Creek			A&Ww			FBC			FC		AgL
VR	Colony Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Dead Horse Lake	34°45'08"/112°00'42"	Shallow		A&Ww			FBC			FC		
VR	Deadman Creek	Headwaters to Horseshoe Reservoir			A&Ww			FBC			FC		AgL
VR	Del Monte Gulch	Headwaters to confluence with City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46"				A&We			PBC				
VR	Del Monte Gulch (EDW)	City of Cottonwood WWTP outfall 002 at 34°43'57"/ 112°02'46" to confluence with Verde River					A&Wedw		PBC				
VR	Del Rio Dam Lake	34°48'55"/112°28'03"	Sedimentary		A&Ww			FBC			FC		AgL
VR	Dry Beaver Creek	Headwaters to confluence with Beaver Creek			A&Ww			FBC			FC	AgI	AgL
VR	Dry Creek (EDW)	Sedona Ventures WWTP outfall at 34°50'02"/ 111°52'17" to 34°48'12"/111°52'48"					A&Wedw		PBC				
VR	Dude Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC			FC	AgI	AgL
VR	East Verde River	Headwaters to confluence with Ellison Creek		A&Wc				FBC		DWS	FC	AgI	AgL
VR	East Verde River	Below confluence with Ellison Creek to confluence with the Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Ellison Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC			FC		AgL
VR	Fossil Creek (OAW)	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Fossil Springs (OAW)	34°25'24"/111°34'27"			A&Ww			FBC		DWS	FC		
VR	Foxboro Lake	34°53'42"/111°39'55"			A&Ww			FBC			FC		AgL
VR	Fry Lake	35°03'45"/111°48'04"			A&Ww			FBC			FC		AgL
VR	Gap Creek	Headwaters to confluence with Government Spring		A&Wc				FBC			FC		AgL
VR	Gap Creek	Below Government Spring to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Garrett Tank	35°18'57"/112°42'20"			A&Ww			FBC			FC		AgL
VR	Goldwater Lake, Lower	34°29'56"/112°27'17"	Sedimentary	A&Wc				FBC		DWS	FC		
VR	Goldwater Lake, Upper	34°29'52"/112°26'59"	Igneous	A&Wc				FBC		DWS	FC		
VR	Granite Basin Lake	34°37'01"/112°32'58"	Igneous	A&Wc				FBC			FC	AgI	AgL

VR	Granite Creek	Headwaters to Watson Lake		A&Wc				FBC			FC	AgI	AgL
VR	Granite Creek	Below Watson Lake to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Green Valley Lake (EDW)	34°13'54"/111°20'45"	Urban				A&Wedw		PBC		FC		
VR	Heifer Tank	35°20'27"/112°32'59"			A&Ww			FBC			FC		AgL
VR	Hells Canyon Tank	35°04'59"/112°24'07"	Igneous		A&Ww			FBC			FC		AgL
VR	Homestead Tank	35°21'24"/112°41'36"	Igneous		A&Ww			FBC			FC		AgL
VR	Horse Park Tank	34°58'15"/111°36'32"			A&Ww			FBC			FC		AgL
VR	Horseshoe Reservoir	34°00'25"/111°43'36"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
VR	Houston Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Huffer Tank	34°27'46"/111°23'11"			A&Ww			FBC			FC		AgL
VR	J.D. Dam Lake	35°04'02"/112°01'48"	Shallow	A&Wc				FBC			FC	AgI	AgL
VR	Jacks Canyon	Headwaters to Big Park WWTP outfall at 34°45'46"/ 111°45'51"				A&We			PBC				
VR	Jacks Canyon (EDW)	Below Big Park WWTP outfall to confluence with Dry Beaver Creek					A&Wedw		PBC				
VR	Lime Creek	Headwaters to Horseshoe Reservoir			A&Ww			FBC			FC		AgL
VR	Masonry Number 2 Reservoir	35°13'32"/112°24'10"		A&Wc				FBC			FC	AgI	AgL
VR	McLellan Reservoir	35°13'09"/112°17'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
VR	Meath Dam Tank	35°07'52"/112°27'35"			A&Ww			FBC			FC		AgL
VR	Mullican Place Tank	34°44'16"/111°36'10"	Igneous		A&Ww			FBC			FC		AgL
VR	Oak Creek (OAW)	Headwaters to confluence with unnamed tributary at 34°59'15"/ 111°44'47"		A&Wc				FBC		DWS	FC	AgI	AgL
VR	Oak Creek (OAW)	Below confluence with unnamed tributary to confluence with Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Oak Creek, West Fork (OAW)	Headwaters to confluence with Oak Creek		A&Wc				FBC			FC		AgL
VR	Odell Lake	34°56'5"/111°37'53"	Igneous	A&Wc				FBC			FC		
VR	Peck's Lake	34°46'51"/112°02'01"	Shallow		A&Ww			FBC			FC	AgI	AgL
VR	Perkins Tank	35°06'42"/112°04'12"	Shallow	A&Wc				FBC			FC		AgL
VR	Pine Creek	Headwaters to confluence with unnamed tributary at 34°21'51"/ 111°26'49"		A&Wc				FBC		DWS	FC	AgI	AgL
VR	Pine Creek	Below confluence with unnamed tributary to confluence with East Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Red Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Reservoir #1	35°13'5"/111°50'09"	Igneous		A&Ww			FBC			FC		
VR	Reservoir #2	35°13'17"/111°50'39"	Igneous		A&Ww			FBC			FC		
VR	Roundtree Canyon Creek	Headwaters to confluence with Tangle Creek			A&Ww			FBC			FC		AgL
VR	Scholze Lake	35°11'53"/112°00'37"	Igneous	A&Wc				FBC			FC		AgL
VR	Spring Creek	Headwaters to confluence with unnamed tributary at 34°57'23"/ 111°57'21"		A&Wc				FBC			FC	AgI	AgL
VR	Spring Creek	Below confluence with unnamed tributary to confluence with Oak Creek			A&Ww			FBC			FC	AgI	AgL
VR	Steel Dam Lake	35°13'36"/112°24'54"	Igneous	A&Wc				FBC			FC		AgL
VR	Stehr Lake	34°22'01"/111°40'02"	Sedimentary		A&Ww			FBC			FC		AgL
VR	Stoneman Lake	34°46'47"/111°31'14"	Shallow	A&Wc				FBC			FC	AgI	AgL
VR	Sullivan Lake	34°51'42"/112°27'51"			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with unnamed tributary at 35°03'41"/ 111°57'31"		A&Wc				FBC			FC	AgI	AgL
VR	Sycamore Creek	Below confluence with unnamed tributary to confluence with Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with Verde River at 33°37'55"/111°39'58"			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with Fort McDowell Indian Reservation boundary at 33°39'19.8"/-111°37'42.7"			A&Ww			FBC			FC		AgL
VR	Tangle Creek	Headwaters to confluence with Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Trinity Tank	35°27'44"/112°48'01"			A&Ww			FBC			FC		AgL
VR	Unnamed Wash	Flagstaff Meadows WWTP outfall at '35°13'59"/ 111°48'35" to Volunteer Wash					A&Wedw		PBC				
VR	Verde River	From headwaters at confluence of Chino Wash and Granite Creek to Bartlett Lake Dam			A&Ww			FBC			FC	AgI	AgL
VR	Verde River	Below Bartlett Lake Dam to Salt River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Walnut Creek	Headwaters to confluence with Big Chino Wash			A&Ww			FBC			FC		AgL
VR	Watson Lake	34°34'58"/112°25'26"	Igneous		A&Ww			FBC			FC	AgI	AgL
VR	Webber Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC			FC		AgL
VR	West Clear Creek	Headwaters to confluence with Meadow Canyon		A&Wc				FBC			FC		AgL
VR	West Clear Creek	Below confluence with Meadow Canyon to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Wet Beaver Creek	Headwaters to unnamed springs at 34°41'17"/ 111°34'34"		A&Wc				FBC			FC	AgI	AgL
VR	Wet Beaver Creek	Below unnamed springs to confluence with Dry Beaver Creek			A&Ww			FBC			FC	AgI	AgL
VR	Whitehorse Lake	35°06'59"/112°00'48"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
VR	Williamson Valley Wash	Headwaters to confluence with Mint Wash				A&We			PBC				AgL
VR	Williamson Valley Wash	From confluence of Mint Wash to 10.5 km downstream			A&Ww			FBC			FC		AgL
VR	Williamson Valley Wash	From 10.5 km downstream of Mint Wash confluence to confluence with Big Chino Wash				A&We			PBC				AgL
VR	Williscraft Tank	35°11'22"/112°35'40"			A&Ww			FBC			FC		AgL
VR	Willow Creek	Above Willow Creek Reservoir		A&Wc				FBC			FC		AgL
VR	Willow Creek	Below Willow Creek Reservoir to confluence with Granite Creek			A&Ww			FBC			FC		AgL
VR	Willow Creek Reservoir	34°36'17"/112°26'19"	Shallow		A&Ww			FBC			FC	AgI	AgL
VR	Willow Valley Lake	34°41'08"/111°20'02"	Sedimentary		A&Ww			FBC			FC		AgL

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Appendix B repealed, new Appendix B adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix B amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Appendix B amended by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Appendix C. Site-Specific Standards

Watershed	Surface Water	Surface Water Description & Location	Parameter	Site-Specific Criterion
LC	Rio de Flag (EDW)	Flagstaff WWTP outfall to the confluence with San Francisco Wash	Copper (D)	36 µg/L (A&Wedw)
CL	Yuma East Wetlands	From inlet culvert from Colorado River into restored channel to Ocean Bridge	Selenium (T)	2.2 µg/L (A&Ww chronic)
			Total residual chlorine	33 µg/L (A&Ww acute)
				20 µg/L (A&Ww chronic)
SR	Pinto Creek	From confluence of Ellis Ranch tributary at 33°19'26.7"/110°54'57.5" to the confluence of West Fork of Pinto Creek at 33°27'32.3"/ 111°00'19.7"	Copper (D)	34 µg/L (A&Ww acute for hardness values below 268 mg/L)
				34 µg/L (A&Ww chronic)

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Appendix C repealed effective April 24, 1996 (Supp. 96-2). New Appendix C made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix C amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

ARTICLE 2. WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS

R18-11-201. Definitions

The following terms apply to this Article:

1. "Acute toxicity" means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. "Agricultural irrigation AZ (AgI AZ)" means the use of a non-WOTUS protected surface water for crop irrigation.
3. "Agricultural livestock watering AZ (AgL AZ)" means the use of a non-WOTUS protected surface water as a water supply for consumption by livestock.
4. "Aquatic and wildlife AZ (cold water) (A&Wc AZ)" means the use of a non-WOTUS protected surface water by animals, plants, or other cold-water organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
5. "Aquatic and wildlife AZ (warm water) (A&Ww AZ)" means the use of a non-WOTUS protected surface water by animals, plants, or other warm-water organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
6. "Assimilative capacity" means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
7. "Complete Mixing" means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.
8. "Criteria" means elements of water quality standards expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
9. "Critical flow conditions of the discharge" means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone's receiving water as follows:
   a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
   b. For chronic aquatic water quality standard criteria, the discharge flow critical flow condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
   c. For human health-based water quality standard criteria, the discharge flow critical condition is the long-term arithmetic mean flow, averaged over several years so as to simulate long-term exposure.
10. "Critical flow conditions of the receiving water" means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
    a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day average flow event expected to occur once every ten years, on average (1Q10).
    b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
    c. For human health-based water quality standard criteria, in order to simulate long-term exposure, the

receiving water critical flow condition is the harmonic mean flow.

11. "Designated use" means a use specified on the Protected Surface Waters List for a non-WOTUS protected surface water.
12. "Domestic water source AZ (DWS AZ)" means the use of a non-WOTUS protected surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
13. "Fish consumption AZ (FC AZ)" means the use of a non-WOTUS protected surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
14. "Full-body contact AZ (FBC AZ)" means the use of a non-WOTUS protected surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely, and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
15. "Geometric mean" means the nth root of the product of n items or values. The geometric mean is calculated using the following formula:

$$GM_y = \sqrt[n]{(Y_1)(Y_2)(Y_3)(Y_n)}$$

16. "Hardness" means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO3) in milligrams per liter.
17. "Mixing zone" means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
18. "Non-WOTUS protected surface water" means a protected surface water designated in Table A of R18-11-216 or added to the PSWL by an emergency action authorized by A.R.S. § 49-221(G)(7) that is not a WOTUS.
19. "Oil" means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
20. "Partial-body contact AZ (PBC AZ)" means the recreational use of a non-WOTUS protected surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and, sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
21. "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance.
22. "Practical quantitation limit" means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
23. "Recharge Project" means a facility necessary or convenient to obtain, divert, withdraw, transport, exchange, deliver, treat, or store water to infiltrate or reintroduce that water into the ground.
24. "Toxic" means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.
25. "Urban lake" means a manmade lake within an urban landscape.
26. "Wastewater" does not mean:
    a. Stormwater,
    b. Discharges authorized under the De Minimus General Permit,
    c. Other allowable non-stormwater discharges permitted under the Construction General Permit or the Multi-sector General Permit, or
    d. Stormwater discharges from a municipal storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
27. "Wetland" means, for the purposes of non-WOTUS protected surface waters, an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
28. "WOTUS" means waters of the state that are also navigable waters as defined by Section 502(7) of the Clean Water Act.
29. "WOTUS protected surface water" means a protected surface water that is a WOTUS.
30. "Zone of initial dilution" means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

Historical Note

Amended effective January 29, 1980 (Supp. 80-1). Amended subsection A. effective April 17, 1984 (Supp. 84-2). Former Section R9-21-201 repealed, former Section R9-21-203 renumbered as Section R9-21-201 and amended effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-201 renumbered without change as Section R18-11-201 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-202. Applicability

A. The water quality standards prescribed in this Article apply to non-WOTUS protected surface waters.

B. The water quality standards prescribed in this Article do not apply to the following:
1. A waste treatment system, including an impoundment, pond, lagoon, or constructed wetland that is part of the waste treatment system;
2. A man-made surface impoundment and any associated ditch and conveyance used in the extraction, beneficiation, or processing of metallic ores including:
    a. A pit,
    b. Pregnant leach solution pond

c. Raffinate pond,
d. Tailing impoundment,
e. Decant pond,
f. Pond of sump in a mine put associated with dewatering activity,
g. Pond holding water that has come into contact with a process or product that is being held for recycling,
h. Spill or catchment pond, or
i. A pond used for onsite remediation

3. A man-made cooling pond that is neither created in a surface water nor results from the impoundment of a surface water; or
4. A surface water located on tribal lands.
5. WOTUS Protected Surface Waters.

Historical Note

Former Section R9-21-202 repealed, former Section R9-21-102 renumbered as Section R9-21-202 and amended effective January 7, 1985 (Supp. 85-1). Amended subsections (B), (D), and (E) effective August 12, 1986 (Supp. 86-4). Former Section R9-21-202 renumbered without change as Section R18-11-202 (Supp. 87-3). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed effective April 24, 1996 (Supp. 96-2). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-203. Designated Uses for Non-WOTUS Protected Surface Waters

A. The designated uses for specific non-WOTUS protected surface waters are listed in the Protected Surface Waters List in this article. The designated uses that may be assigned to a non-WOTUS protected surface water are:
1. Full-body contact AZ,
2. Partial-body contact AZ,
3. Domestic water source AZ,
4. Fish consumption AZ,
5. Aquatic and wildlife AZ (cold water),
6. Aquatic and wildlife AZ (warm water),
7. Agricultural irrigation AZ, and
8. Agricultural livestock watering AZ.

B. Numeric water quality criteria to maintain and protect water quality for the designated uses assigned to non-WOTUS protected surface waters are prescribed in R18-11-215. Narrative water quality standards to protect non-WOTUS protected surface waters are prescribed in R18-11-214.

C. If a non-WOTUS protected surface water has more than one designated use listed in the Protected Surface Waters List, the most stringent water quality criterion applies.

D. The Director shall revise the designated uses of a non-WOTUS protected surface water if water quality improvements result in a level of water quality that permits a use that is not currently listed as a designated use in the Protected Surface Waters List.

E. The Director may remove a designated use or adopt a subcategory of a designated use that requires less stringent water quality criteria through a rulemaking action for any of the following reasons:
1. A naturally-occurring pollutant concentration prevents the attainment of the use;
2. A human-caused condition or source of pollution prevents the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
3. A dam, diversion, or other type of hydrologic modification precludes the attainment of the use, and it is not feasible to restore the non-WOTUS protected surface water to its original condition or to operate the modification in a way that would result in attainment of the use;
4. A physical condition related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, precludes attainment of an aquatic life designated use.

Historical Note

Amended effective January 29, 1980 (Supp. 80-1). Amended subsection (B) by adding paragraphs (27) and (28) effective October 14, 1981 (Supp. 81-5). Former Section R9-21-203 renumbered as Section R9-21-201, former Section R9-21-204 renumbered as Section R9-21-203 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-203 renumbered and amended as Section R9-21-204, new Section R9-21-203 adopted effective August 12, 1986 (Supp. 86-4). Former Section R9-21-203 renumbered without change as Section R18-11-203 (Supp. 87-3). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed effective April 24, 1996 (Supp. 96-2). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-204. Interim, Presumptive Designated Uses

The following water quality standards apply to a non-WOTUS protected surface water that is not listed on the Protected Surface Waters List but is added on an emergency basis pursuant to A.R.S. § 49-221(G)(7):
1. The aquatic and wildlife AZ (cold water use applies to a non-WOTUS protected surface water above 5000 feet in elevation;
2. The aquatic and wildlife AZ (warm water) applies to a non-WOTUS protected surface water below 5000 feet in elevation;
3. The full-body contact AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
4. The partial-body contact AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans in a way that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
5. The fish consumption AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans for harvesting aquatic organisms for con-

sumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.

6. The domestic water source AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans as a source of potable water.
7. The agricultural irrigation AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used for crop irrigation.
8. The agricultural livestock watering AZ use applies to any non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used as a water supply for consumption by livestock.

Historical Note

Former Section R9-21-204 renumbered and amended as Section R9-21-207, former Section R9-21-206 renumbered and amended as Section R9-21-204 effective January 29, 1980 (Supp. 80-1). Former Section R9-21-204 renumbered as Section R9-21-203, former Section R9-21-205 renumbered as Section R9-21-204 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-204 renumbered and amended as Section R9-21-205, former Section R9-21-203 renumbered and amended as Section R9-21-204 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-204 renumbered without change as Section R18-11-204 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-205. Analytical Methods

A. A person conducting an analysis of a sample taken to determine compliance with a water quality standard shall use an analytical method prescribed in A.A.C. R9-14-610 or an alternative method approved under A.A.C. R9-14-610(C).

B. A test result from a sample taken to determine compliance with a water quality standard is valid only if the sample is analyzed by a laboratory that is licensed by the Arizona Department of Health Services, an out-of-state laboratory licensed under A.R.S. § 36-495.14, or a laboratory exempted under A.R.S. § 36-495.02, for the analysis performed.

Historical Note

Former Section R9-21-205 repealed, new Section R9-21-205 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-205 renumbered as Section R9-21-204, former Section R9-21-206 renumbered as Section R9-21-205 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-205 renumbered and amended as Section R9-21-206, former Section R9-21-204 renumbered and amended as Section R9-21-205 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-205 renumbered without change as Section R18-11-205 (Supp. 87-3). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed April 24, 1996 (Supp. 96-2). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-206. Mixing Zones

A. The Director may establish a mixing zone for a point source discharge to a non-WOTUS protected surface water as a condition of an individual AZPDES permit on a pollutant-by-pollutant basis. A mixing zone is prohibited where there is no water for dilution, or as prohibited pursuant to subsection (H).

B. The owner or operator of a point source seeking the establishment of a mixing zone shall submit a request to the Director for a mixing zone as part of an application for an AZPDES permit. The request shall include:

1. An identification of the pollutant for which the mixing zone is requested;
2. A proposed outfall design;
3. A definition of the boundary of the proposed mixing zone. For purposes of this subsection, the boundary of a mixing zone is where complete mixing occurs; and
4. A complete and detailed description of the existing physical, biological, and chemical conditions of the receiving water and the predicted impact of the proposed mixing zone on those conditions. The description shall also address the factors listed in subsection (D) that the Director must consider when deciding to grant or deny a request and shall address the mixing zone requirements in subsection (H).

C. The Director shall consider the following factors when deciding whether to grant or deny a request for a mixing zone:

1. The assimilative capacity of the receiving water;
2. The likelihood of adverse human health effects;
3. The location of drinking water plant intakes and public swimming areas;
4. The predicted exposure of biota and the likelihood that resident biota will be adversely affected;
5. Bioaccumulation;
6. Whether there will be acute toxicity in the mixing zone, and, if so, the size of the zone of initial dilution;
7. The known or predicted safe exposure levels for the pollutant for which the mixing zone is requested;
8. The size of the mixing zone;
9. The location of the mixing zone relative to biologically sensitive areas in the surface water;
10. The concentration gradient of the pollutant within the mixing zone;
11. Sediment deposition;
12. The potential for attracting aquatic life to the mixing zone; and
13. The cumulative impacts of other mixing zones and other discharges to the surface water.

D. Director determination.

1. The Director shall deny a request to establish a mixing zone if an applicable water quality standard will be violated outside the boundaries of the proposed mixing zone.
2. If the Director approves the request to establish a mixing zone, the Director shall establish the mixing zone as a condition of an AZPDES permit. The Director shall include any mixing zone condition in the AZPDES permit that is necessary to protect human health and the designated uses of the surface water.

E. Any person who is adversely affected by the Director's decision to grant or deny a request for a mixing zone may appeal the decision under A.R.S. § 49-321 et seq. and A.R.S. § 41-1092 et seq.

F. The Director shall reevaluate a mixing zone upon issuance, reissuance, or modification of the AZPDES permit for the point source or a modification of the outfall structure.

G. Mixing zone requirements.
1. A mixing zone shall be as small as practicable in that it shall not extend beyond the point in the waterbody at which complete mixing occurs under the critical flow conditions of the discharge and of the receiving water.
2. The total horizontal area allocated to all mixing zones on a lake shall not exceed 10 percent of the surface area of the lake.
3. Adjacent mixing zones in a lake shall not overlap or be located closer together than the greatest horizontal dimension of the largest mixing zone.
4. The design of any discharge outfall shall maximize initial dilution of the wastewater in a surface water.
5. The size of the zone of initial dilution in a mixing zone shall prevent lethality to organisms passing through the zone of initial dilution. The mixing zone shall prevent acute toxicity and lethality to organisms passing through the mixing zone.

H. The Director shall not establish a mixing zone in an AZPDES permit for the following persistent, bioaccumulative pollutants:
1. Chlordane,
2. DDT and its metabolites (DDD and DDE),
3. Dieldrin,
4. Dioxin,
5. Endrin,
6. Endrin aldehyde,
7. Heptachlor,
8. Heptachlor epoxide,
9. Lindane,
10. Mercury,
11. Polychlorinated biphenyls (PCBs), and
12. Toxaphene.

Historical Note

Former Section R9-21-206 renumbered and amended as Section R9-21-204, new Section R9-21-206 adopted effective January 29, 1980 (Supp. 80-1). Amended by adding subsection (B) effective October 14, 1981 (Supp. 81-5). Amended subsection (B) and Table 1 effective January 29, 1982 (Supp. 82-1). Amended subsection (B) and Table 1 effective August 13, 1982 (Supp. 82-4). Former Section R9-21-206 renumbered as Section R9-21-205, former Section R9-21-207 renumbered as Section R9-21-206 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-206 renumbered and amended as Section R9-21-207, former Section R9-21-205 renumbered and amended as R9-21-206 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-206 renumbered without change as Section R18-11-206 (Supp. 87-3). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-207. Natural Background

Where the concentration of a pollutant exceeds a water quality standard and the exceedance is caused solely by naturally occurring conditions, the exceedance shall not be considered a violation of the water quality standard.

Historical Note

Former Section R9-21-207 repealed, former Section R9-21-204 renumbered and amended as Section R9-21-207 effective January 29, 1980 (Supp. 80-1). Former Section R9-21-207 renumbered as Section R9-21-206, former Section R9-21-208 renumbered as Section R9-21-207 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-207 renumbered without change as Section R9-21-208, former Section R9-21-206 renumbered and amended as Section R9-21-207 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-207 renumbered without change as Section R18-11-207 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-208. Schedules of Compliance

A compliance schedule in an AZPDES permit shall require the permittee to comply with a discharge limitation based upon a new or revised water quality standard as soon as possible to achieve compliance. The permittee shall demonstrate that the point source cannot comply with a discharge limitation based upon the new or revised water quality standard through the application of existing water pollution control technology, operational changes, or source reduction. In establishing a compliance schedule, the Director shall consider:
1. How much time the permittee has already had to meet any effluent limitations under a prior permit;
2. The extent to which the permittee has made good faith efforts to comply with the effluent limitations and other requirements in a prior permit;
3. Whether treatment facilities, operations, or measures must be modified to meet the effluent limitations;
4. How long any necessary modifications would take to implement; and
5. Whether the permittee would be expected to use the same treatment facilities, operations or other measures to meet the effluent limitations as it would have used to meet the effluent limitations in a prior permit.

Historical Note

Former Section R9-21-208 repealed, new Section R9-21-208 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-208 renumbered as Section R9-21-207, Appendices 1 through 9 amended as Appendix A (now shown following R9-21-213), former Section R9-21-209 renumbered as R9-21-208 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-208 renumbered and amended as Section R9-21-209, former Section R9-21-207 renumbered without change as Section R9-21-208 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-208 renumbered without change as Section R18-11-208 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-209. Variances

A. Upon request, the Director may establish, by rule, a discharger-specific or water segment-specific or water segments-specific variance from a water quality standard if requirements pursuant to this Section are met.

B. A person who requests a variance must demonstrate all of the following information:
1. Identification of the specific pollutant and water quality standard for which a variance is sought.
2. Identification of the receiving surface water segment or segments to which the variance would apply.
3. A detailed discussion of the need for the variance, including the reasons why compliance with the water quality

standard cannot be achieved over the term of the proposed variance, and any other useful information or analysis to evaluate attainability.

4. A detailed description of proposed interim discharge limitations and pollutant control activities that represent the highest level of treatment achievable by a point source discharger or dischargers during the term of the variance.
5. Documentation that the proposed term is only as long as necessary to achieve compliance with applicable water quality standards.
6. Documentation that is appropriate to the type of designated use to which the variance would apply as follows. For a water quality standard variance documentation must include a demonstration of at least one of the following factors that preclude attainment of the use during the term of the variance:
   a. Naturally occurring pollutant concentrations prevent attainment of the use;
   b. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met;
   c. That human-caused conditions or sources of pollution prevent the attainment of the water quality standard for which the variance is sought and either (1) it is not possible to remedy the conditions or sources of pollution or (2) remedying the human-caused conditions would cause more environmental damage to correct than to leave in place;
   d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification n a way that would result in the attainment of the use;
   e. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;
   f. Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.
7. For a waterbody segment-specific or segments-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
   a. Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant or pollutants or water quality parameter or parameters and water body or waterbody segment or segments specified in the variance that could be implemented to make progress towards attaining the underlying designated use and criterion; and
   b. If any variance pursuant to subsection (B)(7)(a) previously applied to the water body or waterbody segment or segments, documentation must also demonstrate whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant or pollutants or water quality parameter or parameters subject to the water quality variance and the water quality progress achieved.
8. For a discharger-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section: Identification of the permittee subject to the variance.

C. The Director shall consider the following factors when deciding whether to grant or deny a variance request:
1. Bioaccumulation,
2. The predicted exposure of biota and the likelihood that resident biota will be adversely affected,
3. The known or predicted safe exposure levels for the pollutant for which the variance is requested, and
4. The likelihood of adverse human health effects.

D. The variance shall represent the highest attainable condition of the water body or water body segment applicable throughout the term of the variance.

E. A variance shall not result in any lowering of the currently attained ambient water quality, unless the variance is necessary for restoration activities, consistent with subsection (B)(6)(a)(vi). The Director must specify the highest attainable condition of the water body or waterbody segment as a quantifiable expression of one of the following:
1. The highest attainable interim criterion,
2. The interim effluent condition that reflects the greatest pollutant reduction achievable.

F. A variance shall not modify the underlying designated use and criterion. A variance is only a time limited exception to the underlying standard. For discharge-specific variances, other point source dischargers to the surface water that are not granted a variance shall still meet all applicable water quality standards.

G. Point source discharges shall meet all other applicable water quality standards for which a variance is not granted.

H. The term of the water quality variance may only be as long as necessary to achieve the highest attainable condition and must be consistent with the supporting documentation in subsection (E).

I. The Director shall periodically, but not more than every five years, reevaluate whether each variance continues to represent the highest attainable condition. Comment on the variance shall be considered regarding whether the variance continues to represent the highest attainable condition during each rulemaking for this Article. If the Director determines that the requirements of the variance do not represent the highest attainable condition, then the Director shall modify or repeal the variance during the rulemaking.

J. If the variance is modified by rulemaking, the requirements of the variance shall represent the highest attainable condition at the time of initial adoption of the variance, or the highest attainable condition identified during the current reevaluation, whichever is more stringent.

K. Upon expiration of a variance, point source dischargers shall comply with the water quality standard.

Historical Note

Former Section R9-21-209 renumbered and amended as Section R9-21-210, new Section R9-21-209 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-209 renumbered as Section R9-21-208, Tables I and II amended as Appendix B (now shown following R9-21-213 and Appendix A), former Section R9-21-210 renumbered as Section R9-21-209 and amended effective

January 7, 1985 (Supp. 85-1). Former Section R9-21-209 renumbered and amended as Section R9-21-210, former Section R9-21-208 renumbered and amended as Section R9-21-209 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-209 renumbered without change as Section R18-11-209 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-210. Site Specific Standards

A. The Director shall adopt a site-specific standard by rule.

B. The Director may adopt a site-specific standard based upon a request or upon the Director's initiative for any of the following reasons:

1. Local physical, chemical, or hydrological conditions of a non-WOTUS protected surface water such as pH, hardness, fate and transport, or temperature alters the biological availability or toxicity of a pollutant;
2. The sensitivity of resident aquatic organisms that occur in a non-WOTUS protected surface water to a pollutant differs from the sensitivity of the species used to derive the numeric water quality standards to protect aquatic life in R18-11-215;
3. Resident aquatic organisms that occur in a non-WOTUS protected surface water represent a narrower mix of species than those in the dataset used by ADEQ to derive numeric water quality standards to protect aquatic life in R18-11-215;
4. The natural background concentration of a pollutant is greater than the numeric water quality standard to protect aquatic life prescribed in R18-11-215. "Natural background" means the concentration of a pollutant in a non-WOTUS protected surface water due only to non-anthropogenic sources; or
5. Other factors or combination of factors that upon review by the Director warrant changing a numeric water quality standard for a non-WOTUS protected surface water.

C. Site-specific standard by request. To request that the Director adopt a site-specific standard, a person must conduct a study to support the development of a site-specific standard using a scientifically defensible procedure. Before conducting the study, a person shall submit a study outline to the Director for approval that contains the following elements:

1. Identifies the pollutant;
2. Describes the reach's boundaries;
3. Describes the hydrologic regime of the waterbody;
4. Describes the scientifically defensible procedure, which can include relevant aquatic life studies, ecological studies, laboratory tests, biological translators, fate and transport models, and risk analyses;
5. Describes and compares the taxonomic composition, distribution and density of the aquatic biota within the reach to a reference reach and describes the basis of any major taxonomic differences;
6. Describes the pollutant's effect on the affected species or appropriate surrogate species and on the other designated uses listed for the reach;
7. Demonstrates that all designated uses are protected; and
8. A person seeking to develop a site-specific standard based on natural background may use statistical or modeling approaches to determine natural background concentration.

Historical Note

Former Section R9-21-210 renumbered and amended as Section R9-21-211, former Section R9-21-209 renumbered and amended as Section R9-21-210 effective January 29, 1980 (Supp. 80-1). Amended subsection (A) effective April 17, 1984 (Supp. 84-2). Former Section R9-21-210 renumbered as Section R9-21-209, former Section R9-21-211 renumbered as Section R9-21-210 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-210 renumbered and amended as Section R9-21-211, former Section R9-21-209 renumbered and amended as Section R9-21-210 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-210 renumbered without change as Section R18-11-210 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-211. Enforcement of Non-permitted Discharges to Non-WOTUS Protected Surface Waters

A. The Department may establish a numeric water quality standard at a concentration that is below the practical quantitation limit. Therefore, in enforcement actions pursuant to subsection (B), the water quality standard is enforceable at the practical quantitation limit.

B. Except for chronic aquatic and wildlife criteria, for non-permitted discharge violations, the Department shall determine compliance with numeric water quality standard criteria from the analytical result of a single sample, unless additional samples are required under this article. For chronic aquatic and wildlife criteria, compliance for non-permitted discharge violations shall be determined from the geometric mean of the analytical results of the last four samples taken at least 24 hours apart. For the purposes of this Section, a "non-permitted discharge violation" does not include a discharge regulated under an AZPDES permit.

Historical Note

Former Section R9-21-210 renumbered and amended as Section R9-21-211 effective January 29, 1980 (Supp. 80-1). Amended subsections (D), (G) three (I), and added (J) effective October 14, 1981 (Supp. 81-5). Former Section R9-21-211 renumbered as Section R9-21-210, former Section R9-21-212 renumbered as Section R9-21-211 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-211 renumbered and amended as Section R9-21-212, former Section R9-21-210 renumbered and amended as Section R9-21-211 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-211 renumbered without change as Section R18-11-211 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-212. Statements of Intent and Limitations on the Reach of Article 2

A. Nothing in this Article prohibits fisheries management activities by the Arizona Game and Fish Department or the U.S. Fish and Wildlife Service. This Article does not exempt fish hatcheries from AZPDES permit requirements.

B. Nothing in this Article prevents the routine physical or mechanical maintenance of canals, drains, and the urban lakes identified as non-WOTUS protected surface waters on the Protected Surface Waters List. Physical or mechanical maintenance includes dewatering, lining, dredging, and the physical,

biological, or chemical control of weeds and algae. Increases in turbidity that result from physical or mechanical maintenance activities are permitted in canals, drains, and the urban lakes identified on the Protected Surface Waters List.

C. Increases in turbidity that result from the routine physical or mechanical maintenance of a dam or flood control structure are not violations of this Article.

D. Nothing in this Article requires the release of water from a dam or a flood control structure.

Historical Note

Adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-212 renumbered as Section R9-21-211, former Section R9-21-213 renumbered as Section R9-21-212 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-212 repealed, former Section R9-21-211 renumbered and amended as Section R9-21-212 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-212 renumbered without change as Section R18-11-212 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-213. Procedures for Determining Economic, Social, and Environmental Cost and Benefits

A. The Director shall perform an economic, social, and environmental cost and benefits analysis that shows the benefits outweigh the costs before conducting any of the following rulemaking actions:
1. Adopting a water quality standard that applies to non-WOTUS protected surface waters at a particular level or for a particular water category of non-WOTUS protected surface waters;
2. Adding a non-WOTUS protected surface water to the Protected Surface Waters List when the conditions of A.R.S. § 49-221(G)(4) apply; or
3. Removing a non-WOTUS protected surface water from the Protected Surface Waters List when the conditions of A.R.S. § 49-221(G)(6) apply.

B. The economic, social, and environmental cost and benefit analysis must include:
1. A justification of the valuation methodology used to quantify the costs or benefits of the rulemaking action;
2. A reference to any study relevant to the economic, social, and environmental cost and benefit analysis that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of the costs and benefits of the rulemaking action;
3. A description of any data on which an economic, social, and environmental cost and benefits analysis is based and an explanation of how the data was obtained and why the data is acceptable data.
4. A description of the probable impact of the rulemaking on any existing AZPDES permits that are impacted by the rulemaking action;
5. A description of the probable amount of additional AZPDES permits that will be required for known and ongoing point-source discharges after the rulemaking is completed that otherwise would not have been required if the Director did not undertake the rulemaking action; and
6. The administrative and other costs to ADEQ associated with the proposed rulemaking.

C. The Director shall publish a copy of the economic, social, and environmental cost and benefits analysis to the agency website prior to filing any rulemaking materials during any of the rulemaking actions listed in subsection (A) of this rule.

D. If for any reason enough data is not reasonably available to comply with the requirements of subsection (B) of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

E. The Director is not required to prepare the economic, social, and environmental cost and benefits analysis required by this rule when:
1. Adding or removing a WOTUS-protected surface water from the Protected Surface Waters List; or
2. Adding a water to the Protected Surface Waters List on an emergency basis pursuant to A.R.S. § 49-221(G)(7).

Historical Note

Adopted effective January 29, 1980 (Supp. 80-1). Amended effective April 17, 1984 (Supp. 84-2). Former Section R9-21-213 renumbered as Section R9-21-212, former Section R9-21-103 renumbered as Section R9-21-213 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-213 renumbered without change as Section R9-21-214, new Section R9-21-213 adopted effective August 12, 1986 (Supp. 86-4). Former Section R9-21-213 renumbered without change as Section R18-11-213 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-214. Narrative Water Quality Standards for Non-WOTUS Protected Surface Waters

A. A non-WOTUS protected surface water shall not contain pollutants in amounts or combinations that:
1. Settle to form bottom deposits that inhibit or prohibit the habitation, growth, or propagation of aquatic life;
2. Cause objectionable odor in the area in which the non-WOTUS protected surface water is located;
3. Cause off-taste or odor in drinking water;
4. Cause off-flavor in aquatic organisms;
5. Are toxic to humans, animals, plants, or other organisms;
6. Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth, or propagation of other aquatic life or that impair recreational uses;
7. Cause or contribute to a violation of an aquifer water quality standard prescribed in R18-11-405 or R18-11-406; or
8. Change the color of the non-WOTUS protected surface water from natural background levels of color.

B. A non-WOTUS protected surface water shall not contain oil, grease, or any other pollutant that floats as debris, foam, or scum; or that causes a film or iridescent appearance on the surface of the water; or that causes a deposit on a shoreline, bank, or aquatic vegetation. The discharge of lubricating oil or gasoline associated with the normal operation of a recreational watercraft is not a violation of this narrative standard

C. A non-WOTUS protected surface water shall not contain a discharge of suspended solids in quantities or concentrations that interfere with the treatment processes at the nearest downstream potable water treatment plant or substantially increase the cost of handling solids produced at the nearest downstream potable water treatment plant.

Historical Note

Former Section R9-21-213 renumbered without change as Section R9-21-214 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-214 renumbered without change as Section R18-11-214 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-215. Numeric Water Quality Standards for Non-WOTUS Protected Surface Waters

A. *E. coli bacteria*. The following water quality standards for *Escherichia coli (E. coli)* are expressed in colony-forming units per 100 milliliters of water (cfu / 100 ml) or as a Most Probable Number (MPN):

E. coli	**FBC AZ**	**PBC AZ**
Geometric mean (minimum of four samples in 30 days)	126	126
Statistical threshold value	410	576

B. pH. The following water quality standards for non-WOTUS protected surface waters pH are expressed in standard units:

pH	**DWS AZ**	**FBC AZ, PBC AZ, A&Ww AZ, A&Wc AZ**	**AgI AZ**	**AgL AZ**
Maximum	9.0	9.0	9.0	9.0
Minimum	5.0	6.5	4.5	6.5

C. The maximum allowable increase in ambient water temperature, due to a thermal discharge is as follows:

A&Ww AZ	**A&Wc AZ**
3.0° C	1.0° C

D. Suspended sediment concentration.

1. The following water quality standards for suspended sediment concentration, expressed in milligrams per liter (mg/L), are expressed as a median value determined from a minimum of four samples collected at least seven days apart:
2. The Director shall not use the results of a suspended sediment concentration sample collected during or within 48 hours after a local storm event to determine the median value.

A&Wc AZ	**A&Ww AZ**
25	80

E. Dissolved oxygen. A non-WOTUS protected surface water meets the water quality standard for dissolved oxygen when either:

1. The percent saturation of dissolved oxygen is equal to or greater than 90 percent, or
2. The single sample minimum concentration for the designated use, as expressed in milligrams per liter (mg/L) is as follows:

Designated Use	**Single sample minimum concentration in mg/L**
A&Ww AZ	6.0
A&Wc AZ	7.0

The single sample minimum concentration is the same for the designated use in a lake, but the sample must be taken from a depth no greater than one meter.

F. Tables 1 through 17 prescribe water quality criteria for individual pollutants by designated use.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 1. Water Quality Criteria by Designated Use (see footnote)

Parameter	CAS NUMBER	DWS AZ (µg/L)	FC AZ (µg/L)	FBC AZ (µg/L)	PBC AZ (µg/L)	A&Wc AZ Acute (µg/L)	A&Wc AZ Chronic (µg/L)	A&Ww AZ Acute (µg/L)	A&Ww AZ Chronic (µg/L)	AgI AZ (µg/L)	AgL AZ (µg/L)
Acenaphthene	83329	420	198	56,000	56,000	850	550	850	550		
Acrolein	107028	3.5	1.9	467	467	3	3	3	3		
Acrylonitrile	107131	0.06	0.2	3	37,333	3,800	250	3,800	250		
Alachlor	15972608	2		9,333	9,333	2,500	170	2,500	170		
Aldrin	309002	0.002	0.00005	0.08	28	3		3		0.003	See (b)
Alpha Particles (Gross) Radioactivity		15 pCi/L See (h)									
Ammonia	7664417					See (e) & Tables 11 (present) & 14 (absent)	See (e) & Tables 13 (present) & 17 (absent)	See (e) & Tables 12 (present) & 15 (absent)	See (e) & Tables 13 (present) & 16 (absent)		
Anthracene	120127	2,100	74	280,000	280,000						
Antimony	7440360	6 T	640 T	747 T	747 T	88 D	30 D	88 D	30 D		
Arsenic	7440382	10 T	80 T	30 T	280 T	340 D	150 D	340 D	150 D	2,000 T	200 T
Asbestos	1332214	See (a)									
Atrazine	1912249	3		32,667	32,667						
Barium	7440393	2,000 T		98,000 T	98,000 T						
Benz(a)anthracene	56553	0.005	0.02	0.2	0.2						
Benzene	71432	5	140	93	3,733	2,700	180	2,700	180		
Benzo[b]fluoranthene Benzfluoranthene	205992	0.005	0.02	1.9	1.9						
Benzidine	92875	0.0002	0.0002	0.01	2,800	1,300	89	1,300	89	0.01	0.01
Benzo(a)pyrene	50328	0.2	0.02	0.2	0.2						
Benzo(k)fluoranthene	207089	0.005	0.02	1.9	1.9						
Beryllium	7440417	4 T	84 T	1,867 T	1,867 T	65 D	5.3 D	65 D	5.3 D		
Beta particles and photon emitters		4 millirems / year See (i)									
Bis(2-chloroethyl) ether	111444	0.03	0.5	1	1	120,000	6,700	120,000	6,700		
Bis(2-chloroisopropyl) ether	108601	280	3,441	37,333	37,333						
Boron	7440428	1,400 T		186,667 T	186,667 T					1,000 T	
Bromodichloromethane	75274	TTHM See (g)	17	TTHM	18,667						
4-Bromophenyl phenyl ether	101553					180	14	180	14		
Bromoform	75252	TTHM See (g)	133	180	18,667	15,000	10,000	15,000	10,000		
Bromomethane	74839	9.8	299	1,307	1,307	5,500	360	5,500	360		
Butyl benzyl phthalate	85687	1,400	386	186,667	186,667	1,700	130	1,700	130		

Cadmium	7440439	5 T	84 T	700 T	700 T	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	50	50
Carbaryl	63252					2.1	2.1	2.1	2.1		
Carbofuran	1563662	40		4,667	4,667	650	50	650	50		
Carbon tetrachloride	56235	5	2	11	980	18,000	1,100	18,000	1,100		
Chlordane	57749	2	0.0008	4	467	2.4	0.004	2.4	0.2		
Chlorine (total residual)	7782505	4,000		4000	4000	19	11	19	11		
Chlorobenzene	108907	100	1,553	18,667	18,667	3,800	260	3,800	260		
2-Chloroethyl vinyl ether	110758					180,000	9,800	180,000	9,800		
Chloroform	67663	TTHM See (g)	470	230	9,333	14,000	900	14,000	900		
p-Chloro-m-cresol	59507					15	4.7	15	4.7		
Chloromethane	74873					270,000	15,000	270,000	15,000		
beta-Chloronaphthalene	91587	560	317	74,667	74,667						
2-Chlorophenol	95578	35	30	4,667	4,667	2,200	150	2,200	150		
Chloropyrifos	2921882	21		2,800	2,800	0.08	0.04	0.08	0.04		
Chromium III	16065831		75,000 T	1,400,000 T	1,400,000 T	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4		
Chromium VI	18540299	21 T	150 T	2,800 T	2,800 T	16 D	11 D	16 D	11 D		
Chromium (Total)	7440473	100 T								1,000	1,000
Chrysene	218019	0.005	0.02	19	19						
Copper	7440508	1,300 T		1,300 T	1,300 T	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	5,000 T	500 T
Cyanide (as free cyanide)	57125	200 T	16,000 T	18,667 T	18,667 T	22 T	5.2 T	41 T	9.7 T		200 T
Dalapon	75990	200	8,000	28,000	28,000						
DDT and its breakdown products	50293	0.1	0.0002	14	467	1.1	0.001	1.1	0.001	0.001	0.001
Demeton	8065483						0.1		0.1		
Diazinon	333415					0.17	0.17	0.17	0.17		
Dibenz (ah) anthracene	53703	0.005	0.02	1.9	1.9						
Dibromochloromethane	124481	TTHM See (g)	13	TTHM	18,667						
1,2-Dibromo-3-chloropro- pane	96128	0.2		2,800	2,800						
1,2-Dibromoethane	106934	0.05		8,400	8,400						
Dibutyl phthalate	84742	700	899	93,333	93,333	470	35	470	35		
1,2-Dichlorobenzene	95501	600	205	84,000	84,000	790	300	1,200	470		
1,3-Dichlorobenzene	541731					2,500	970	2,500	970		
1,4-Dichlorobenzene	106467	75	5755	373,333	373,333	560	210	2,000	780		
3,3'-Dichlorobenzidine	91941	0.08	0.03	3	3						
1,2-Dichloroethane	107062	5	37	15	186,667	59,000	41,000	59,000	41,000		
1,1-Dichloroethylene	75354	7	7,143	46,667	46,667	15,000	950	15,000	950		
1,2-cis-Dichloroethylene	156592	70		70	70						
1,2-trans-Dichloroethylene	156605	100	10,127	18,667	18,667	68,000	3,900	68,000	3,900		
Dichloromethane	75092	5	593	190	56,000	97,000	5,500	97,000	5,500		
2,4-Dichlorophenol	120832	21	59	2,800	2,800	1,000	88	1,000	88		
2,4-Dichlorophenoxyacetic acid (2,4-D)	94757	70		9,333	9,333						
1,2-Dichloropropane	78875	5	17,518	84,000	84,000	26,000	9,200	26,000	9,200		
1,3-Dichloropropene	542756	0.7	42	420	28,000	3,000	1,100	3,000	1,100		
Dieldrin	60571	0.002	0.00005	0.09	47	0.2	0.06	0.2	0.06	0.003	See (b)
Diethyl phthalate	84662	5,600	8,767	746,667	746,667	26,000	1,600	26,000	1,600		
Di (2-ethylhexyl) adipate	103231	400		560,000	560,000						
Di (2-ethylhexyl) phthalate	117817	6	3	100	18,667	400	360	400	360		
2,4-Dimethylphenol	105679	140	171	18,667	18,667	1,000	310	1,000	310		
Dimethyl phthalate	131113					17,000	1,000	17,000	1,000		
4,6-Dinitro-o-cresol	534521	28	582	3,733	3,733	310	24	310	24		
2,4-Dinitrophenol	51285	14	1,067	1,867	1,867	110	9.2	110	9.2		
2,4-Dinitrotoluene	121142	14	421	1,867	1,867	14,000	860	14,000	860		
2,6-Dinitrotoluene	606202	0.05		2	3,733						
Di-n-octyl phthalate	117840	2,800		373,333	373,333						
Dinoseb	88857	7		933	933						
1,2-Diphenylhydrazine	122667	0.04	0.2	1.8	1.8	130	11	130	11		
Diquat	85007	20		2,053	2,053						
Endosulfan sulfate	1031078	42	18	5,600	5,600	0.2	0.06	0.2	0.06		
Endosulfan (Total)	115297	42	18	5,600	5,600	0.2	0.06	0.2	0.06		
Endothall	145733	100		18,667	18,667						
Endrin	72208	2	0.06	280	280	0.09	0.04	0.09	0.04	0.004	0.004
Endrin aldehyde	7421934	2				0.09	0.04	0.09	0.04		
Ethylbenzene	100414	700	2,133	93,333	93,333	23,000	1,400	23,000	1,400		
Fluoranthene	206440	280	28	37,333	37,333	2,000	1,600	2,000	1,600		
Fluorene	86737	280	1,067	37,333	37,333						
Fluoride	7782414	4,000		140,000	140,000						
Glyphosate	1071836	700	266,667	93,333	93,333						
Guthion	86500						0.01		0.01		
Heptachlor	76448	0.4	0.00008	0.4	467	0.5	0.004	0.5	0.004		
Heptachlor epoxide	1024573	0.2	0.00004	0.2	12	0.5	0.004	0.5	0.004		
Hexachlorobenzene	118741	1	0.0003	1	747	6	3.7	6	3.7		
Hexachlorobutadiene	87683	0.4	18	18	187	45	8.2	45	8.2		
Hexachlorocyclohexane alpha	319846	0.006	0.005	0.22	7,467	1,600	130	1,600	130		
Hexachlorocyclohexane beta	319857	0.02	0.02	0.78	560	1,600	130	1,600	130		
Hexachlorocyclohexane delta	319868					1,600	130	1,600	130		
Hexachlorocyclohexane gamma (lindane)	58899	0.2	1.8	280	280	1	0.08	1	0.28		
Hexachlorocyclopentadiene	77474	50	580	9,800	9,800	3.5	0.3	3.5	0.3		

Hexachloroethane	67721	2.5	3.3	100	933	490	350	490	350		
Hydrogen sulfide	7783064						2 See (c)		2 See (c)		
Indeno (1,2,3-cd) pyrene	193395	0.05	0.49	1.9	1.9						
Iron	7439896						1,000 D		1,000 D		
Isophorone	78591	37	961	1,500	186,667	59,000	43,000	59,000	43,000		
Lead	7439921	15 T		15 T	15 T	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	10,000 T	100 T
Malathion	121755	140		18,667	18,667		0.1		0.1		
Manganese	7439965	980		130,667	130,667					10,000	
Mercury	7439976	2 T		280 T	280 T	2.4 D	0.01 D	2.4 D	0.01 D		10 T
Methoxychlor	72435	40		4,667	4,667		0.03		0.03		
Methylmercury	22967926		0.3 mg/ kg								
Mirex	2385855	1		187	187		0.001		0.001		
Naphthalene	91203	140	1,524	18,667	18,667	1,100	210	3,200	580		
Nickel	7440020	140 T	4,600 T	28,000 T	28,000 T	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7		
Nitrate	14797558	10,000		3,733,333	3,733,333						
Nitrite	14797650	1,000		233,333	233,333						
Nitrate + Nitrite		10,000									
Nitrobenzene	98953	3.5	138	467	467	1,300	850	1,300	850		
p-Nitrophenol	100027					4,100	3,000	4,100	3,000		
N-nitrosodimethylamine	62759	0.001	3	0.03	0.03						
N-Nitrosodiphenylamine	86306	7.1	6	290	290	2,900	200	2,900	200		
N-nitrosodi-n-propylamine	621647	0.005	0.5	0.2	88,667						
Nonylphenol	104405					28	6.6	28	6.6		
Oxamyl	23135220	200		23,333	23,333						
Parathion	56382					0.07	0.01	0.07	0.01		
Paraquat	1910425	32		4,200	4,200	100	54	100	54		
Pentachlorophenol	87865	1	1,000	12	28,000	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10		
Permethrin	52645531	350		46,667	46,667	0.3	0.2	0.3	0.2		
Phenanthrene	85018					30	6.3	30	6.3		
Phenol	108952	2,100	37	280,000	280,000	5,100	730	7,000	1,000		
Picloram	1918021	500	2,710	65,333	65,333						
Polychlorinatedbiphenyls (PCBs)	1336363	0.5	0.00006	2 19	19	2	0.01	2	0.02	0.001	0.001
Pyrene	129000	210	800	28,000	28,000						
Radium 226 + Radium 228		5 pCi/L									
Selenium	7782492	50 T	667 T	4,667 T	4,667 T		2 T		2 T	20 T	50 T
Silver	7440224	35 T	8,000 T	4,667 T	4,667 T	See (d) & Table 8		See (d) & Table 8			
Simazine	112349	4		4,667	4,667						
Strontium	7440246	8 pCi/L									
Styrene	100425	100		186,667	186,667	5,600	370	5,600	370		
Sulfides											
2,3,7,8-Tetrachlorod- ibenzo-p-dioxin (2,3,7,8-TCDD)	1746016	0.00003	5x10-9	0.00003	0.0009	0.01	0.005	0.01	0.005		
1,1,2,2-Tetrachloroethane	79345	0.2	4	7	56,000	4,700	3,200	4,700	3,200		
Tetrachloroethylene	127184	5	261	9,333	9,333	2,600	280	6,500	680		
Thallium	7440280	2 T	7.2 T	75 T	75 T	700 D	150 D	700 D	150 D		
Toluene	108883	1,000	201.000	280,000	280,000	8,700	180	8,700	180		
Toxaphene	8001352	3	0.0003	1.3	933	0.7	0.0002	0.7	0.0002	0.005	0.005
Tributyltin						0.5	0.07	0.5	0.07		
1,2,4-Trichlorobenzene	120821	70	70	9,333	9,333	750	130	1,700	300		
1,1,1-Trichloroethane	71556	200	428,571	1,866,667	1,866,667	2,600	1,600	2,600	1,600	1,000	
1,1,2-Trichloroethane	79005	5	16	25	3,733	18,000	12,000	18,000	12,000		
Trichloroethylene	79016	5	29	280,000	280	20,000	1,300	20,000	1,300		
2,4,6-Trichlorophenol	88062	3.2	2	130	130	160	25	160	25		
2,4,5-Trichlorophenoxy proprionic acid (2,4,5-TP)	93721	50		7,467	7,467						
Trihalomethanes (T)		80									
Tritium	10028178	20,000 pCi/L									
Uranium	7440611	30 D		2,800	2,800						
Vinyl chloride	75014	2	5	2	2,800						
Xylenes (T)	1330207	10,000		186,667	186,667						
Zinc	7440666	2,100 T	5,106 T	280,000 T	280,000 T	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	10,000 T	25,000 T

Historical Note

Table 1 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 2. Acute Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife Coldwater AZ		Aquatic and Wildlife Warm Water AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	0.40	20	2.1
100	1.8	100	9.4
400	6.5	400	34
e(0.9789*LN(Hardness)-3.866)*(1.136672-LN(Hard-ness)*0.041838)		e(0.9789*LN(Hardness)-2.208)*(1.136672-LN(Hard-ness)*0.041838)	

Historical Note
Table 2 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 3. Chronic Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**
20	0.21
100	0.72
400	2.0
e(0.7977*LN(Hardness)-3.909)*(1.101672-LN(Hardness)*0.041838)	

Historical Note
Table 3 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 4. Water Quality Standards for Dissolved Chromium III

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	152	20	19.8
100	570	100	74.1
400	1,773	400	231
e(0.819*LN(Hardness)+3.7256)*(0.316)		e(0.819*LN(Hardness)+0.6848)*(0.86)	

Historical Note
Table 4 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 5. Water Quality Standards for Dissolved Copper

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	2.9	20	2.3
100	13	100	9.0
400	50	400	29
e(0.9422*LN(Hardness)-1.702)*(0.96)		e(0.8545*LN(Hardness)-1.702)*(0.96)	

Historical Note
Table 5 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 6. Water Quality Standards for Dissolved Lead

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	10.8	20	0.42
100	64.6	100	2.5
400	281	400	10.9
e(1.273*LN(Hardness)-1.46)*(1.46203-(LN(Hardness))*(0.145712))		e(1.273*LN(Hardness)-4.705) *(1.46203-(LN(Hardness))*(0.145712))	

Historical Note
Table 6 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 7. Water Quality Standards for Dissolved Nickel

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	120.0	20	13.3
100	468	100	52.0
400	1513	400	168
e(0.846*LN(Hardness)+2.255)*(0.998)		e(0.846*LN(Hardness)+0.0584)*(0.997)	

Historical Note
Table 7 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 8. Water Quality Standards for Dissolved Silver

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**

20	0.20
100	3.2
400	34.9
e(1.72*LN(Hardness)-6.59)*(0.85)	

Historical Note

Table 8 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 9. Water Quality Standards for Dissolved Zinc

Acute and Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**
20	30.0
100	117
400	379
e(0.8473*LN(Hardness)+0.884)*(0.978)	

Historical Note

Table 9 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 10. Water Quality Standards for Pentachlorophenol

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
pH	**µg/L**	**pH**	**µg/L**
3	0.16	3	0.1
6	3.3	6	2.1
9	67.7	9	42.7
e(1.005*(pH)-4.83)		e(1.005*(pH)-5.29)	

Historical Note

Table 10 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 11. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ, Unionid Mussels Present

For the Aquatic and Wildlife Coldwater AZ uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	33	33	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	31	31	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	30	30	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	28	28	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	26	26	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	24	24	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	8	7.3
7.1	22	22	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	20	20	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	18	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	15	15	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	11	11	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	9.6	9.6	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	3
7.8	8.1	8.1	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	6.8	6.8	6.6	6	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	5.6	5.6	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	4.6	4.6	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	3.8	3.8	3.7	3.5	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	3.1	3.1	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	2.6	2.6	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	2.1	2.1	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	1.8	1.8	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.59	0.54
8.7	1.5	1.5	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.2	1.2	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37

8.9	1	1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9	0.88	0.88	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27
$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(23.12\times10^{0.036\times(20-T)}\right)\right)\right)$																	

Historical Note
Table 11 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 12. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater AZ, Unionid Mussels Present

For the Aquatic and Wildlife Warmwater AZ uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																				
	0-10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9	7.3
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	3	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	8.8	8.2	7.6	7	6.4	5.9	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	6	5.6	5.2	4.8	4.4	4	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

$$\frac{0.7249 \times \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}}\right) \times MIN(51.93, 23.12 \times 10^{0.036\times(20-T)})}{}$$

Historical Note

Table 12 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 13. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ and Warmwater AZ, Unionid Mussels Present

For the Aquatic and Wildlife Coldwater and Warmwater AZ uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																							
pH	**0-7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.5	1.4	1.3	1.2	1.1
6.6	4.8	4.5	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1
6.7	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1
6.8	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1
6.9	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1
7	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99
7.1	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95
7.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9
7.3	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85
7.4	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79
7.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73
7.6	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.4	1.4	1.3	1.2	1.1	1.1	0.98	0.92	0.86	0.81	0.76	0.71	0.67
7.7	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6
7.8	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53
7.9	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47
8	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6	0.56	0.53	0.5	0.44	0.44	0.41
8.1	1.5	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81	0.76	0.71	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35
8.2	1.3	1.2	1.2	1.1	1	0.96	0.9	0.84	0.79	0.74	0.7	0.65	0.61	0.57	0.54	0.5	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3
8.3	1.1	1.1	0.99	0.93	0.87	0.82	0.76	0.72	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26
8.4	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47	0.44	0.41	0.39	0.36	0.34	0.32	0.3	0.28	0.26	0.25	0.23	0.22
8.5	0.8	0.75	0.71	0.67	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31	0.29	0.27	0.25	0.24	0.22	0.21	0.2	0.18
8.6	0.68	0.64	0.6	0.56	0.53	0.49	0.46	0.43	0.41	0.38	0.36	0.33	0.31	0.29	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.16	0.15
8.7	0.57	0.54	0.51	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13
8.8	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26	0.24	0.23	0.21	0.2	0.19	0.17	0.16	0.15	0.14	0.13	0.13	0.12	0.11
8.9	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.12	0.11	0.1	0.09
9	0.36	0.34	0.32	0.3	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.11	0.1	0.09	0.09	0.08

$$0.8876 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(2.126 \times 10^{0.028 \times (20-MAX(T,7))}\right)$$

Historical Note

Table 13 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 14. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ, Unionid Mussels Absent

For the Aquatic and Wildlife Coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	33	33	33	33	33	33	33	33	33	33	33	33	33	33	31	29	27
6.6	31	31	31	31	31	31	31	31	31	31	31	31	31	31	30	28	26
6.7	30	30	30	30	30	30	30	30	30	30	30	30	30	30	29	26	24
6.8	28	28	28	28	28	28	28	28	28	28	28	28	28	28	27	25	23
6.9	26	26	26	26	26	26	26	26	26	26	26	26	26	26	25	23	21
7	24	24	24	24	24	24	24	24	24	24	24	24	24	24	23	21	20
7.1	22	22	22	22	22	22	22	22	22	22	22	22	22	22	21	19	18
7.2	20	20	20	20	20	20	20	20	20	20	20	20	20	20	19	17	16
7.3	18	18	18	18	18	18	18	18	18	18	18	18	18	18	17	16	14
7.4	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	14	13
7.5	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	12	11
7.6	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	10	9.3
7.7	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.3	8.6	7.9
7.8	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	7.8	7.2	6.6
7.9	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.5	6	5.5
8	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.6
8.1	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.5	4.1	3.8
8.2	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.7	3.4	3.1
8.3	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3	2.8	2.6
8.4	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.5	2.3	2.1
8.5	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	1.9	1.8
8.6	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.6	1.4
8.7	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.4	1.3	1.2
8.8	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1
8.9	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0.92	0.85
9	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.85	0.78	0.72

$$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(62.15\times 10^{0.036\times(20-T)}\right)\right)\right)$$

Historical Note

Table 14 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 15. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater AZ Uses, Unionid Mussels Absent

For the Aquatic and Wildlife Warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	51	51	51	51	51	51	51	51	51	48	44	40	37	34	31	29	27
6.6	49	49	49	49	49	49	49	49	49	46	42	39	36	33	30	28	26
6.7	46	46	46	46	46	46	46	46	46	43	40	37	34	31	29	26	24
6.8	44	44	44	44	44	44	44	44	44	41	38	35	32	29	27	25	23
6.9	41	41	41	41	41	41	41	41	41	38	35	32	30	27	25	23	21
7	38	38	38	38	38	38	38	38	38	35	32	30	27	25	23	21	20
7.1	34	34	34	34	34	34	34	34	34	32	29	27	25	23	21	19	18
7.2	31	31	31	31	31	31	31	31	31	29	26	24	22	21	19	17	16
7.3	27	27	27	27	27	27	27	27	27	26	23	22	20	18	17	16	14
7.4	24	24	24	24	24	24	24	24	24	22	21	19	17	16	15	14	13
7.5	21	21	21	21	21	21	21	21	21	19	18	16	15	14	13	12	11
7.6	18	18	18	18	18	18	18	18	18	17	15	14	13	12	11	10	9.3
7.7	15	15	15	15	15	15	15	15	15	14	13	12	11	10	9.3	8.6	7.9
7.8	13	13	13	13	13	13	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6
7.9	11	11	11	11	11	11	11	11	11	9.9	9.1	8.4	7.7	7.1	6.5	6	5.5
8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.2	7.5	6.9	6.4	5.9	5.4	5	4.6
8.1	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	6.8	6.2	5.7	5.3	4.9	4.5	4.1	3.8
8.2	6	6	6	6	6	6	6	6	6	5.6	5.1	4.7	4.4	4	3.7	3.4	3.1
8.3	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6
8.4	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	3.8	3.4	3.2	3	2.7	2.5	2.3	2.1
8.5	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.1	2.9	2.6	2.4	2.2	2.1	1.9	1.8
8.6	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4
8.7	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2	1.8	1.7	1.5	1.4	1.3	1.2
8.8	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1
8.9	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.4	1.3	1.2	1.1	1	0.92	0.85
9	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1	0.93	0.85	0.78	0.72

$$0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204-pH}} + \frac{1.6181}{1 + 10^{pH-7.204}}\right) \times MIN\left(51.93, \left(62.15 \times 10^{0.036\times(20-T)}\right)\right)$$

Historical Note

Table 15 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 16. Chronic Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater AZ, Unionid Mussels Absent

For the Aquatic and Wildlife Warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

	Temperature (°C)																							
pH	0-7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	19	17	16	15	14	13	13	12	11	10	9.7	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	18	17	16	15	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
6.7	18	17	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
6.8	17	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
6.9	17	16	15	14	13	12	12	11	10	9.5	8.9	8.4	7.8	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
7	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.9	5.5	5.1	4.8	4.5	4.2	4	3.7
7.1	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	15	14	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
7.3	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	12	11	11	10	9.4	8.8	8.2	7.7	7.2	6.8	6.4	6	5.6	5.2	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	11	10	10	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	9.9	9.3	8.7	8.1	7.7	7.2	6.8	6.3	5.9	5.6	5.2	4.9	4.6	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	8.8	8.3	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	6.8	6.3	6	5.6	5.2	4.9	4.6	4.3	4	3.8	3.6	3.3	3.1	2.9	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3
8.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3	2.8	2.6	2.5	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81
8.5	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	2.6	2.4	2.2	2.1	2	1.9	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.93	0.88	0.82	0.77	0.72	0.68	0.63	0.6	0.56	0.52	0.49
8.8	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79	0.74	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49	0.46	0.43	0.4	0.38	0.36
9	1.4	1.3	1.2	1.1	1	0.98	0.92	0.86	0.81	0.76	0.71	0.66	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(7.547 \times 10^{0.028 \times (20-MAX(T,7))}\right)$$

Historical Note

Table 16 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 17. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ, Unionid Mussels Absent

For the Aquatic and Wildlife Coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
6.7	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
6.8	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.6	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
6.9	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
7	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7
7.1	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
7.3	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3
8.2	2	2	2	2	2	2	2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.1	0.99	0.93	0.87	0.81
8.5	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	1	1	1	1	1	1	1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49
8.8	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.6	0.56	0.52	0.49	0.46	0.43	0.41	0.38	0.36
9	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times MIN\left(6.920, \left(7.547 \times 10^{0.028 \times (20-T)}\right)\right)$$

Historical Note

Table 17 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-216. The Protected Surface Waters List

Tables A through C prescribe the protected surface waters list.

Historical Note

Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table A. Non-WOTUS Protected Surface Waters and Designated Uses

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Aquatic and Wildlife		Human Health				Agricultural	
			A&Wc AZ	A&Ww AZ	FBC AZ	PBC AZ	DWS AZ	FC AZ	AgI AZ	AgL AZ
CG	Cottonwood Creek	Headwaters to confluence with unnamed tributary at 35°20'46"/113°35'31"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
CG	Cottonwood Creek	Below confluence with unnamed tributary to confluence with Truxton Wash		A&Ww AZ	FBC AZ			FC AZ		AgL AZ
CG	Wright Canyon Creek	Headwaters to confluence with unnamed tributary at 35°20'48"/113°30'40"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
CG	Wright Canyon Creek	Below confluence with unnamed tributary to confluence with Truxton Wash		A&Ww AZ	FBC AZ			FC AZ		AgL AZ
LC	Boot Lake	34°58'54"/111°20'11"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Little Ortega Lake	34°22'47"/109°40'06"	A&Wc AZ		FBC AZ			FC AZ		
LC	Mormon Lake	34°56'38"/111°27'25"	A&Wc AZ		FBC AZ		DWS AZ	FC AZ	AgI AZ	AgL AZ
LC	Potato Lake	35°03'15"/111°24'13"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Pratt Lake	34°01'32"/109°04'18"	A&Wc AZ		FBC AZ			FC AZ		
LC	Sponseller Lake	34°14'09"/109°50'45"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Vail Lake	35°05'23"/111°30'46"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Water Canyon Reservoir	34°03'38"/109°26'20		A&Ww AZ	FBC AZ			FC AZ	AgI AZ	AgL AZ
MG	Bonsall Park Lake	59th Avenue & Bethany Home Road at 33°31'24"/ 112°11'08"		A&Ww AZ		PBC AZ		FC AZ		
MG	Canal Park Lake	College Avenue & Curry Road, Tempe at 33°26'54"/ 111°56'19"		A&Ww AZ		PBC AZ		FC AZ		
SP	Big Creek	Headwaters to confluence with Pitchfork Canyon Wash	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	Goudy Canyon Wash	Headwaters to confluence with Grant Creek	A&Wc AZ		FBC AZ			FC AZ		
SP	Grant Creek	Headwaters to confluence with unnamed tributary at 32°38'10"/109°56'37"		A&Ww AZ	FBC AZ		DWS AZ	FC AZ		
SP	Grant Creek	Below confluence with unnamed tributary to terminus near Willcox Playa		A&Ww AZ	FBC AZ			FC AZ		
SP	High Creek	Headwaters to confluence with unnamed tributary at 32°33'08"/110°14'42"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	High Creek	Below confluence with unnamed tributary to terminus near Willcox Playa	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	Pinery Creek	Headwaters to State Highway 181	A&Wc AZ		FBC AZ		DWS AZ	FC AZ		AgL AZ
SP	Pinery Creek	Below State Highway 181 to terminus near Willcox Playa		A&Ww AZ	FBC AZ		DWS AZ	FC AZ		AgL AZ
SP	Post Creek	Headwaters to confluence with Grant Creek	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Riggs Flat Lake	32°42'28"/109°57'53"	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Rock Creek	Headwaters to confluence with Turkey Creek			FBC AZ			FC AZ		AgL AZ
SP	Soldier Creek	Headwaters to confluence with Post Creek at 32°40'50"/ 109°54'41"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	Snow Flat Lake	32°39'10"/109°51'54"	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Stronghold Canyon East	Headwaters to 31°55'9.28"/109°57'53.24"	A&Wc AZ			PBC AZ				
SP	Stronghold Canyon East	31°55'9.28"/109°57'53.24" to confluence with Carlink Canyon		A&Ww AZ		PBC AZ				
SP	Turkey Creek	Headwaters to confluence with Rock Creek	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Turkey Creek	Below confluence with Rock Creek to terminus near Willcox Playa		A&Ww AZ	FBC AZ			FC AZ	AgI AZ	AgL AZ
UG	Ward Canyon	Headwaters to confluence with Turkey Creek	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
VR	Moonshine Creek	Headwaters to confluence with Post Creek	A&Wc AZ		FBC AZ			FC AZ		AgL AZ

Historical Note

Table A made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table B. WOTUS Protected Surface Waters

The waters listed in this table have been tentatively identified by ADEQ as WOTUS, under the law governing on 8/26/2022. Notwithstanding its inclusion on the list below, the status of a particular water in this table can be contested by a person in an enforcement or permit proceeding, a challenge to an identification as an impaired water, or a challenge to a proposed TMDL for an impaired water. Any changes to Table B will be made through formal rulemaking.

The waters on this list have their designated uses assigned by Title 18, Chapter 11, Article 1. Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the WOTUS Protected Surface Waters Table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.

Watersheds:

BW = Bill Williams
CG = Colorado – Grand Canyon
CL = Colorado – Lower Gila
LC = Little Colorado
MG = Middle Gila
SC = Santa Cruz – Rio Magdelena – Rio Sonoyta
SP = San Pedro – Willcox Playa – Rio Yaqui
SR = Salt River
UG = Upper Gila
VR = Verde River

Other Abbreviations:

WWTP = Wastewater Treatment Plant
Km = kilometers

Watershed	Surface Water	Segment Description and Location (Latitude and Longitudes are in NAD 83)
BW	Big Sandy River	Headwaters to Alamo Lake
BW	Boulder Creek	Below confluence with unnamed tributary to confluence with Burro Creek
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek
BW	Francis Creek (OAW)	Headwaters to confluence with Burro Creek
BW	Kirkland Creek	Headwaters to confluence with Santa Maria River
BW	Trout Creek	Below confluence with unnamed tributary to confluence with Knight Creek
CG	Beaver Dam Wash	Headwaters to confluence with the Virgin River
CG	Bright Angel Creek	Headwaters to confluence with Roaring Springs Creek
CG	Bright Angel Creek	Below Roaring Spring Springs Creek to confluence with Colorado River
CG	Colorado River	Lake Powell to Lake Mead
CG	Crystal Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Deer Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Garden Creek	Headwaters to confluence with Pipe Creek
CG	Havasu Creek	From the Havasupai Indian Reservation boundary to confluence with the Colorado River
CG	Hermit Creek	Below Hermit Pack Trail crossing to confluence with the Colorado River
CG	Kanab Creek	Headwaters to confluence with the Colorado River
CG	Lake Mead	36°06'18"/114°26'33"
CG	Lake Powell	36°59'53"/111°08'17"
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Paria River	Utah border to confluence with the Colorado River
CG	Phantom Creek	Below confluence with unnamed tributary to confluence with Bright Angel Creek
CG	Pipe Creek	Headwaters to confluence with the Colorado River
CG	Shinumo Creek	Below confluence with unnamed tributary to confluence with the Colorado River
CG	Short Creek	Headwaters to confluence with Fort Pearce Wash
CG	Tapeats Creek	Headwaters to confluence with the Colorado River
CG	Thunder River	Headwaters to confluence with Tapeats Creek
CG	Vasey's Paradise	A spring at 36°29'52"/111°51'26"
CG	Virgin River	Headwaters to confluence with the Colorado River
CG	White Creek	Headwaters to confluence with unnamed tributary at 36°18'45"/112°21'03"
CG	White Creek	Below confluence with unnamed tributary to confluence with the Colorado River
CL	A10 Backwater	33°31'45"/114°33'19"
CL	A7 Backwater	33°34'27"/114°32'04"
CL	Adobe Lake	33°02'36"/114°39'26"
CL	Cibola Lake	33°14'01"/114°40'31"
CL	Clear Lake	33°01'59"/114°31'19"
CL	Colorado River	Lake Mead to Topock Marsh
CL	Colorado River	Topock Marsh to Morelos Dam
CL	Gila River	Painted Rock Dam to confluence with the Colorado River
CL	Hunter's Hole Backwater	32°31'13"/114°48'07"
CL	Imperial Reservoir	32°53'02"/114°27'54"
CL	Island Lake	33°01'44"/114°36'42"
CL	Laguna Reservoir	32°51'35"/114°28'29"
CL	Lake Havasu	34°35'18"/114°25'47"
CL	Lake Mohave	35°26'58"/114°38'30"
CL	Martinez Lake	32°58'49"/114°28'09"
CL	Mittry Lake	32°49'17"/114°27'54"
CL	Nortons Lake	33°02'30"/114°37'59"
CL	Pretty Water Lake	33°19'51"/114°42'19"
CL	Topock Marsh	34°43'27"/114°28'59"

LC	Auger Creek	Headwaters to confluence with Nutrioso Creek
LC	Chevelon Canyon	Headwaters to confluence with the Little Colorado River
LC	Chevelon Canyon Lake	34°29'18"/110°49'30"
LC	Clear Creek	Headwaters to confluence with the Little Colorado River
LC	Clear Creek Reservoir	34°57'09"/110°39'14"
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek
LC	Colter Reservoir	33°56'39"/109°28'53"
LC	Coyote Creek	Headwaters to confluence with the Little Colorado River
LC	Cragin Reservoir (formerly Blue Ridge Reservoir)	34°32'40"/111°11'33"
LC	East Clear Creek	Headwaters to confluence with Clear Creek
LC	Ellis Wiltbank Reservoir	34°05'25"/109°28'25"
LC	Fool's Hollow Lake	34°16'30"/110°03'43"
LC	Lee Valley Creek	From Lee Valley Reservoir to confluence with the East Fork of the Little Colorado River
LC	Lily Creek	Headwaters to confluence with Coyote Creek
LC	Little Colorado River	Headwaters to Lyman Reservoir
LC	Little Colorado River	Below Lyman Reservoir to confluence with the Puerco River
LC	Little Colorado River	Below Puerco River confluence to the Colorado River, excluding segments on Native American Lands
LC	Little Colorado River, East Fork	Headwaters to confluence with the Little Colorado River
LC	Little Colorado River, South Fork	Headwaters to confluence with the Little Colorado River
LC	Little Colorado River, West Fork	Below Government Springs to confluence with the Little Colorado River
LC	Lyman Reservoir	34°21'21"/109°21'35"
LC	Mamie Creek	Headwaters to confluence with Coyote Creek
LC	Morrison Creek	Headwaters to Mamie Creek @ 33°59'24.45"/109°03'51.94
LC	Nutrioso Creek	Headwaters to confluence with the Little Colorado River
LC	Porter Creek	Headwaters to confluence with Show Low Creek
LC	Riggs Creek	Headwaters to Nutrioso Creek
LC	Rio de Flag	Headwaters to City of Flagstaff WWTP outfall at 35°12'21"/111°39'17"
LC	Rudd Creek	Headwaters to confluence with Nutrioso Creek
LC	Rosey Creek	Headwaters to 34°02'28.72"/109°27'24.3"
LC	Scott Reservoir	34°10'31"/109°57'31"
LC	Show Low Creek	Headwaters to confluence with Silver Creek
LC	Show Low Lake	34°11'36"/110°00'12"
LC	Silver Creek	Headwaters to confluence with the Little Colorado River
LC	White Mountain Lake	34°21'57"/109°59'21"
LC	Willow Creek	Headwaters to confluence with Clear Creek
LC	Zuni River	Headwaters to confluence with the Little Colorado River
MG	Agua Fria River	From State Route 169 to Lake Pleasant
MG	Ash Creek	Headwaters to confluence with Tex Canyon
MG	East Maricopa Floodway	From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary
MG	Fain Lake	Town of Prescott Valley Park Lake 34°34'29"/ 112°21'06"
MG	Gila River	San Carlos Indian Reservation boundary to the Ashurst-Hayden Dam
MG	Gila River (EDW)	From the confluence with the Salt River to Gillespie Dam
MG	Hassayampa Lake	34°25'45"/112°25'33"
MG	Hassayampa River	Below unnamed tributary to the Buckeye Irrigation Company Canal
MG	Hassayampa River	Headwaters to confluence with unnamed tributary at 34°26'09"/112°30'32"
MG	Lake Pleasant	33°53'46"/112°16'29"
MG	Little Ash Creek	Headwaters to confluence with Ash Creek at 34°20'45.74"/112°4'17.26"
MG	Little Sycamore Creek	Headwaters to Sycamore Creek @ 34°21'39.13"/111°58'49.98"
MG	Mineral Creek (diversion tunnel and lined channel)	33°12'24"/110°59'58" to 33°07'56"/110°58'34"
MG	Papago Park South Pond	Curry Road, Tempe 33°26'22"/111°55'55"
MG	Salt River	Verde River to 2 km below Granite Reef Dam
MG	Seven Springs Wash	Headwaters to Unnamed trib @ 33°57'58.66"/111°51'52.07"
MG	Tempe Town Lake	At Mill Avenue Bridge at 33°26'00"/111°56'26"
MG	Turkey Creek	Headwaters to confluence with unnamed tributary at 34°19'28"/112°21'33"
SC	Alum Gulch	Below 31°29'17"/110°44'25" to confluence with Sonoita Creek
SC	California Gulch	Headwaters To U.S./Mexico border
SC	Cienega Creek (OAW)	From confluence with Gardner Canyon to USGS gaging station (#09484600)
SC	Cox Gulch	Headwaters to Three R Canyon @ 31°28'28.03"/110°47'14.65"
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River
SC	Nogales Wash	Headwaters to confluence with Potrero Creek
SC	Parker Canyon Creek	Below unnamed tributary to U.S./Mexico border
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River
SC	Romero Canyon Creek	Below unnamed tributary to confluence with Sutherland Wash
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border
SC	Santa Cruz River	U.S./Mexico border to the Nogales International WWTP outfall at 31°27'25"/110°58'04"
SC	Santa Cruz River	Tubac Bridge to Agua Nueva WRF outfall at 32°17'04"/111°01'45"
SC	Santa Cruz River (EDW)	Agua Nueva WRF outfall to Baumgartner Road
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/110°45'31"
SC	Sonoita Creek (EDW)	Town of Patagonia WWTP outfall to permanent groundwater upwelling point approximately 1600 feet downstream of outfall
SC	Sycamore Canyon	Headwaters to the U.S./Mexico border
SP	Aravaipa Creek	Below downstream boundary of Aravaipa Canyon Wilderness Area to confluence with the San Pedro River
SP	Aravaipa Creek (OAW)	Stowe Gulch to downstream boundary of Aravaipa Canyon Wilderness Area
SP	Bass Canyon Creek	Below confluence with unnamed tributary to confluence with Hot Springs Canyon Creek
SP	Bear Creek	Headwaters to U.S./Mexico border
SP	Black Draw	Headwaters to the U.S./Mexico border
SP	Carr Canyon Creek	Headwaters to confluence with unnamed tributary at 31°27'01"/110°15'48"
SP	Gold Gulch	Headwaters to U.S./Mexico border
SP	Ramsey Canyon Creek	Below Forest Service Road #110 to confluence with Carr Wash
SP	San Pedro River	U.S./ Mexico Border to Buehman Canyon

SP	San Pedro River	From Buehman canyon to confluence with the Gila River
SP	Whitewater Draw	Headwaters to confluence with unnamed tributary at 31°20'36"/109°43'48"
SP	Whitewater Draw	Below confluence with unnamed tributary to U.S./ Mexico border
SR	Ackre Lake	33°37'01"/109°20'40"
SR	Apache Lake	33°37'23"/111°12'26"
SR	Bear Wallow Creek (OAW)	Headwaters to confluence with the Black River
SR	Beaver Creek	Headwaters to confluence with Black River
SR	Black River	Headwaters to confluence with Salt River
SR	Black River, East Fork	From 33°51'19"/109°18'54" to confluence with the Black River
SR	Black River, North Fork of East Fork	Headwaters to confluence with Boneyard Creek
SR	Black River, West Fork	Headwaters to confluence with the Black River
SR	Boggy Creek	Headwaters to confluence with Centerfire Creek
SR	Boneyard Creek	Headwaters to confluence with Black River, East Fork
SR	Canyon Lake	33°32'44"/111°26'19"
SR	Cherry Creek	Below unnamed tributary to confluence with the Salt River
SR	Conklin Creek	Headwaters to confluence with the Black River
SR	Corduroy Creek	Headwaters to confluence with Fish Creek
SR	Devils Chasm Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Dipping Vat Reservoir	33°55'47"/109°25'31"
SR	Fish Creek	Headwaters to confluence with the Black River
SR	Haigler Creek	Headwaters to confluence with unnamed tributary at 34°12'23"/111°00'15"
SR	Haigler Creek	Below confluence with unnamed tributary to confluence with Tonto Creek
SR	Hannagan Creek	Headwaters to confluence with Beaver Creek
SR	Hay Creek (OAW)	Headwaters to confluence with the Black River, West Fork
SR	Horton Creek	Headwaters to confluence with Tonto Creek
SR	P B Creek	Below Forest Service Road #203 to Cherry Creek
SR	Pinal Creek	From Lower Pinal Creek WTP outfall # to See Ranch Crossing at 33°32'25"/110°52'28"
SR	Pinal Creek	From unnamed tributary to confluence with Salt River
SR	Pinto Creek	Headwaters to confluence with unnamed tributary at 33°19'27"/110°54'58"
SR	Roosevelt Lake	33°52'17"/111°00'17"
SR	Rye Creek	Headwaters to confluence with Tonto Creek
SR	Saguaro Lake	33°33'44"/111°30'55"
SR	Salt River	White Mountain Apache Reservation Boundary at 33°48'52"/110°31'33" to Roosevelt Lake
SR	Salt River	Theodore Roosevelt Dam to 2 km below Granite Reef Dam
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River
SR	Tonto Creek	Headwaters to confluence with unnamed tributary at 34°18'11"/111°04'18"
SR	Tonto Creek	Below confluence with unnamed tributary to Roosevelt Lake
SR	Willow Creek	Headwaters to confluence with Beaver Creek
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek
UG	Apache Creek	Headwaters to confluence with the Gila River
UG	Bitter Creek	Headwaters to confluence with the Gila River
UG	Blue River	Headwaters to confluence with Strayhorse Creek at 33°29'02"/109°12'14"
UG	Blue River	Below confluence with Strayhorse Creek to confluence with San Francisco River
UG	Bob Thomas Creek	Headwaters to Stone Creek 33°51'93"/109°42'52"
UG	Bonita Creek (OAW)	San Carlos Indian Reservation boundary to confluence with the Gila River
UG	Campbell Blue Creek	Headwaters to confluence with the Blue River
UG	Cave Creek (OAW)	Headwaters to confluence with South Fork Cave Creek
UG	Cave Creek (OAW)	Below confluence with South Fork Cave Creek to Coronado National Forest boundary
UG	Cave Creek, South Fork	Headwaters to confluence with Cave Creek
UG	Deadman Canyon Creek	Headwaters to confluence with unnamed tributary at 32°43'50"/109°49'03"
UG	Eagle Creek	Below confluence with unnamed tributary to confluence with the Gila River
UG	Gila River	New Mexico border to the San Carlos Indian Reservation boundary
UG	Grant Creek	Headwaters to confluence with the Blue River
UG	Judd Lake	33°51'15"/109°09'35"
UG	K P Creek (OAW)	Headwaters to confluence with the Blue River
UG	Little Blue Creek	Below confluence with Dutch Blue Creek to confluence with Blue Creek
UG	Luna Lake	33°49'50"/109°05'06"
UG	North Fork Cave Creek	Headwaters to Cave Creek @ 31°52'56.63"/109°12'19.75"
UG	Raspberry Creek	Headwaters to confluence with the Blue River
UG	San Francisco River	Headwaters to the New Mexico border
UG	San Francisco River	New Mexico border to confluence with the Gila River
UG	San Simon River	Headwaters to confluence with the Gila River
UG	Stone Creek	Headwaters to confluence with the San Francisco River
UG	Thomas Creek	Below confluence with Rousensock Creek to confluence with Blue River
UG	Turkey Creek	Headwaters to confluence with Campbell Blue Creek
VR	Bartlett Lake	33°49'52"/111°37'44"
VR	Beaver Creek	Headwaters to confluence with the Verde River
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"
VR	Bitter Creek	Below the Yavapai Apache Indian Reservation boundary to confluence with the Verde River
VR	Dead Horse Lake	34°45'08"/112°00'42"
VR	East Verde River	Headwaters to confluence with Ellison Creek
VR	East Verde River	Below confluence with Ellison Creek to confluence with the Verde River
VR	Fossil Creek (OAW)	Headwaters to confluence with the Verde River
VR	Fossil Springs (OAW)	34°25'24"/111°34'27"
VR	Horseshoe Reservoir	34°00'25"/111°43'36"
VR	Oak Creek (OAW)	Headwaters to confluence with unnamed tributary at 34°59'15"/111°44'47"
VR	Oak Creek (OAW)	Below confluence with unnamed tributary to confluence with Verde River
VR	Spring Creek	Below confluence with unnamed tributary to confluence with Oak Creek
VR	Sullivan Lake	34°51'42"/112°27'51"
VR	Sycamore Creek	Headwaters to confluence with unnamed tributary at 35°03'41"/111°57'31"

VR	Sycamore Creek	Headwaters to confluence with Verde River at 33°37'55"/111°39'58"
VR	Verde River	From headwaters at confluence of Chino Wash and Granite Creek to Bartlett Lake Dam
VR	Verde River	Below Bartlett Lake Dam to Salt River
VR	West Clear Creek	Headwaters to confluence with Meadow Canyon
VR	West Clear Creek	Below confluence with Meadow Canyon to confluence with the Verde River
VR	Wet Beaver Creek	Below unnamed springs to confluence with Dry Beaver Creek
VR	Willow Creek Reservoir	34°36'17"/112°26'19"

Historical Note

Table B made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table C. Historically Regulated as WOTUS and in Need of Confirmation

The waters listed in this table have historically been and will continue to be regulated as WOTUS unless ADEQ makes a determination that they are non-WOTUS. Notwithstanding its inclusion on the list below, the status of a particular water in this table can be contested by a person in an enforcement or permit proceeding, a challenge to an identification as an impaired water, or a challenge to a proposed TMDL for an impaired water. Any changes to Table C will be made through formal rulemaking.

The waters on this list have their designated uses assigned by Title 18, Chapter 11, Article 1. Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the Historically Regulated as WOTUS and in Need of Confirmation Table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.

Watersheds:

BW = Bill Williams
CG = Colorado – Grand Canyon
CL = Colorado – Lower Gila
LC = Little Colorado
MG = Middle Gila
SC = Santa Cruz – Rio Magdelena – Rio Sonoyta
SP = San Pedro – Willcox Playa – Rio Yaqui
SR = Salt River
UG = Upper Gila
VR = Verde River

Other Abbreviations:

WWTP = Wastewater Treatment Plant
Km = kilometers

Watershed	Surface Water	Segment Description and Location (Latitude and Longitudes are in NAD 83)
BW	Alamo Lake	34°14'06"/113°35'00"
BW	Bill Williams River	Alamo Lake to confluence with Colorado River
BW	Blue Tank	34°40'14"/112°58'17"
BW	Boulder Creek	Headwaters to confluence with unnamed tributary at 34°41'13"/113°03'37"
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek
BW	Carter Tank	34°52'27"/112°57'31"
BW	Conger Creek	Headwaters to confluence with unnamed tributary at 34°45'15"/113°05'46"
BW	Conger Creek	Below confluence with unnamed tributary to confluence with Burro Creek
BW	Copper Basin Wash	Headwaters to confluence with unnamed tributary at 34°28'12"/112°35'33"
BW	Copper Basin Wash	Below confluence with unnamed tributary to confluence with Skull Valley Wash
BW	Cottonwood Canyon	Headwaters to Bear Trap Spring
BW	Cottonwood Canyon	Below Bear Trap Spring to confluence at Sycamore Creek
BW	Date Creek	Headwaters to confluence with Santa Maria River
BW	Knight Creek	Headwaters to confluence with Big Sandy River
BW	Peoples Canyon (OAW)	Headwaters to confluence with Santa Maria River
BW	Red Lake	35°12'18"/113°03'57"
BW	Santa Maria River	Headwaters to Alamo Lake
BW	Trout Creek	Headwaters to confluence with unnamed tributary at 35°06'47"/113°13'01"
CG	Agate Canyon	Headwaters to confluence with the Colorado River
CG	Big Springs Tank	36°36'08"/112°21'01"
CG	Boucher Creek	Headwaters to confluence with the Colorado River
CG	Bright Angel Wash	Headwaters to Grand Canyon National Park South Rim WWTP outfall at 36°02'59"/112°09'02"
CG	Bright Angel Wash (EDW)	Grand Canyon National Park South Rim WWTP outfall to Coconino Wash
CG	Bulrush Canyon Wash	Headwaters to confluence with Kanab Creek
CG	Cataract Creek	Headwaters to Santa Fe Reservoir
CG	Cataract Creek	Santa Fe Reservoir to City of Williams WWTP outfall at 35°14'40"/112°11'18"
CG	Cataract Creek	Red Lake Wash to Havasupai Indian Reservation boundary
CG	Cataract Creek (EDW)	City of Williams WWTP outfall to 1 km downstream
CG	Cataract Lake	35°15'04"/112°12'58"
CG	Chuar Creek	Headwaters to confluence with unnamed tributary at 36°11'35"/111°52'20"
CG	Chuar Creek	Below unnamed tributary to confluence with the Colorado River
CG	City Reservoir	35°13'57"/112°11'25"
CG	Clear Creek	Headwaters to confluence with unnamed tributary at 36°07'33"/112°00'03"
CG	Clear Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Coconino Wash (EDW)	South Grand Canyon Sanitary District Tusayan WRF outfall at 35°58'39"/112°08'25" to 1 km downstream
CG	Crystal Creek	Headwaters to confluence with unnamed tributary at 36°13'41"/112°11'49"
CG	Deer Creek	Headwaters to confluence with unnamed tributary at 36°26'15"/112°28'20"
CG	Detrital Wash	Headwaters to Lake Mead
CG	Dogtown Reservoir	35°12'40"/112°07'54"
CG	Dragon Creek	Headwaters to confluence with Milk Creek
CG	Dragon Creek	Below confluence with Milk Creek to confluence with Crystal Creek
CG	Gonzalez Lake	35°15'26"/112°12'09"
CG	Grand Wash	Headwaters to Colorado River
CG	Grapevine Creek	Headwaters to confluence with the Colorado River
CG	Grapevine Wash	Headwaters to Colorado River
CG	Hakatai Canyon	Headwaters to confluence with the Colorado River
CG	Hance Creek	Headwaters to confluence with the Colorado River
CG	Hermit Creek	Headwaters to Hermit Pack Trail crossing at 36°03'38"/112°14'00"
CG	Horn Creek	Headwaters to confluence with the Colorado River

CG	Hualapai Wash	Headwaters to Lake Mead
CG	Jacob Lake	36°42'27"/112°13'50"
CG	Kaibab Lake	35°17'04"/112°09'32"
CG	Kwagunt Creek	Headwaters to confluence with unnamed tributary at 36°13'37"/111°54'50"
CG	Kwagunt Creek	Below confluence with unnamed tributary to confluence with the Colorado River
CG	Lonetree Canyon Creek	Headwaters to confluence with the Colorado River
CG	Matkatamiba Creek	Below Havasupai Indian Reservation boundary to confluence with the Colorado River
CG	Monument Creek	Headwaters to confluence with the Colorado River
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	National Canyon Creek	Headwaters to Hualapai Indian Reservation boundary at 36°15'15"/112°52'34"
CG	North Canyon Creek	Headwaters to confluence with unnamed tributary at 36°33'58"/111°55'41"
CG	North Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Olo Canyon	Headwaters to confluence with the Colorado River
CG	Parashant Canyon	Headwaters to confluence with unnamed tributary at 36°21'02"/113°27'56"
CG	Parashant Canyon	Below confluence with unnamed tributary to confluence with the Colorado River
CG	Phantom Creek	Headwaters to confluence with unnamed tributary at 36°09'29"/112°08'13"
CG	Red Canyon Creek	Headwaters to confluence with the Colorado River '
CG	Roaring Springs	36°11'45"/112°02'06"
CG	Roaring Springs Creek	Headwaters to confluence with Bright Angel Creek
CG	Royal Arch Creek	Headwaters to confluence with the Colorado River
CG	Ruby Canyon	Headwaters to confluence with the Colorado River
CG	Russell Tank	35°52'21"/111°52'45"
CG	Saddle Canyon Creek	Headwaters to confluence with unnamed tributary at 36°21'36"/112°22'43"
CG	Saddle Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Santa Fe Reservoir	35°14'31"/112°11'10"
CG	Sapphire Canyon	Headwaters to confluence with the Colorado River
CG	Serpentine Canyon	Headwaters to confluence with the Colorado River
CG	Shinumo Creek	Headwaters to confluence with unnamed tributary at 36°18'18"/112°18'07"
CG	Slate Creek	Headwaters to confluence with the Colorado River
CG	Spring Canyon Creek	Headwaters to confluence with the Colorado River
CG	Trail Canyon Creek	Headwaters to confluence with the Colorado River
CG	Transept Canyon	Headwaters to Grand Canyon National Park North Rim WWTP outfall at 36°12'20"/112°03'35"
CG	Transept Canyon	From 1 km downstream of the Grand Canyon National Park North Rim WWTP outfall to confluence with Bright Angel Creek
CG	Transept Canyon (EDW)	Grand Canyon National Park North Rim WWTP outfall to 1 km downstream
CG	Travertine Canyon Creek	Headwaters to confluence with the Colorado River
CG	Turquoise Canyon	Headwaters to confluence with the Colorado River
CG	Unkar Creek	Below confluence with unnamed tributary at 36°07'54"/111°54'06" to confluence with Colorado River
CG	Unnamed Wash to Cedar Canyon (EDW)	Grand Canyon National Park Desert View WWTP outfall at 36°02'06"/111°49'13" to confluence with Cedar Canyon
CG	Unnamed Wash to Spring Valley Wash (EDW)	Valle Airpark WRF outfall at 35°38'34"/112°09'22" to confluence with Spring Valley Wash
CG	Vishnu Creek	Headwaters to confluence with the Colorado River
CG	Warm Springs Creek	Headwaters to confluence with the Colorado River
CG	West Cataract Creek	Headwaters to confluence with Cataract Creek
CL	Columbus Wash	Headwaters to confluence with the Gila River
CL	Holy Moses Wash	Headwaters to City of Kingman Downtown WWTP outfall at 35°10'33"/114°03'46"
CL	Holy Moses Wash	From 3 km downstream of City of Kingman Downtown WWTP outfall to confluence with Sawmill Wash
CL	Holy Moses Wash (EDW)	City of Kingman Downtown WWTP outfall to 3 km downstream
CL	Mohave Wash	Headwaters to Lower Colorado River
CL	Painted Rock (Borrow Pit) Lake	33°04'55"/113°01'17"
CL	Quigley Pond	32°43'40"/113°57'44"
CL	Redondo Lake	32°44'32"/114°29'03"
CL	Sacramento Wash	Headwaters to Topock Marsh
CL	Sawmill Canyon	Headwaters to abandoned gaging station at 35°09'45"/113°57'56"
CL	Sawmill Canyon	Below abandoned gaging station to confluence with Holy Moses Wash
CL	Tyson Wash (EDW)	Town of Quartzsite WWTP outfall at 33°42'39"/ 114°13'10" to 1 km downstream
CL	Wellton Canal	Wellton-Mohawk Irrigation District
CL	Yuma Area Canals	Above municipal water treatment plant intakes
CL	Yuma Area Canals	Below municipal water treatment plant intakes and all drains
LC	Als Lake	35°02'10"/111°25'17"
LC	Ashurst Lake	35°01'06"/111°24'18"
LC	Atcheson Reservoir	33°59'59"/109°20'43"
LC	Barbershop Canyon Creek	Headwaters to confluence with East Clear Creek
LC	Bear Canyon Creek	Headwaters to confluence with General Springs Canyon
LC	Bear Canyon Creek	Headwaters to confluence with Willow Creek
LC	Bear Canyon Lake	34°24'00"/111°00'06"
LC	Becker Lake	34°09'11"/109°18'23"
LC	Billy Creek	Headwaters to confluence with Show Low Creek
LC	Black Canyon	Headwaters to confluence with Chevelon Creek
LC	Bow and Arrow Wash	Headwaters to confluence with Rio de Flag
LC	Buck Springs Canyon Creek	Headwaters to confluence with Leonard Canyon Creek
LC	Bunch Reservoir	34°02'20"/109°26'48"
LC	Carnero Lake	34°06'57"/109°31'42"
LC	Chevelon Creek, West Fork	Headwaters to confluence with Chevelon Creek
LC	Chilson Tank	34°51'43"/111°22'54"
LC	Coconino Reservoir	35°00'05"/111°24'10"
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek
LC	Concho Creek	Headwaters to confluence with Carrizo Wash
LC	Concho Lake	34°26'37"/109°37'40"
LC	Cow Lake	34°53'14"/111°18'51"
LC	Crisis Lake (Snake Tank #2)	34°47'51"/111°17'32"
LC	Dane Canyon Creek	Headwaters to confluence with Barbershop Canyon Creek

LC	Daves Tank	34°44'22"/111°17'15"
LC	Deep Lake	35°03'34"/111°25'00"
LC	Ducksnest Lake	34°59'14"/111°23'57"
LC	Estates at Pine Canyon lakes (EDW)	35°09'32"/111°38'26"
LC	Fish Creek	Headwaters to confluence with the Little Colorado River
LC	General Springs Canyon Creek	Headwaters to confluence with East Clear Creek
LC	Geneva Reservoir	34°01'45"/109°31'46"
LC	Hall Creek	Headwaters to confluence with the Little Colorado River
LC	Hart Canyon Creek	Headwaters to confluence with Willow Creek
LC	Hay Lake	34°00'11"/109°25'57"
LC	Hog Wallow Lake	33°58'57"/109°25'39"
LC	Horse Lake	35°03'55"/111°27'50"
LC	Hulsey Creek	Headwaters to confluence with Nutrioso Creek
LC	Hulsey Lake	33°55'58"/109°09'40"
LC	Humphrey Lake (EDW)	35°11'51"/111°35'19"
LC	Indian Lake	35°00'39"/111°22'41"
LC	Jacks Canyon	Headwaters to confluence with the Little Colorado River
LC	Jarvis Lake	33°58'59"/109°12'36"
LC	Kinnikinick Lake	34°53'53"/111°18'18"
LC	Knoll Lake	34°25'38"/111°05'13"
LC	Lake Mary, Lower	35°06'21"/111°34'38"
LC	Lake Mary, Upper	35°03'23"/111°28'34"
LC	Lake of the Woods	34°09'40"/109°58'47"
LC	Lee Valley Creek (OAW)	Headwaters to Lee Valley Reservoir
LC	Lee Valley Reservoir	33°56'29"/109°30'04"
LC	Leonard Canyon Creek	Headwaters to confluence with Clear Creek
LC	Leonard Canyon Creek, East Fork	Headwaters to confluence with Leonard Canyon Creek
LC	Leonard Canyon Creek, Middle Fork	Headwaters to confluence with Leonard Canyon, West Fork
LC	Leonard Canyon Creek, West Fork	Headwaters to confluence with Leonard Canyon, East Fork
LC	Leroux Wash, tributary to Little Colorado River	From City of Holbrook-Painted Mesa WRF outfall at 34° 54' 30", -110° 11' 36" to Little Colorado River. The outfall discharges into Leroux Wash. All reaches of the Little Colorado River between the outfall to the Colorado River are perennial or intermittent.
LC	Little Colorado River, West Fork (OAW)	Headwaters to Government Springs
LC	Little George Reservoir	34°00'37"/109°19'15"
LC	Little Mormon Lake	34°17'00"/109°58'06"
LC	Long Lake, Lower	34°47'16"/111°12'40"
LC	Long Lake, Upper	35°00'08"/111°21'23"
LC	Long Tom Tank	34°20'35"/110°49'22"
LC	Lower Walnut Canyon Lake (EDW)	35°12'04"/111°34'07"
LC	Marshall Lake	35°07'18"/111°32'07"
LC	McKay Reservoir	34°01'27"/109°13'48"
LC	Merritt Draw Creek	Headwaters to confluence with Barbershop Canyon Creek
LC	Mexican Hay Lake	34°01'58"/109°21'25"
LC	Milk Creek	Headwaters to confluence with Hulsey Creek
LC	Miller Canyon Creek	Headwaters to confluence with East Clear Creek
LC	Miller Canyon Creek, East Fork	Headwaters to confluence with Miller Canyon Creek
LC	Morton Lake	34°53'37"/111°17'41"
LC	Mud Lake	34°55'19"/111°21'29"
LC	Ned Lake (EDW)	34°17'17"/110°03'22"
LC	Norton Reservoir	34°03'57"/109°31'27"
LC	Paddy Creek	Headwaters to confluence with Nutrioso Creek
LC	Pierce Seep	34°23'39"/110°31'17"
LC	Pine Tank	34°46'49"/111°17'21"
LC	Pintail Lake (EDW)	34°18'05"/110°01'21"
LC	Puerco River	Headwaters to confluence with the Little Colorado River
LC	Puerco River (EDW)	Sanders Unified School District WWTP outfall at 35°12'52"/109°19'40" to 0.5 km downstream
LC	Rainbow Lake	34°09'00"/109°59'09"
LC	Reagan Reservoir	34°02'09"/109°08'41"
LC	Rio de Flag (EDW)	From City of Flagstaff WWTP outfall to the confluence with San Francisco Wash
LC	River Reservoir	34°02'01"/109°26'07"
LC	Rogers Reservoir	33°56'30"/109°16'20"
LC	Russel Reservoir	33°59'29"/109°20'01"
LC	San Salvador Reservoir	33°58'51"/109°19'55"
LC	Slade Reservoir	33°59'41"/109°20'26"
LC	Soldiers Annex Lake	34°47'15"/111°13'51"
LC	Soldiers Lake	34°47'47"/111°14'04"
LC	Spaulding Tank	34°30'17"/111°02'06"
LC	St Johns Reservoir (Little Reservoir)	34°29'10"/109°22'06"
LC	Telephone Lake (EDW)	34°17'35"/110°02'42"
LC	Tremaine Lake	34°46'02"/111°13'51"
LC	Tunnel Reservoir	34°01'53"/109°26'34"
LC	Turkey Draw (EDW)	High Country Pines II WWTP outfall at 33°25'35"/ 110°38'13" to confluence with Black Canyon Creek
LC	Unnamed Wash to Pierce Wash (EDW)	Bison Ranch WWTP outfall at 34°23'31"/110°31'29" to Pierce Seep
LC	Unnamed wash, tributary to Rio de Flag River (Bow and Arrow Wash)	Treated municipal wastewater is piped from the Rio de Flag WWTP through a city-wide reuse system to the main effluent storage pond that is in an unnamed wash.
LC	Walnut Creek	Headwaters to confluence with Billy Creek
LC	Water Canyon Creek	Headwaters to confluence with the Little Colorado River
LC	Whale Lake (EDW)	35°11'13"/111°35'21"
LC	Whipple Lake	34°16'49"/109°58'29"
LC	White Mountain Reservoir	34°00'12"/109°30'39"
LC	Willow Creek	Headwaters to confluence with Clear Creek
LC	Willow Springs Canyon Creek	Headwaters to confluence with Chevelon Creek

LC	Willow Springs Lake	34°18'13"/110°52'16"
LC	Woodland Reservoir	34°07'35"/109°57'01"
LC	Woods Canyon Creek	Headwaters to confluence with Chevelon Creek
LC	Woods Canyon Lake	34°20'09"/110°56'45"
MG	Agua Fria River	Headwaters to confluence with unnamed tributary at 34°35'14"/112°16'18"
MG	Agua Fria River	Below Lake Pleasant to the City of El Mirage WWTP at ' 33°34'20"/112°18'32"
MG	Agua Fria River	Below 2 km downstream of the City of El Mirage WWTP to City of Avondale WWTP outfall at 33°23'55"/112°21'16"
MG	Agua Fria River	From City of Avondale WWTP outfall to confluence with Gila River
MG	Agua Fria River (EDW)	Below confluence with unnamed tributary to State Route 169
MG	Agua Fria River (EDW)	From City of El Mirage WWTP outfall to 2 km downstream
MG	Andorra Wash	Headwaters to confluence with Cave Creek Wash
MG	Antelope Creek	Headwaters to confluence with Martinez Creek
MG	Arlington Canal	From Gila River at 33°20'54"/112°35'39" to Gila River at 33°13'44"/112°46'15"
MG	Arnett Creek	Headwaters to Queen Creek @ 33°16'43.24"/111°10'12.49"
MG	Ash Creek	Headwaters to confluence with Tex Canyon
MG	Beehive Tank	32°52'37"/111°02'20"
MG	Big Bug Creek	Headwaters to confluence with Eugene Gulch
MG	Big Bug Creek	Below confluence with Eugene Gulch to confluence with Agua Fria River
MG	Black Canyon Creek	Headwaters to confluence with the Agua Fria River
MG	Blind Indian Creek	Headwaters to confluence with the Hassayampa River
MG	Cash Gulch	Headwaters to Jersey Gulch @ 34°25'31.39"/112°25'30.96"
MG	Cave Creek	Headwaters to the Cave Creek Dam
MG	Cave Creek	Cave Creek Dam to the Arizona Canal
MG	Centennial Wash	Headwaters to confluence with the Gila River at 33°16'32"/112°48'08"
MG	Centennial Wash Ponds	33°54'52"/113°23'47"
MG	Chaparral Park Lake	Hayden Road & Chaparral Road, Scottsdale at 33°30'40"/111°54'27"
MG	Corgett Wash	From Corgett Wash WRF outfall at 33°21'42", -112°27'05" to Gila River. The discharge point is 0.5 miles from the ephemeral conveyance Corgett Wash. The Gila River is then 1.5 miles downstream from Corgett Wash.
MG	Devils Canyon	Headwaters to confluence with Mineral Creek
MG	Eldorado Park Lake	Miller Road & Oak Street, Tempe at 33°28'25"/ 111°54'53"
MG	Eugene Gulch	Headwaters to Big Bug Creek @ 34°27'11.51"/112°18'30.95"
MG	French Gulch	Headwaters to confluence with Hassayampa River
MG	Galena Gulch	Headwaters to confluence with the Agua Fria River
MG	Galloway Wash (EDW)	Town of Cave Creek WWTP outfall at 33°50'15"/ 111°57'35" to confluence with Cave Creek
MG	Gila River	Ashurst-Hayden Dam to the Town of Florence WWTP outfall at 33°02'20"/111°24'19"
MG	Gila River	Felix Road to the Gila River Indian Reservation boundary
MG	Gila River	Gillespie Dam to confluence with Painted Rock Dam
MG	Gila River (EDW)	Town of Florence WWTP outfall to Felix Road
MG	Groom Creek	Headwaters to confluence with the Hassayampa River
MG	Hassayampa River	Below confluence with unnamed tributary to confluence with unnamed tributary at 33°51"52"/112°39'56".
MG	Hassayampa River	Below Buckeye Irrigation Company canal to the Gila River
MG	Hassayampa River	From City of Buckeye-Palo Verde Road WWTP outfall at 33° 23' 54.3", -112° 40' 33.7" to Buckeye Canal
MG	Horsethief Lake	34°09'42"/112°17'57"
MG	Indian Bend Wash	Headwaters to confluence with the Salt River
MG	Indian Bend Wash Lakes	Scottsdale at 33°30'32"/111°54'24"
MG	Indian School Park Lake	Indian School Road & Hayden Road, Scottsdale at 33°29'39"/111°54'37"
MG	Jersey Gulch	Headwaters to Hassayampa River @ 34°25'40.16"/112°25'45.64"
MG	Kiwanis Park Lake	6000 South Mill Avenue, Tempe at 33°22'27"/111°56'22"
MG	Lake Pleasant, Lower	33°50'32"/112°16'03"
MG	Lion Canyon	Headwaters to confluence with Weaver Creek
MG	Lynx Creek	Headwaters to confluence with unnamed tributary at 34°34'29"/112°21'07"
MG	Lynx Creek	Below confluence with unnamed tributary at 34°34'29"/112°21'07" to confluence with Agua Fria River
MG	Lynx Lake	34°31'07"/112°23'07"
MG	Martinez Canyon	Headwaters to confluence with Box Canyon
MG	Martinez Creek	Headwaters to confluence with the Hassayampa River
MG	McKellips Park Lake	Miller Road & McKellips Road, Scottsdale at 33°27'14"/111°54'49"
MG	McMicken Wash (EDW)	City of Peoria Jomax WWTP outfall at 33°43'31"/ 112°20'15" to confluence with Agua Fria River
MG	Mineral Creek	Headwaters to 33°12'34"/110°59'58"
MG	Mineral Creek	End of diversion channel to confluence with Gila River
MG	Minnehaha Creek	Headwaters to confluence with the Hassayampa River
MG	Money Metals Trib	Headwaters to Unnamed Trib (UB1)
MG	New River	Headwaters to Interstate 17 at 33°54'19.5"/112°08'46"
MG	New River	Below Interstate 17 to confluence with Agua Fria River
MG	Painted Rock Reservoir	33°04'23"/113°00'38"
MG	Papago Park Ponds	Galvin Parkway, Phoenix at 33°27'15"/111°56'45"
MG	Perry Mesa Tank	34°11'03"/112°02'01"
MG	Phoenix Area Canals	Granite Reef Dam to all municipal WTP intakes
MG	Phoenix Area Canals	Below municipal WTP intakes and all other locations
MG	Picacho Reservoir	32°51'10"/111°28'25"
MG	Poland Creek	Headwaters to confluence with Lorena Gulch
MG	Poland Creek	Below confluence with Lorena Gulch to confluence with Black Canyon Creek
MG	Queen Creek	Headwaters to the Town of Superior WWTP outfall at 33°16'33"/111°07'44"
MG	Queen Creek	Below Potts Canyon to ' Whitlow Dam
MG	Queen Creek	Below Whitlow Dam to confluence with Gila River
MG	Queen Creek (EDW)	Below Town of Superior WWTP outfall to confluence with Potts Canyon
MG	Salt River	2 km below Granite Reef Dam to City of Mesa NW WRF outfall at 33°26'22"/111°53'14"
MG	Salt River	Below Tempe Town Lake to Interstate 10 bridge
MG	Salt River	Below Interstate 10 bridge to the City of Phoenix 23rd Avenue WWTP outfall at 33°24'44"/ 112°07'59"
MG	Salt River (EDW)	City of Mesa NW WRF outfall to Tempe Town Lake
MG	Salt River (EDW)	From City of Phoenix 23rd Avenue WWTP outfall to confluence with Gila River
MG	Siphon Draw (EDW)	Superstition Mountains CFD WWTP outfall at 33°21'40"/111°33'30" to 6 km downstream

MG	Sycamore Creek	Headwaters to confluence with Tank Canyon
MG	Sycamore Creek	Below confluence with Tank Canyon to confluence with Agua Fria River
MG	The Lake Tank	32°54'14"/111°04'15"
MG	Tule Creek	Headwaters to confluence with the Agua Fria River
MG	Turkey Creek	Below confluence with unnamed tributary to confluence with Poland Creek
MG	Unnamed Trib (UQ2) to Queen Creek	Headwaters to Queen Creek @ 33°18'26.15"/111°04'19.3"
MG	Unnamed Trib (UQ3) to Queen Creek	Headwaters to Queen Creek @ 33°18'33.75"/111°04'02.61"
MG	Unnamed Trib to Big Bug Creek (UB1)	Headwaters to Big Bug Creek @ 34°25'38.86"/112°22'29.32"
MG	Unnamed Trib to Eugene Gulch	Headwaters to Eugene Gulch @ 34°27'34.6"/112°20'24.53"
MG	Unnamed Trib to Lynx Creek	Headwaters to Superior Mining Div. Outfall @ Lynx Creek @ 34°27'10.57"/112°23'14.22"
MG	Unnamed tributary to Deadman's Wash	From EPCOR Water Anthem Water Campus WWTP outfall at 33° 50' 47.9", -112° 08' 25.6" to Deadman's Wash
MG	Unnamed tributary to Gila River (EDW)	Gila Bend WWTP outfall to confluence with the Gila River
MG	Unnamed tributary to Gila River (EDW)	North Florence WWTP outfall at 33°03'50"/ 111°23'13" to confluence with Gila River
MG	Unnamed tributary to the Agua Fria River	From Softwinds WWTP outfall at 34˚ 32' 43", -112˚ 14' 21" to the Agua Fria River. Discharges to Agua Fria which is a jurisdictional tributary to Lake Pleasant (TNW)
MG	Unnamed tributary to Winters Wash	From Balterra WWTP outfall at 33? 29' 45", -112? 55' 10" to Winters Wash
MG	Unnamed Wash (EDW)	Luke Air Force Base WWTP outfall at 33°32'21"/112°19'15" to confluence with the Agua Fria River
MG	Unnamed Wash (EDW)	Town of Prescott Valley WWTP outfall at 34°35'16"/ 112°16'18" to confluence with the Agua Fria River
MG	Unnamed Wash (EDW)	Town of Cave Creek WRF outfall at 33°48'02"/ 111°59'22" to confluence with Cave Creek
MG	Unnamed wash, tributary to Black Canyon Creek	From Black Canyon Ranch RV Resort WWTP outfall to Agua Fria River.
MG	Unnamed wash, tributary to Queen Creek	Queen Creek, AZ15050100-013B is closest WBID to outfall coordinates
MG	Unnamed wash, tributary to Waterman Wash	The Rainbow Valley outfall discharges to an unnamed wash to Waterman wash to the Gila River.
MG	Wagner Wash (EDW)	City of Buckeye Festival Ranch WRF outfall at 33°39'14"/112°40'18" to 2 km downstream
MG	Walnut Canyon Creek	Headwaters to confluence with the Gila River
MG	Weaver Creek	Headwaters to confluence with Antelope Creek, tributary to Martinez Creek
MG	White Canyon	Headwaters to confluence with Walnut Canyon Creek
MG	Yavapai Lake (EDW)	Town of Prescott Valley WWTP outfall 002 at 34°36'07"/112°18'48" to Navajo Wash
SC	Agua Caliente Lake	12325 East Roger Road, Tucson 32°16'51"/ 110°43'52"
SC	Agua Caliente Wash	Headwaters to confluence with Soldier Trail
SC	Agua Caliente Wash	Below Soldier Trail to confluence with Tanque Verde Creek
SC	Aguirre Wash	From the Tohono O'odham Indian Reservation boundary to 32°28'38"/111°46'51"
SC	Alambre Wash	Headwaters to confluence with Brawley Wash
SC	Alamo Wash	Headwaters to confluence with Rillito Creek
SC	Altar Wash	Headwaters to confluence with Brawley Wash
SC	Alum Gulch	Headwaters to 31°28'20"/110°43'51"
SC	Alum Gulch	From 31°28'20"/110°43'51" to 31°29'17"/110°44'25"
SC	Arivaca Creek	Headwaters to confluence with Altar Wash
SC	Arivaca Lake	31°31'52"/111°15'06"
SC	Atterbury Wash	Headwaters to confluence with Pantano Wash
SC	Bear Grass Tank	31°33'01"/111°11'03"
SC	Big Wash	Headwaters to confluence with Cañada del Oro
SC	Black Wash (EDW)	Pima County WWMD Avra Valley WWTP outfall at 32°09'58"/111°11'17" to confluence with Brawley Wash
SC	Bog Hole Tank	31°28'36"/110°37'09"
SC	Brawley Wash	Headwaters to confluence with Los Robles Wash
SC	Cañada del Oro	Headwaters to State Route 77
SC	Cañada del Oro	Below State Route 77 to confluence with the Santa Cruz River
SC	Cienega Creek	Headwaters to confluence with Gardner Canyon
SC	Davidson Canyon	Headwaters to unnamed spring at 31°59'00"/ 110°38'49"
SC	Davidson Canyon (OAW)	From unnamed Spring to confluence with unnamed tributary at 31°59'09"/110°38'44"
SC	Davidson Canyon (OAW)	Below confluence with unnamed tributary to unnamed spring at 32°00'40"/110°38'36"
SC	Davidson Canyon (OAW)	From unnamed spring to confluence with Cienega Creek
SC	Empire Gulch	Headwaters to unnamed spring at 31°47'18"/ 110°38'17"
SC	Empire Gulch	From 31°47'18"/110°38'17" to 31°47'03"/110°37'35"
SC	Empire Gulch	From 31°47'03"/110°37'35" to 31°47'05"/ 110°36'58"
SC	Empire Gulch	From 31°47'05"/110°36'58" to confluence with Cienega Creek
SC	Flux Canyon	Headwaters to confluence with Alum Gulch
SC	Gardner Canyon Creek	Headwaters to confluence with Sawmill Canyon
SC	Gardner Canyon Creek	Below Sawmill Canyon to confluence with Cienega Creek
SC	Greene Wash	Santa Cruz River to the Tohono O'odham Indian Reservation boundary
SC	Greene Wash	Tohono O'odham Indian Reservation boundary to confluence with Santa Rosa Wash at 32°53'52"/ 111°56'48"
SC	Harshaw Creek	Headwaters to confluence with Sonoita Creek at
SC	Hit Tank	32°43'57"/111°03'18"
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border
SC	Huachuca Tank	31°21'11"/110°30'18"
SC	Humboldt Canyon	Headwaters to Alum Gulch @ 31°28'25.84"/110°44'01.57"
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River
SC	Kennedy Lake	Mission Road & Ajo Road, Tucson at 32°10'49"/ 111°00'27"
SC	Lakeside Lake	8300 East Stella Road, Tucson at 32°11'11"/ 110°49'00"
SC	Lemmon Canyon Creek	Headwaters to confluence with unnamed tributary at 32°23'48"/110°47'49"
SC	Lemmon Canyon Creek	Below unnamed tributary at 32°23'48"/110°47'49" to confluence with Sabino Canyon Creek
SC	Los Robles Wash	Headwaters to confluence with the Santa Cruz River
SC	Madera Canyon Creek	Headwaters to confluence with unnamed tributary at 31°43'42"/110°52'51"
SC	Madera Canyon Creek	Below unnamed tributary at 31°43'42"/110°52'51 to confluence with the Santa Cruz River
SC	Mattie Canyon	Headwaters to confluence with Cienega Creek
SC	Oak Tree Canyon	Headwaters to confluence with Cienega Creek
SC	Palisade Canyon	Headwaters to confluence with unnamed tributary at 32°22'33"/110°45'31"
SC	Palisade Canyon	Below 32°22'33"/110°45'31" to unnamed tributary of Sabino Canyon
SC	Pantano Wash	Headwaters to confluence with Tanque Verde Creek
SC	Parker Canyon Creek	Headwaters to confluence with unnamed tributary at 31°24'17"/110°28'47"
SC	Parker Canyon Lake	31°25'35"/110°27'15"
SC	Patagonia Lake	31°29'56"/110°50'49"

SC	Peña Blanca Lake	31°24'15"/111°05'12"
SC	Potrero Creek	Headwaters to Interstate 19
SC	Potrero Creek	Below Interstate 19 to confluence with Santa Cruz River
SC	Puertocito Wash	Headwaters to confluence with Altar Wash
SC	Quitobaquito Spring	(Pond and Springs) 31°56'39"/113°01'06"
SC	Redrock Canyon Creek	Headwaters to confluence with Harshaw Creek
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River
SC	Romero Canyon Creek	Headwaters to confluence with unnamed tributary at 32°24'29"/110°50'39"
SC	Rose Canyon Creek	Headwaters to confluence with Sycamore Canyon
SC	Rose Canyon Lake	32°23'13"/110°42'38"
SC	Ruby Lakes	31°26'29"/111°14'22"
SC	Sabino Creek	Headwaters to 32°23'20"/110°47'06"
SC	Sabino Creek	Below 32°23'20"/110°47'06" to confluence with Tanque Verde River
SC	Salero Ranch Tank	31°35'43"/110°53'25"
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border
SC	Santa Cruz River	Baumgartner Road to the Ak Chin Indian Reservation boundary
SC	Santa Cruz River (EDW)	Nogales International WWTP outfall to the Tubac Bridge
SC	Santa Cruz River, West Branch	Headwaters to the confluence with Santa Cruz River
SC	Santa Cruz Wash, North Branch	Headwaters to City of Casa Grande WRF outfall at 32°54'57"/111°47'13"
SC	Santa Cruz Wash, North Branch (EDW)	City of Casa Grande WRF outfall to 1 km downstream
SC	Santa Rosa Wash	Below Tohono O'odham Indian Reservation to the Ak Chin Indian Reservation
SC	Santa Rosa Wash (EDW)	Palo Verde Utilities CO-WRF outfall at 33°04'20"/ 112°01'47" to the Chin Indian Reservation
SC	Soldier Tank	32°25'34"/110°44'43"
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/110°45'31"
SC	Sonoita Creek	Below 1600 feet downstream of Town of Patagonia WWTP outfall groundwater upwelling point to confluence with the Santa Cruz River
SC	Split Tank	31°28'11"/111°05'12"
SC	Sutherland Wash	Headwaters to confluence with Cañada del Oro
SC	Sycamore Canyon	Headwaters to 32°21'60" / 110°44'48"
SC	Sycamore Canyon	From 32°21'60" / 110°44'48" to Sycamore Reservoir
SC	Sycamore Reservoir	32°20'57"/110°47'38"
SC	Tanque Verde Creek	Headwaters to Houghton Road
SC	Tanque Verde Creek	Below Houghton Road to confluence with Rillito Creek
SC	Three R Canyon	Headwaters to Unnamed Trib to Three R Canyon at 31°28'26"/110°46'04"
SC	Three R Canyon	From 31°28'26"/110°46'04" to 31°28'28"/110°47'15" (Cox Gulch)
SC	Three R Canyon	From (Cox Gulch) 31°28'28"/110°47'15" to confluence with Sonoita Creek
SC	Tinaja Wash	Headwaters to confluence with the Santa Cruz River
SC	Unnamed Trib (Endless Mine Tributary) to Harshaw Creek	Headwaters to Harshaw Creek @ 31°26'12.3"/110°43'27.26"
SC	Unnamed Trib (UA2) to Alum Gulch	Headwaters to Alum Gulch @ 31°28'49.67"/110°44'12.86"
SC	Unnamed Trib to Cox Gulch	Headwaters to Cox Gulch @ 31°27'53.86"/110°46'51.29"
SC	Unnamed Trib to Three R Canyon	Headwaters to Three R Canyon @ 31°28'25.82"/110°46'04.11"
SC	Unnamed Wash to Canada Del Oro (EDW)	Oracle Sanitary District WWTP outfall at 32°36'54"/ 110°48'02" to 5 km downstream
SC	Unnamed Wash to Canada del Oro (EDW)	Saddlebrook WWTP outfall at 32°32'00"/110°53'01" to confluence with Cañada del Oro
SC	Unnamed Wash to Santa Cruz Wash (EDW)	Arizona City Sanitary District WWTP outfall at 32°45'43"/111°44'24" to confluence with Santa Cruz Wash
SC	Vekol Wash	Headwater to Santa Cruz Wash: Those reaches not located on the Ak-Chin, Tohono O'odham and Gila River Indian Reservations
SC	Wakefield Canyon	Headwaters to confluence with unnamed tributary at 31°52'48"/110°26'27"
SC	Wakefield Canyon	Below confluence with unnamed tributary to confluence with Cienega Creek
SC	Wild Burro Canyon	Headwaters to confluence with unnamed tributary at 32°27'43"/111°05'47"
SC	Wild Burro Canyon	Below confluence with unnamed tributary to confluence with Santa Cruz River
SP	Abbot Canyon	Headwaters to confluence with Whitewater Draw
SP	Aravaipa Creek	Headwaters to confluence with Stowe Gulch
SP	Ash Creek	Headwaters to 31°50'28"/109°40'04"
SP	Babocomari River	Headwaters to confluence with the San Pedro River
SP	Bass Canyon Creek	Headwaters to confluence with unnamed tributary at 32°26'06"/110°13'22"
SP	Bass Canyon Tank	32°24'00"/110°13'00"
SP	Blacktail Pond	Fort Huachuca Military Reservation at 31°31'04"/110°24'47", headwater lake in Blacktail Canyon
SP	Booger Canyon	Headwaters to confluence with Aravaipa Creek
SP	Brewery Gulch	Headwaters to Mule Gulch @ 31°26'27.88"/109°54'48.1"
SP	Buck Canyon	Headwaters to confluence with Buck Creek Tank
SP	Buck Canyon	Below Buck Creek Tank to confluence with Dry Creek
SP	Buehman Canyon Creek	Below confluence with unnamed tributary to confluence with San Pedro River
SP	Buehman Canyon Creek (OAW)	Headwaters to confluence with unnamed tributary at 32°24'54"/110°32'10"
SP	Bullock Canyon	Headwaters to confluence with Buehman Canyon
SP	Carr Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River
SP	Copper Creek	Headwaters to confluence with Prospect Canyon
SP	Copper Creek	Below confluence with Prospect Canyon to confluence with the San Pedro River
SP	Curry Draw	Headwaters to San Pedro River
SP	Deer Creek	Headwaters to confluence with unnamed tributary at 32°59'57"/110°20'11"
SP	Deer Creek	Below confluence with unnamed tributary to confluence with Aravaipa Creek
SP	Dixie Canyon	Headwaters to confluence with Mexican Canyon
SP	Double R Canyon Creek	Headwaters to confluence with Bass Canyon
SP	Dry Canyon	Headwaters to confluence with Whitewater draw
SP	East Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'54"/ 110°19'44"
SP	Espiritu Canyon Creek	Headwaters to confluence with Soza Wash
SP	Fourmile Canyon Creek	Headwaters to confluence with Aravaipa Creek
SP	Fourmile Canyon, Left Prong	Headwaters to confluence with unnamed tributary at 32°43'15"/110°23'46"
SP	Fourmile Canyon, Left Prong	Below confluence with unnamed tributary to confluence with Fourmile Canyon Creek
SP	Fourmile Canyon, Right Prong	Headwaters to confluence with Fourmile Canyon
SP	Gadwell Canyon	Headwaters to confluence with Whitewater Draw
SP	Garden Canyon Creek	Headwaters to confluence with unnamed tributary at 31°29'01"/110°19'44"
SP	Garden Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River

SP	Glance Creek	Headwaters to confluence with Whitewater Draw
SP	Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'52"/ 110°19'49"
SP	Greenbush Draw	From U.S./Mexico border to confluence with San Pedro River
SP	Greenbush Draw	From City of Bisbee San Jose WWTP outfall at 31˚ 20' 35.4", -109˚ 56' 10.2" to San Pedro River. The City of Bisbee San Jose WWTP outfall discharges to Greenbush Draw.
SP	Hidden Pond	Fort Huachuca Military Reservation at 32°30'30"/ 109°22'17"
SP	Horse Camp Canyon	Headwaters to confluence with Aravaipa Creek
SP	Hot Springs Canyon	Headwaters to confluence with the San Pedro River
SP	Johnson Canyon	Headwaters to Whitewater Draw at 31°32'46"/ 109°43'32"
SP	Leslie Creek	Headwaters to confluence with Whitewater Draw
SP	Lower Garden Canyon Pond	Fort Huachuca Military Reservation at 31°29'39"/ 110°18'34"
SP	Mexican Canyon	Headwaters to confluence with Dixie Canyon
SP	Miller Canyon	Headwaters to Broken Arrow Ranch Road at 31°25'35"/110°15'04"
SP	Miller Canyon	Below Broken Arrow Ranch Road to confluence with the San Pedro River
SP	Montezuma Creek	Headwaters to Mexico Border @ 31°20'01.87"/110°13'40.97"
SP	Mountain View Golf Course Pond	Fort Huachuca Military Reservation at 31°32'14"/ 110°18'52"
SP	Mule Gulch	Headwaters to the Lavender Pit at 31°26'11"/ 109°54'02"
SP	Mule Gulch	The Lavender Pit to the' Highway 80 bridge at 31°26'30"/109°49'28"
SP	Mule Gulch	Below the Highway 80 bridge to confluence with Whitewater Draw
SP	Oak Grove Canyon	Headwaters to confluence with Turkey Creek
SP	Officers Club Pond	Fort Huachuca Military Reservation at 31°32'51"/ 110°21'37"
SP	Paige Canyon Creek	Headwaters to confluence with the San Pedro River
SP	Parsons Canyon	Headwaters to confluence with Aravaipa Creek
SP	Ramsey Canyon Creek	Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"
SP	Rattlesnake Creek	Headwaters to confluence with Brush Canyon
SP	Rattlesnake Creek	Below confluence with Brush Canyon to confluence with Aravaipa Creek
SP	Redfield Canyon	Headwaters to confluence with unnamed tributary at 32°33'40"/110°18'42"
SP	Redfield Canyon	Below confluence with unnamed tributary to confluence with the San Pedro River
SP	Rucker Canyon	Headwaters to confluence with Whitewater Draw
SP	Rucker Canyon Lake	31°46'46"/109°18'30"
SP	Soto Canyon	Headwaters to confluence with Dixie Canyon
SP	Swamp Springs Canyon Creek	Headwaters to confluence with Redfield Canyon
SP	Sycamore Pond I	Fort Huachuca Military Reservation at 31°35'12"/ 110°26'11"
SP	Sycamore Pond II	Fort Huachuca Military Reservation at 31°34'39"/ 110°26'10"
SP	Turkey Creek	Headwaters to confluence with Aravaipa Creek
SP	Unnamed Wash Mt. Lemmon (EDW)	Mt. Lemmon WWTP outfall at 32°26'51"/110°45'08" to 0.25 km downstream
SP	Virgus Canyon	Headwaters to confluence with Aravaipa Creek
SP	Walnut Gulch	Headwaters to Tombstone WWTP outfall at 31°43'47"/110°04'06"
SP	Walnut Gulch	Tombstone Wash to confluence with San Pedro River
SP	Walnut Gulch (EDW)	Tombstone WWTP outfall to the confluence with Tombstone Wash
SP	Woodcutters Pond	Fort Huachuca Military Reservation at 31°30'09"/ 110°20'12"
SR	Barnhard Creek	Headwaters to confluence with unnamed tributary at 34°05'37/111°26'40"
SR	Barnhardt Creek	Below confluence with unnamed tributary to confluence with Rye Creek
SR	Basin Lake	33°55'00"/109°26'09"
SR	Bear Creek	Headwaters to confluence with the Black River
SR	Bear Wallow Creek, North Fork (OAW)	Headwaters to confluence with the Bear Wallow Creek
SR	Bear Wallow Creek, South Fork (OAW)	Headwaters to confluence with the Bear Wallow Creek
SR	Big Lake	33°52'36"/109°25'33"
SR	Bloody Tanks Wash	Headwaters to Schultze Ranch Road
SR	Bloody Tanks Wash	Schultze Ranch Road to confluence with Miami Wash
SR	Boulder Creek	Headwaters to confluence with LaBarge Creek
SR	Campaign Creek	Headwaters to Roosevelt Lake
SR	Canyon Creek	Headwaters to the White Mountain Apache Reservation boundary
SR	Centerfire Creek	Headwaters to confluence with the Black River
SR	Chambers Draw Creek	Headwaters to confluence with the North Fork of the East Fork of Black River
SR	Cherry Creek	Headwaters to confluence with unnamed tributary at 34°05'09"/110°56'07"
SR	Christopher Creek	Headwaters to confluence with Tonto Creek
SR	Cold Spring Canyon Creek	Headwaters to confluence with unnamed tributary at 33°49'50"/110°52'58"
SR	Cold Spring Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Coon Creek	Headwaters to confluence with unnamed tributary at 33°46'41"/110°54'26"
SR	Coon Creek	Below confluence with unnamed tributary to confluence with Salt River
SR	Coyote Creek	Headwaters to confluence with the Black River, East Fork
SR	Deer Creek (D2E)	Headwaters to confluence with the Black River, East Fork
SR	Del Shay Creek	Headwaters to confluence with Gun Creek
SR	Devils Chasm Creek	Headwaters to confluence with unnamed tributary at 33°48'46" /110°52'35"
SR	Dipping Vat Reservoir	33°55'47"/109°25'31"
SR	Double Cienega Creek	Headwaters to confluence with Fish Creek
SR	Fish Creek	Headwaters to confluence with the Salt River
SR	Five Point Mountain Tributary	Headwaters to Pinto Creek @ 33°22'25.93"/110°58'14"
SR	Gibson Mine Tributary	Headwaters to Pinto Creek @ 33°20'48.99"/110°56'42.31"
SR	Gold Creek	Headwaters to confluence with unnamed tributary at 33°59'47"/111°25'10"
SR	Gold Creek	Below confluence with unnamed tributary to confluence with Tonto Creek
SR	Gordon Canyon Creek	Headwaters to confluence with Hog Canyon
SR	Gordon Canyon Creek	Below confluence with Hog Canyon to confluence with Haigler Creek
SR	Greenback Creek	Headwaters to confluence with Tonto Creek
SR	Home Creek	Headwaters to confluence with the Black River, West Fork
SR	Horse Camp Creek	Headwaters to confluence with unnamed tributary at 33°54'00"/110°50'07"
SR	Horse Camp Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Houston Creek	Headwaters to confluence with Tonto Creek
SR	Hunter Creek	Headwaters to confluence with Christopher Creek
SR	LaBarge Creek	Headwaters to Canyon Lake

SR	Lake Sierra Blanca	33°52'25"/109°16'05"
SR	Miami Wash	Headwaters to confluence with Pinal Creek
SR	Mule Creek	Headwaters to confluence with Canyon Creek
SR	Open Draw Creek	Headwaters to confluence with the East Fork of Black River
SR	P B Creek	Headwaters to Forest Service Road #203 at 33°57'08"/110°56'12"
SR	Pinal Creek	Headwaters to confluence with unnamed EDW wash (Globe WWTP) at 33°25'29"/110°48'20"
SR	Pinal Creek	From 33°26'55"/110°49'25" to Lower Pinal Creek water treatment plant outfall #001 at 33°31'04"/ 110°51'55"
SR	Pinal Creek	From See Ranch Crossing to confluence with unnamed tributary at 33°35'28"/110°54'31"
SR	Pinal Creek (EDW)	Confluence with unnamed EDW wash (Globe WWTP) to 33°25'29"/110°48'20"
SR	Pine Creek	Headwaters to confluence with the Salt River
SR	Pinto Creek	Below confluence with unnamed tributary to Roosevelt Lake
SR	Pole Corral Lake	33°30'38"/110°00'15"
SR	Pueblo Canyon Creek	Headwaters to confluence with unnamed tributary at 33°50'23"/110°51'37"
SR	Pueblo Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Reevis Creek	Headwaters to confluence with Pine Creek
SR	Reservation Creek	Headwaters to confluence with the Black River
SR	Reynolds Creek	Headwaters to confluence with Workman Creek
SR	Russell Gulch	From Headwaters to confluence with Miami Wash
SR	Salome Creek	Headwaters to confluence with the Salt River
SR	Salt House Lake	33°57'04"/109°20'11"
SR	Slate Creek	Headwaters to confluence with Tonto Creek
SR	Snake Creek (OAW)	Headwaters to confluence with the Black River
SR	Spring Creek	Headwaters to confluence with Tonto Creek
SR	Stinky Creek (OAW)	Headwaters to confluence with the Black River, West Fork
SR	Thomas Creek	Headwaters to confluence with Beaver Creek
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River
SR	Turkey Creek	Headwaters to confluence with Rock Creek
SR	Unnamed trib to Black River North Fork East Fork	Headwaters to Black River NF of EF
SR	Wildcat Creek	Headwaters to confluence with Centerfire Creek
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek
UG	Ash Creek	Headwaters to confluence with unnamed tributary at 32°46'15"/109°51'45"
UG	Ash Creek	Below confluence with unnamed tributary to confluence with the Gila River
UG	Bennett Wash	Headwaters to the Gila River
UG	Buckelew Creek	Headwaters to confluence with Castle Creek
UG	Castle Creek	Headwaters to confluence with Campbell Blue Creek
UG	Cave Creek	Below Coronado National Forest boundary to New Mexico border
UG	Chase Creek	Headwaters to the Phelps-Dodge Morenci Mine
UG	Chase Creek	Below the Phelps-Dodge Morenci Mine to confluence with San Francisco River
UG	Chitty Canyon Creek	Headwaters to confluence with Salt House Creek
UG	Cima Creek	Headwaters to confluence with Cave Creek
UG	Cluff Reservoir #1	32°48'55"/109°50'46"
UG	Cluff Reservoir #3	32°48'21"/109°51'46"
UG	Coleman Creek	Headwaters to confluence with Campbell Blue Creek
UG	Dankworth Lake	32°43'13"/109°42'17"
UG	Deadman Canyon Creek	Below confluence with unnamed tributary to confluence with Graveyard Wash
UG	Eagle Creek	Headwaters to confluence with unnamed tributary at 33°22'32"/109°29'43"
UG	East Eagle Creek	Headwaters to confluence with Eagle Creek
UG	East Turkey Creek	Headwaters to confluence with unnamed tributary at 31°58'22"/109°12'20"
UG	East Turkey Creek	Below confluence with unnamed tributary to terminus near San Simon River
UG	East Whitetail	Headwaters to terminus near San Simon River
UG	Emigrant Canyon	Headwaters to terminus near San Simon River
UG	Evans Pond #1	32°49'19"/109°51'12"
UG	Evans Pond #2	32°49'14"/109°51'09"
UG	Fishhook Creek	Headwaters to confluence with the Blue River
UG	Foote Creek	Headwaters to confluence with the Blue River
UG	Frye Canyon Creek	Headwaters to Frye Mesa Reservoir
UG	Frye Canyon Creek	Frye Mesa reservoir to terminus at Highline Canal.
UG	Frye Mesa Reservoir	32°45'14"/109°50'02"
UG	Georges Tank	33°51'24"/109°08'30"
UG	Gibson Creek	Headwaters to confluence with Marijilda Creek
UG	Lanphier Canyon	Headwaters to confluence with the Blue River
UG	Little Blue Creek	Headwaters to confluence with Dutch Blue Creek
UG	Little Creek	Headwaters to confluence with the San Francisco River
UG	Marijilda Creek	Headwaters to confluence with Gibson Creek
UG	Marijilda Creek	Below confluence with Gibson Creek to confluence with Stockton Wash
UG	Markham Creek	Headwaters to confluence with the Gila River
UG	Pigeon Creek	Headwaters to confluence with the Blue River
UG	Roper Lake	32°45'23"/109°42'14"
UG	Sheep Tank	32°46'14"/109°48'09"
UG	Smith Pond	32°49'15"/109°50'36"
UG	Squaw Creek	Headwaters to confluence with Thomas Creek
UG	Stone Creek	Headwaters to confluence with the San Francisco River
UG	Strayhorse Creek	Headwaters to confluence with the Blue River
UG	Thomas Creek	Headwaters to confluence with Rousensock Creek
UG	Tinny Pond	33°47'49"/109°04'27"
VR	American Gulch	Headwaters to the Northern Gila County Sanitary District WWTP outfall at 34°14'02"/111°22'14"
VR	American Gulch (EDW)	Below Northern Gila County Sanitary District WWTP outfall to confluence with the East Verde River
VR	Apache Creek	Headwaters to confluence with Walnut Creek
VR	Ashbrook Wash	Headwaters to the Fort McDowell Indian Reservation boundary
VR	Aspen Creek	Headwaters to confluence with Granite Creek

VR	Banning Creek	Headwaters to Granite Creek @ 34°31'01.02"/112°28'37.63"
VR	Bar Cross Tank	35°00'41"/112°05'39"
VR	Barrata Tank	35°02'43"/112°24'21"
VR	Big Chino Wash	Headwaters to confluence with Sullivan Lake
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"
VR	Bitter Creek (EDW)	Jerome WWTP outfall to the Yavapai Apache Indian Reservation boundary
VR	Black Canyon Creek	Headwaters to confluence with unnamed tributary at 34°39'20"/112°05'06"
VR	Black Canyon Creek	Below confluence with unnamed tributary to confluence with the Verde River
VR	Bonita Creek	Headwaters to confluence with Ellison Creek
VR	Bray Creek	Headwaters to confluence with Webber Creek
VR	Butte Creek	Headwaters to Miller Creek @ 34°32'49.03"/112°28'29.3"
VR	Camp Creek	Headwaters to confluence with Verde River
VR	Cereus Wash	Headwaters to the Fort McDowell Indian Reservation boundary
VR	Chase Creek	Headwaters to confluence with the East Verde River
VR	Clover Creek	Headwaters to confluence with Headwaters of West Clear Creek
VR	Coffee Creek	Headwaters to confluence with Spring Creek
VR	Colony Wash	Headwaters to the Fort McDowell Indian Reservation boundary
VR	Deadman Creek	Headwaters to Horseshoe Reservoir
VR	Del Monte Gulch	Headwaters to confluence with City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46"
VR	Del Monte Gulch (EDW)	City of Cottonwood WWTP outfall 002 at 34°43'57"/ 112°02'46" to confluence with Verde River
VR	Del Rio Dam Lake	34°48'55"/112°28'03"
VR	Dry Beaver Creek	Headwaters to confluence with Beaver Creek
VR	Dry Creek (EDW)	Sedona Ventures WWTP outfall at 34°50'42"/ 111°52'26" to 34°50'02"/ 111°52'17"
VR	Dude Creek	Headwaters to confluence with the East Verde River
VR	Ellison Creek	Headwaters to confluence with the East Verde River
VR	Foxboro Lake	34°53'42"/111°39'55"
VR	Fry Lake	35°03'45"/111°48'04"
VR	Gap Creek	Headwaters to confluence with Government Spring
VR	Gap Creek	Below Government Spring to confluence with the Verde River
VR	Garrett Tank	35°18'57"/112°42'20"
VR	Goldwater Lake, Lower	34°29'56"/112°27'17"
VR	Goldwater Lake, Upper	34°29'52"/112°26'59"
VR	Government Canyon	Headwaters to Granite Creek @ 34°33'29.49"/112°26'53.18"
VR	Granite Basin Lake	34°37'01"/112°32'58"
VR	Granite Creek	Headwaters to Watson Lake
VR	Granite Creek	Below Watson Lake to confluence with the Verde River
VR	Green Valley Lake (EDW)	34°13'54"/111°20'45"
VR	Heifer Tank	35°20'27"/112°32'59"
VR	Hells Canyon Tank	35°04'59"/112°24'07"
VR	Homestead Tank	35°21'24"/112°41'36"
VR	Horse Park Tank	34°58'15"/111°36'32"
VR	Houston Creek	Headwaters to confluence with the Verde River
VR	Huffer Tank	34°27'46"/111°23'11"
VR	J.D. Dam Lake	35°04'02"/112°01'48"
VR	Jacks Canyon	Headwaters to Big Park WWTP outfall at 34°45'46"/ 111°45'51"
VR	Jacks Canyon (EDW)	Below Big Park WWTP outfall to confluence with Dry Beaver Creek
VR	Lime Creek	Headwaters to Horseshoe Reservoir
VR	Mail Creek	Headwaters to East Verde River @ 34°25'03.88"/111°15'49.6"
VR	Manzanita Creek	Headwaters to Granite Creek @ 34°31'31.19"/112°28'44.34"
VR	Masonry Number 2 Reservoir	35°13'32"/112°24'10"
VR	McLellan Reservoir	35°13'09"/112°17'06"
VR	Meath Dam Tank	35°07'52"/112°27'35"
VR	Miller Creek	Headwaters to Granite Creek @ 34°32'48.55"/112°28'12.96"
VR	Mullican Place Tank	34°44'16"/111°36'10"
VR	Munds Creek (EDW), Tributary to Oak Creek	From Pinewood Sanitary District Kay S. Blackman WWTP outfall at 34? 56' 09", -111? 38' 35" to Oak Creek.
VR	North Fork Miller	Headwaters to Miller Creek
VR	North Granite Creek	Headwaters to Granite Creek @ 34°33'04.33"/112°27'50.45"
VR	Oak Creek, West Fork (OAW)	Headwaters to confluence with Oak Creek
VR	Odell Lake	34°56'5"/111°37'53"
VR	Peck's Lake	34°46'51"/112°02'01"
VR	Perkins Tank	35°06'42"/112°04'12"
VR	Pine Creek	Headwaters to confluence with unnamed tributary at 34°21'51"/111°26'49"
VR	Pine Creek	Below confluence with unnamed tributary to confluence with East Verde River
VR	Red Creek	Headwaters to confluence with the Verde River
VR	Reservoir #1	35°13'5"/111°50'09"
VR	Reservoir #2	35°13'17"/111°50'39"
VR	Roundtree Canyon Creek	Headwaters to confluence with Tangle Creek
VR	Scholze Lake	35°11'53"/112°00'37"
VR	Slaugterhouse Gulch	Headwaters to Yavapai Res. Boundary
VR	Spring Creek	Headwaters to confluence with unnamed tributary at 34°57'23"/111°57'21"
VR	Steel Dam Lake	35°13'36"/112°24'54"
VR	Stehr Lake	34°22'01"/111°40'02"
VR	Stoneman Lake	34°46'47"/111°31'14"
VR	Sycamore Creek	Below confluence with unnamed tributary to confluence with Verde River
VR	Sycamore Creek	Headwaters to confluence with Verde River at 34°04'42"/111°42'14"
VR	Tangle Creek	Headwaters to confluence with Verde River
VR	Trinity Tank	35°27'44"/112°48'01"
VR	Unnamed Trib to Granite Creek (UGC)	Headwaters to Yavapai Prescott Reservation Boundary
VR	Unnamed Trib to UGC (UUG)	Headwaters to Unnamed Trib to Granite Creek (UGC)
VR	Unnamed Wash	Flagstaff Meadows WWTP outfall at 35°13'53.54"/ 111°48'40.32"'to Volunteer Wash

VR	Walnut Creek	Headwaters to confluence with Big Chino Wash
VR	Watson Lake	34°34'58"/112°25'26"
VR	Webber Creek	Headwaters to confluence with the East Verde River
VR	Wet Beaver Creek	Headwaters to unnamed springs at 34°41'17"/ 111°34'34"
VR	Whitehorse Lake	35°06'59"/112°00'48"
VR	Williamson Valley Wash	Headwaters to confluence with Mint Wash
VR	Williamson Valley Wash	From confluence of Mint Wash to 10.5 km downstream
VR	Williamson Valley Wash	From 10.5 km downstream of Mint Wash confluence to confluence with Big Chino Wash
VR	Williscraft Tank	35°11'22"/112°35'40"
VR	Willow Creek	Above Willow Creek Reservoir
VR	Willow Valley Lake	34°41'08"/111°20'02"

Historical Note

Table C made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-217. Best Management Practices for non-WOTUS Protected Surface Waters

A. The BMPs described in this rule are intended to ensure that activities within the ordinary high-water mark of perennial or intermittent non-WOTUS protected surface waters, or within the bed and bank of other waters that materially impact (i.e., are within 1/4 mile upstream of) non-WOTUS protected surface waters, do not violate applicable surface water quality standards in the non-WOTUS protected surface waters. For purposes of this Section, the activities described in the prior sentence will be referred to as "regulated activities." Depending on the regulated activities conducted, not all of the BMPs described below may be applicable to a particular project. The owner or operator is responsible to consider the BMPs outlined below and to implement those necessary to ensure that the regulated activities will not violate applicable surface water quality standards in the non-WOTUS protected surface water.

B. The BMPs described below are not applicable to any activities that are addressed under an individual or general AZPDES permit that are otherwise regulated under A.R.S. Title 49.

C. Erosion and sedimentation control BMPs:

1. When flow is present in any non-WOTUS protected surface waters within a project area, flow shall not be altered except to prevent erosion or pollution of any non-WOTUS protected surface waters.
2. Any disturbance within the ordinary high-water mark of non-WOTUS protected surface waters or within the bed and banks of other waters, that is not intended to be permanently altered, shall be stabilized as soon as practicable to prevent erosion and sedimentation.
3. When flow in any non-WOTUS protected surface water is sufficient to erode, carry, or deposit material, regulated activities shall cease until:
   a. The flow decreases below the point where sediment movement ceases; or
   b. Control measures have been undertaken, i.e., equipment and material easily transported by flow are protected within non-erodible barriers or moved outside the flow area.
4. Silt laden or turbid water resulting from regulated activities should be managed in a manner to reduce sediment load prior to discharging.
5. No washing or dewatering of fill material should occur within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters. Other than the replacement of native fill or material used to support vegetation rooting or growth, fill placed within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface water must resist washout whether such resistance is derived via particle size limits, presence of a binder, vegetation, or other armoring.

D. Pollutant management BMPs:

1. If regulated activities are likely to violate applicable surface water quality standards in a perennial or intermittent non-WOTUS protected surface water, operations shall cease until the problem is resolved or until control measures have been implemented.
2. Construction material and/or fill (other than native fill or that necessary to support revegetation) placed within surface waters as a result of regulated activities shall not include pollutants in concentrations that will violate applicable surface water quality standards in a perennial or intermittent non-WOTUS protected surface water.

E. Construction phase BMPs:

1. Equipment staging and storage areas or fuel, oil, and other petroleum products storage and solid waste containment should not be located within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface water.
2. Any equipment maintenance, washing, or fueling shall not be done within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters with the following exception: Equipment too large or unwieldy to be readily moved, such as large cranes, may be fueled and serviced in non-WOTUS protected surface waters (but outside of standing or flowing water) provided material specifically manufactured and sold as spill containment is in place during fueling/servicing.
3. All equipment shall be inspected for leaks, all leaks shall be repaired, and all repaired equipment shall be cleaned to remove any fuel or other fluid residue prior to use within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters.
4. Washout of concrete handling equipment shall not take place within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters.

F. Post-construction BMPs:

1. Upon completion of regulated activities, areas within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters shall be promptly cleared of all forms, piling, construction residues, equipment, debris, or other obstructions.
2. If fully, partially, or occasionally submerged structures are constructed of cast-in-place concrete instead of precast concrete, steps will be taken using sheet piling or temporary dams to prevent contact between water (instream and runoff) and the concrete until it cures and until any curing agents have evaporated or are no longer a pollutant threat.
3. Any permanent water crossings within the ordinary high-water mark of any perennial or intermittent in a non-WOTUS protected surface water (other than fords) shall

not be equipped with gutters, drains, scuppers, or other conveyances that allow untreated runoff (due to events equal to or lesser in magnitude than the design event for the crossing structure) to directly enter a non-WOTUS protected surface water if such runoff can be directed to a local stormwater drainage, containment, and/or treatment system.

4. Debris shall be cleared as needed from culverts, ditches, dips, and other drainage structures within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface water to prevent clogging or conditions that may lead to a washout.
5. Temporary structures constructed or imported materials shall be removed no later than upon completion of the regulated activities.
6. Temporary structures constructed of native materials, if they provide an obstacle to flow or can contribute to or cause erosion, or cause changes in sediment load, shall be removed no later than upon completion of the regulated activities.

G. Design consideration BMPs:

1. All temporary structures constructed of imported materials and all permanent structures, including but not limited to, access roadways, culvert crossings, staging areas, material stockpiles, berms, dikes, and pads, shall be constructed so as to accommodate overtopping and resist washout by streamflow.
2. Any temporary crossing, other than fords on native material, shall be constructed in such a manner so as to provide armoring of the stream channel. Materials used to provide this armoring shall not include anything easily transportable by flow. Examples of acceptable materials include steel plates, untreated wooden planks, pre-cast concrete planks or blocks. Examples of unacceptable materials include clay, silt, sand, and gravel finer than cobble (roughly fist-sized). The armoring shall, via mass, anchoring systems, or a combination of the two, resist washout.

H. Notification. The owner or operator of any regulated activities shall, five days prior to initiation of the regulated activities, submit a notice to ADEQ on a form that includes basic information including the GPS location, the waterbody ID of the nearest non-WOTUS protected surface water, general description of planned activities, types of BMPs to be employed during the project, and phone number and email for a contact person. Work may proceed after five calendar days have passed since the owner/operator provided notification to ADEQ unless ADEQ responds in writing to the contact person for the owner/operator.

I. Exclusions: The BMPS and notification requirements in this Section shall not apply to:

1. Activities that are already regulated under A.R.S. Title 49.
2. Discharges to a non-WOTUS protected surface water incidental to a recharge project.
3. Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
4. Maintenance but not construction of drainage ditches.
5. Construction and maintenance of irrigation ditches.
6. Maintenance of structures as dams, dikes, and levees.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Appendix A. Repealed

Historical Note

Former Section R9-21-208, Appendices 1 through 9 renumbered and amended as new Appendix A adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

Appendix B. Repealed

Historical Note

Former R9-21-209, Table 1 and Table 2 renumbered and amended as Appendix B adopted effective January 7, 1985 (Supp.85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

R18-11-301. Definitions

The terms in this Article have the following meanings:

"Direct reuse" has the meaning prescribed in R18-9-701(1).

"Disinfection" means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

"Filtration" means a treatment process that removes particulate matter from wastewater by passage through porous media.

"Gray water" means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

"Industrial wastewater" means wastewater generated from an industrial process.

"Landscape impoundment" means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

"NTU" means nepholometric turbidity unit.

"On-site wastewater treatment facility" has the meaning prescribed in A.R.S. § 49-201(24).

"Open access" means that access to reclaimed water by the general public is uncontrolled.

"Reclaimed water" has the meaning prescribed in A.R.S. § 49-201(31).

"Recreational impoundment" means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

"Restricted access" means that access to reclaimed water by the general public is controlled.

"Secondary treatment" means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

"Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

Historical Note

Adopted effective July 9, 1981 (Supp. 81-4). Former Section R9-21-301 renumbered without change as Section R18-11-301 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-302. Applicability

This Article applies to the direct reuse of reclaimed water, except for:

1. The direct reuse of gray water, or
2. The direct reuse of reclaimed water from an onsite wastewater treatment facility regulated by a general Aquifer Protection Permit under 18 A.A.C. 9, Article 3.

Historical Note

Adopted effective June 8, 1981 (Supp. 81-3). Amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-302 renumbered without change as Section R18-11-302 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-303. Class A+ Reclaimed Water

A. Class A+ reclaimed water is wastewater that has undergone secondary treatment, filtration, nitrogen removal treatment, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in (B)(1) is achieved without chemical addition.

B. An owner of a facility shall ensure that:

1. The turbidity of Class A+ reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
   a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
   b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
   c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A+ reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.
3. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.

C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A+ reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) and the total nitrogen criteria in subsection (B)(3) before discharge to a reclaimed water distribution system.

D. Class A+ reclaimed water is not required for any type of direct reuse. A person may use Class A+ reclaimed water for any type of direct reuse listed in Table A.

Historical Note

Adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-303 renumbered without change as Section R18-11-303 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-304. Class A Reclaimed Water

A. Class A reclaimed water is wastewater that has undergone secondary treatment, filtration, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in subsection (B)(1) is achieved without chemical addition.

B. An owner of a facility shall ensure that:

1. The turbidity of Class A reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
   a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
   b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
   c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.

C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsec-

tion (B)(2) before discharge to a reclaimed water distribution system.

D. A person shall use Class A reclaimed water for a type of direct reuse listed as Class A in Table A. A person may use Class A reclaimed water for a type of direct reuse listed as Class B or Class C in Table A.

Historical Note
Adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-304 renumbered without change as Section R18-11-304 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-305. Class B+ Reclaimed Water

A. Class B+ reclaimed water is wastewater that has undergone secondary treatment, nitrogen removal treatment, and disinfection.

B. An owner of a facility shall ensure that:
1. Class B+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.
2. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.

C. Class B+ reclaimed water is not required for a type of direct reuse. A person may use Class B+ reclaimed water for a type of direct reuse listed as Class B or Class C in Table A. A person shall not use Class B+ reclaimed water for a type of direct reuse listed as Class A in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-306. Class B Reclaimed Water

A. Class B reclaimed water is wastewater that has undergone secondary treatment and disinfection.

B. An owner of a facility shall ensure that Class B reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
1. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
2. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.

C. A person shall use a minimum of Class B reclaimed water for a type of direct reuse listed as Class B in Table A. A person may use Class B reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class B reclaimed water for a type of direct reuse listed as Class A in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-307. Class C Reclaimed Water

A. Class C reclaimed water is wastewater that has undergone secondary treatment in a series of wastewater stabilization ponds, including aeration, with or without disinfection.

B. The owner of a facility shall ensure that:
1. The total retention time of Class C reclaimed water in wastewater stabilization ponds is at least 20 days.
2. Class C reclaimed water meets the following criteria after treatment and before discharge to a reclaimed water distribution system:
   a. The concentration of fecal coliform organisms in four of the last seven reclaimed water samples taken is less than 1000 / 100 ml.
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 4000 / 100 ml.

C. A person shall use a minimum of Class C reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class C reclaimed water for a type of direct reuse listed as Class A or Class B in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-308. Industrial Reuse

A. The reclaimed water quality requirements for the following direct reuse applications are industry-specific and shall be determined by the Department on a case-by-case basis in a reclaimed water permit issued by the Department under 18 A.A.C. 9, Article 7:
1. Direct reuse of industrial wastewater containing sewage.
2. Direct reuse of industrial wastewater for the production or processing of any crop used as human or animal food.

B. The Department shall use best professional judgment to determine the reclaimed water quality requirements needed to protect public health and the environment for a type of direct reuse specified in subsection (A).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-309. Reclaimed Water Quality Standards for an Unlisted Type of Direct Reuse

A. The Department may prescribe in an individual reclaimed water permit issued under 18 A.A.C. 9, Article 7, reclaimed water quality requirements for a type of direct reuse not listed in Table A. Before permitting a direct reuse of reclaimed water not listed in Table A, the Department shall, using its best professional judgment, determine and require compliance with reclaimed water quality requirements needed to protect public health and the environment.

B. Department may determine that Class A+, A, B+, B, or C reclaimed water is appropriate for a new type of direct reuse.

C. The Department shall consider the following factors when prescribing reclaimed water quality requirements for a new type of direct reuse:
1. The risk to public health;
2. The degree of public access to the site where the reclaimed water is reused and human exposure to the reclaimed water;
3. The level of treatment necessary to ensure that the reclaimed water is aesthetically acceptable;
4. The level of treatment necessary to prevent nuisance conditions;

5. Specific water quality requirements for the intended type of direct reuse;
6. The means of application of the reclaimed water;
7. The degree of treatment necessary to avoid a violation of surface water quality standards or aquifer water quality standards;
8. The potential for improper or unintended use of the reclaimed water;
9. The reuse guidelines, criteria, or standards adopted or recommended by the U.S. Environmental Protection Agency or other federal or state agencies that apply to the new type of direct reuse; and
10. Similar wastewater reclamation experience of reclaimed water providers in the United States.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

Table A. Minimum Reclaimed Water Quality Requirements for Direct Reuse

Type of Direct Reuse	Minimum Class of Reclaimed Water Required
Irrigation of food crops	A
Recreational impoundments	A
Residential landscape irrigation	A
Schoolground landscape irrigation	A
Open access landscape irrigation	A
Toilet and urinal flushing	A
Fire protection systems	A
Spray irrigation of an orchard or vineyard	A
Commercial closed loop air conditioning systems	A
Vehicle and equipment washing (does not include self-service vehicle washes)	A
Snowmaking	A
Surface irrigation of an orchard or vineyard	B
Golf course irrigation	B
Restricted access landscape irrigation	B
Landscape impoundment	B
Dust control	B
Soil compaction and similar construction activities	B
Pasture for milking animals	B
Livestock watering (dairy animals)	B
Concrete and cement mixing	B
Materials washing and sieving	B
Street cleaning	B
Pasture for non-dairy animals	C
Livestock watering (non-dairy animals)	C
Irrigation of sod farms	C
Irrigation of fiber, seed, forage, and similar crops	C
Silviculture	C

Note: Nothing in this Article prevents a wastewater treatment plant from using a higher quality reclaimed water for a type of direct reuse than the minimum class of reclaimed water listed in Table A. For example, a wastewater treatment plant may provide Class A reclaimed water for a type of direct reuse where Class B or Class C reclaimed water is acceptable.

Historical Note
New Table adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

R18-11-401. Definitions
In addition to the definitions contained in A.R.S. §§ 49-101 and 49-201, the terms of this Article shall have the following meanings:

1. "Beta particle and photon radioactivity from man-made radionuclides" means all radionuclides emitting beta particles or photons, except Thorium-232, Uranium-235, Uranium-238 and their progeny.
2. "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements.
3. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
4. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
5. "Mg/l" means milligrams per liter.
6. "Millirem" means 1/1000 of a rem. A rem means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system.
7. "Non-drinking water protected use" means the protection and maintenance of aquifer water quality for a use other than for human consumption.
8. "pCi" means picocurie, or the quantity of radioactive material producing 2.22 nuclear transformations per minute.
9. "Total trihalomethanes" means the sum of the concentrations of the following trihalomethane compounds: trichloromethane (chloroform), dibromo-chloromethane, bromodichloromethane and tribromo-methane (bromoform).

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1). Amended effective August 14, 1992 (Supp. 92-3).

R18-11-402. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1). Repealed effective August 14, 1992 (Supp. 92-3).

R18-11-403. Analytical Methods
Analysis of a sample to determine compliance with an aquifer water quality standard shall be in accordance with an analytical method specified in A.A.C. Title 9, Chapter 14, Article 6 or an alternative analytical method that is approved by the Director of the Arizona Department of Health Services pursuant to A.A.C. R9-14-610(C).

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1). Amended effective August 14, 1992 (Supp. 92-3). Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-404. Laboratories
A test result from a sample taken to determine compliance with an aquifer water quality standard shall be valid only if the sample has

been analyzed by a laboratory that is licensed by the Arizona Department of Health Services for the analysis performed.

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-405. Narrative Aquifer Water Quality Standards

A. A discharge shall not cause a pollutant to be present in an aquifer classified for a drinking water protected use in a concentration which endangers human health.

B. A discharge shall not cause or contribute to a violation of a water quality standard established for a navigable water of the state.

C. A discharge shall not cause a pollutant to be present in an aquifer which impairs existing or reasonably foreseeable uses of water in an aquifer.

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

A. The aquifer water quality standards in this Section apply to aquifers that are classified for drinking water protected use.

B. The following are the aquifer water quality standards for inorganic chemicals:

Pollutant	mg/L)
Antimony	0.006
Arsenic	0.05
Asbestos	7 million fibers/liter (longer than 10 mm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (As Free Cyanide)	0.2
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nickel	0.1
Nitrate (as N)	10
Nitrite (as N)	1
Nitrate and nitrite (as N)	10
Selenium	0.05
Thallium	0.002

C. The following are the aquifer water quality standards for organic chemicals:

Pollutant	(mg/L)
Benzene	0.005
Benzo (a) pyrene	0.0002
Carbon Tetrachloride	0.005
o-Dichlorobenzene	0.6
para-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
1,2-Dichloropropane	0.005
Dichloromethane	0.005
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) pthalate	0.006
Ethylbenzene	0.7
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Pentachlorophenol	0.001
Styrene	0.1
2,3,7,8-TCDD (Dioxin)	0.00000003
Tetrachloroethylene	0.005
Toluene	1
Trihalomethanes (Total)	0.10
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.20
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Vinyl Chloride	0.002
Xylenes (Total)	10

D. The following are the aquifer water quality standards for pesticides and polychlorinated biphenyls (PCBs):

Pollutant	(mg/L)
Alachlor	0.002
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dalapon	0.2
1,2-Dibromo-3-Chloropropane (DBCP)	0.0002
2,4,-Dichlorophenoxyacetic Acid(2,4-D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor Epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl	0.2
Picloram	0.5
Polychlorinated Biphenols (PCBs)	0.0005
Simazine	0.004
Toxaphene	0.003
2,4,5-Trichlorophenoxypropionic Acid (2,4,5-TP or Silvex)	0.05

E. The following are the aquifer water quality standards for radionuclides:

1. The maximum concentration for gross alpha particle activity, including Radium-226 but excluding radon and uranium, shall not exceed 15 pCi/l.
2. The maximum concentration for combined Radium-226 and Radium-228 shall not exceed 5 pCi/l.
3. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.
4. Except for the radionuclides listed in this subsection, the concentration of man-made radionuclides causing 4 millirem total body or organ dose equivalents shall be calculated on the basis of a 2-liter-per-day drinking water intake using the 168-hour data listed in “Maximum Permissible Body Burdens and Maximum Permissible Con-

centration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, National Bureau of Commerce, as amended August 1963 (and no future editions), incorporated herein by reference and on file with the Office of the Secretary of State and with the Department. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year. The following average annual concentrations are assumed to produce a total body or organ dose of 4 millirem/year:

Radionuclide	Critical Organ	pCi/l
Tritium	Total body	20,000
Strontium-90	Bone Marrow	8

F. The aquifer water quality standard for microbiological contaminants is based upon the presence or absence of total coliforms in a 100-milliliter sample. If a sample is total coliform-positive, a 100-milliliter repeat sample shall be taken within two weeks of the time the sample results are reported. Any total coliform-positive repeat sample following a total coliform-positive sample constitutes a violation of the aquifer water quality standard for microbiological contaminants.

G. The following are the aquifer water quality standards for turbidity:

1. One nephelometric turbidity unit as determined by a monthly average except that five or fewer nephelometric turbidity units may be allowed if it can be determined that the higher turbidity does not interfere with disinfection, prevent maintenance of effective disinfectant agents in water supply distribution systems, or interfere with microbiological determinations.
2. Five nephelometric turbidity units based on an average of two consecutive days.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).
Amended effective May 26, 1994 (Supp. 94-2).

R18-11-407. Aquifer Water Quality Standards in Reclassified Aquifers

A. All aquifers in the state are classified for drinking water protected use except for aquifers which are reclassified to a nondrinking water protected use pursuant to A.R.S. § 49-224 and A.A.C. R18-11-503.

B. Aquifer water quality standards for drinking water protected use apply to reclassified aquifers except where expressly superseded by aquifer water quality standards adopted pursuant to subsection (C).

C. The Director shall adopt, by rule, aquifer water quality standards for reclassified aquifers within one year of the date of the order reclassifying the aquifer to a nondrinking water protected use. The Director shall adopt aquifer water quality standards for reclassified aquifers only for pollutants that are specifically identified in a petition for reclassification as prescribed by A.R.S. § 49-223(E) and A.A.C. R18-11-503(B). Aquifer water quality standards for reclassified aquifers shall be sufficient to protect the use of the reclassified aquifer.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-408. Petition for Adoption of a Numeric Aquifer Water Quality Standard

A. Any person may petition the Director to adopt, by rule, a numeric aquifer water quality standard for a pollutant for which no numeric aquifer water quality standard exists.

B. Petitions for adoption of a numeric aquifer water quality standard shall be filed with the Department and shall comply with the requirements applicable to petitions for rule adoption as provided by A.R.S. § 41-1033 and A.A.C. R18-1-302, except as otherwise provided by A.R.S. § 49-223 or this Section.

C. In addition to the requirements of A.A.C. R18-1-302, a petition for rule adoption to establish a numeric aquifer water quality standard shall include specific reference to:

1. Technical information that the pollutant is a toxic pollutant.
2. Technical information upon which the Director reasonably may base the establishment of a numeric aquifer water quality standard.
3. Evidence that the pollutant that is the subject of the petition is or may in the future be present in an aquifer or part of an aquifer that is classified for drinking water protected use. Evidence may include, but is not limited to, any of the following:
   a. A laboratory analysis of a water sample by a laboratory licensed by the Arizona Department of Health Services which indicates the presence of the pollutant in the aquifer.
   b. A hydrogeological study which demonstrates that the pollutant that is the subject of the petition may be present in an aquifer in the future. The hydrogeological study shall include the following:
      i. A description of the use that results in a discharge of the pollutant that is the subject of the petition.
      ii. A description of the mobility of the pollutant in the vadose zone and in the aquifer.
      iii. A description of the persistence of the pollutant in the vadose zone and in the aquifer.

D. Within 180 calendar days of the receipt of a complete petition for rule adoption to establish a numeric aquifer water quality standard, the Director shall make a written determination of whether the petition should be granted or denied. The Director shall give written notice by regular mail of the determination to the petitioner.

E. If the petition for rule adoption is granted, the Director shall initiate rulemaking proceedings to adopt a numeric aquifer water quality standard. The Director shall, within one year of the date that the petition for adoption of a numeric aquifer water quality standard is granted, either adopt a rule establishing a numeric aquifer water quality standard or publish a notice of termination of rulemaking in the Arizona Administrative Register.

F. If the petition for rule adoption is denied, the Director shall issue a denial letter to the petitioner which explains the reasons for the denial. The denial of a petition for rule adoption to establish a numeric aquifer water quality standard is not subject to judicial review.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).

Appendix 1. Repealed

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 2. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 3. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 4. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 5. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 6. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 7. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION

R18-11-501. Definitions
In addition to the definitions contained in A.R.S. § 49-201, the words and phrases of this Article shall have the following meaning:

1. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
2. "Hardrock areas containing little or no water" means areas of igneous or metamorphic rock which do not yield usable quantities of water.
3. "Nondrinking water protected use" means the protection and maintenance of aquifer water quality for a use other than human consumption.
4. "Usable quantities" means five gallons of water per day.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-502. Aquifer Boundaries

A. Except as provided in subsection (B), aquifer boundaries for the aquifers in this state are identified and defined as being identical to the hydrologic basin and subbasin boundaries, as found by the Director of the Department of Water Resources, Findings and Order In the Matter of The Designation of Groundwater Basins and Subbasins In The State of Arizona (dated June 21, 1984), pursuant to A.R.S. §§ 45-403 and 45-404, which is incorporated herein by reference, on file and available for public inspection at the Department of Environmental Quality. No later amendments or editions are incorporated by reference.

B. Excluded from the boundaries of the aquifers are hard rock areas which contain little or no water, as identified in Plate 1 of the Department of Water Resources, Water Resource Hydrologic Map Series Report Number 2 (dated January 1981) and as further identified in the Bureau of Mines, University of Arizona County Geologic Map Series (individual county maps dated 1957 through 1960), which are incorporated herein by reference, on file and available for public inspection at the Department of Environmental Quality. No later amendments or editions are incorporated by reference.

C. The Director may, by rule, modify or add an aquifer boundary provided that one or more of the following applies:

1. The Department of Water Resources modifies the boundaries of its basins or subbasins.
2. The Director is made aware of new technical information or data which supports refinement of an aquifer boundary.

D. Facilities located outside of the boundaries defined in these rules shall be subject to A.R.S. § 49-241 except as provided therein.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-503. Petition for reclassification

A. Any person may petition the Director to reclassify an aquifer from a drinking water protected use to a nondrinking water protected use pursuant to A.R.S. § 49-224(C).

B. A written petition for reclassification pursuant to A.R.S. § 49-224(C) or A.R.S. § 49-224(D) shall be filed with the Department and shall include the following categories of information:

1. The proposed protected use for which the reclassification is being requested.
2. The pollutant and affected aquifer water quality standards for which the reclassification is being requested.
3. A hydrogeologic report which demonstrates that the aquifer proposed for reclassification is or will be hydrologically isolated, to the extent described in A.R.S. § 49-224(C)(1). This report and demonstration of hydrologic isolation for the area containing such aquifer, and immediate adjacent geologic units, shall include at least the following:
   a. Hydrogeologic area maps and cross sections.
   b. An analysis of subsurface geology, including geologic and hydrologic separation.
   c. Water level elevation or piezometric level contour maps.
   d. Analysis of hydrologic characteristics of the aquifer and the immediate adjacent geologic units.
   e. Description of existing water quality and analysis of water chemistry.
   f. Projected annual quantity of water to be withdrawn.
   g. Identification of pumping centers, cones of depression and areas of recharge.
   h. A water balance.
   i. Existing flow direction and evaluation of the effects of seasonal and future pumping on flow.
   j. An evaluation as to whether the reclassification will contribute to or cause a violation of aquifer water quality standards in other aquifers, or in parts of the aquifer not being proposed for reclassification.
4. Documentation demonstrating that water from the aquifer or part of the aquifer for which reclassification is pro-

posed is not being used as drinking water. This documentation shall include at least the following:

a. A list of all wells or springs including their location, ownership and use within the aquifer or part of the aquifer being proposed for reclassification.
b. Identification of groundwater withdrawal rights, on file with the Department of Water Resources, within the aquifer or part of the aquifer being proposed for reclassification.
c. A comprehensive list of agencies, persons and other information sources consulted for aquifer use documentation.

5. A cost-benefit analysis developed pursuant to the requirements of A.R.S. § 49-224(C)(3), except for petitions submitted pursuant to A.R.S. § 49-224(D). This analysis shall identify potential future uses of the aquifer being proposed for reclassification, as well as other opportunity costs associated with reclassification, and shall contain a description of the cost-benefit methodology used, including all assumptions, data, data sources and criteria considered and all supporting statistical analyses.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-504. Agency Action on Petition

A. Upon receipt of a petition for reclassification, the Director shall review the petition for compliance with the requirements of R18-11-503. If additional information is necessary, the petitioner shall be notified of specific deficiencies in writing within 30 calendar days of receipt of the petition.

B. Within 120 calendar days after receipt of a complete petition, and after consultation with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C), the Director shall make a final decision to grant or deny the petition and shall notify the petitioner of such decision and the reason for such determination in writing.

C. Upon a decision to grant a petition for aquifer reclassification, the Director shall initiate proceedings for promulgation of aquifer water quality standards and, if applicable, for aquifer boundary designation for the reclassified aquifers.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-505. Public participation

A. Within 30 days of receipt of a complete petition for reclassification filed pursuant to A.R.S. § 49-224(D), or if the Director deems it necessary to consider a reclassification under A.R.S. § 49-224(C), the Director shall give public notice of the proposed reclassification pursuant to A.A.C. R18-1-401.

B. The Director shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification. The Director shall give notice of each public hearing and conduct the public hearing in accordance with the provisions of A.A.C. R18-1-402.

Historical Note
Adopted effective June 29, 1989 (Supp. 89-2).

R18-11-506. Rescission of Reclassification

The Director may, by rule, rescind an aquifer reclassification and return an aquifer to a drinking water protected use if he determines that any of the conditions under which the reclassification was granted are no longer valid. If the Director initiates a change under this Section, he shall consult with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C).

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

ARTICLE 6. IMPAIRED WATER IDENTIFICATION

Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-601. Definitions

In addition to the definitions established in A.R.S. §§ 49-201 and 49-231, and A.A.C. R18-11-101, the following terms apply to this Article:

1. "303(d) List" means the list of surface waters or segments required under section 303(d) of the Clean Water Act and A.R.S. Title 49, Chapter 2, Article 2.1, for which TMDLs are developed and submitted to EPA for approval.
2. "Attaining" means there is sufficient, credible, and scientifically defensible data to assess a surface water or segment and the surface water or segment does not meet the definition of impaired or not attaining.
3. "AZPDES" means the Arizona Pollutant Elimination Discharge System.
4. "Credible and scientifically defensible data" means data submitted, collected, or analyzed using:
   a. Quality assurance and quality control procedures under A.A.C. R18-11-602;
   b. Samples or analyses representative of water quality conditions at the time the data were collected;
   c. Data consisting of an adequate number of samples based on the nature of the water in question and the parameters being analyzed; and
   d. Methods of sampling and analysis, including analytical, statistical, and modeling methods that are generally accepted and validated by the scientific community as appropriate for use in assessing the condition of the water.
5. "Designated use" means those uses specified in 18 A.A.C. 11, Article 1 for each surface water or segment whether or not they are attaining.
6. "EPA" means the U.S. Environmental Protection Agency.
7. "Impaired water" means a Navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code § 1313(d) and the regulations implementing that statute. A.R.S. § 49-231(1).
8. "Laboratory detection limit" means a "Method Reporting Limit" (MRL) or "Reporting Limit" (RL). These analogous terms describe the laboratory reported value, which is the lowest concentration level included on the calibration curve from the analysis of a pollutant that can be quantified in terms of precision and accuracy.
9. "Monitoring entity" means the Department or any person who collects physical, chemical, or biological data used for an impaired water identification or a TMDL decision.
10. "Naturally occurring condition" means the condition of a surface water or segment that would have occurred in the

absence of pollutant loadings as a result of human activity.

11. "Not attaining" means a surface water is assessed as impaired, but is not placed on the 303(d) List because:
    a. A TMDL is prepared and implemented for the surface water;
    b. An action, which meets the requirements of R18-11-604(D)(2)(h), is occurring and is expected to bring the surface water to attaining before the next 303(d) List submission; or
    c. The impairment of the surface water is due to pollution but not a pollutant, for which a TMDL load allocation cannot be developed.
12. "NPDES" means National Pollutant Discharge Elimination System.
13. "Planning List" means a list of surface waters and segments that the Department will review and evaluate to determine if the surface water or segment is impaired and whether a TMDL is necessary.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. 1362(6). Characteristics of water, such as dissolved oxygen, pH, temperature, turbidity, and suspended sediment are considered pollutants if they result or may result in the non-attainment of a water quality standard.
15. "Pollution" means "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." 33 U.S.C. 1362(19).
16. "QAP" means a quality assurance plan detailing how environmental data operations are planned, implemented, and assessed for quality during the duration of a project.
17. "Sampling event" means one or more samples taken under consistent conditions on one or more days at a distinct station or location.
18. "SAP" means a site specific sampling and analysis plan that describes the specifics of sample collection to ensure that data quality objectives are met and that samples collected and analyzed are representative of surface water conditions at the time of sampling.
19. "Spatially independent sample" means a sample that is collected at a distinct station or location. The sample is independent if the sample was collected:
    a. More than 200 meters apart from other samples, or
    b. Less than 200 meters apart, and collected to characterize the effect of an intervening tributary, outfall or other pollution source, or significant hydrographic or hydrologic change.
20. "Temporally independent sample" means a sample that is collected at the same station or location more than seven days apart from other samples.
21. "Threatened" means that a surface water or segment is currently attaining its designated use, however, trend analysis, based on credible and scientifically defensible data, indicates that the surface water or segment is likely to be impaired before the next listing cycle.
22. "TMDL" means total maximum daily load.
23. "TMDL decision" means a decision by the Department to:
    a. Prioritize an impaired water for TMDL development,
    b. Develop a TMDL for an impaired water, or
    c. Develop a TMDL implementation plan.
24. *"Total maximum daily load" means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water, as required by section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards.* A.R.S. § 49-231(4).
25. "Water quality standard" means a standard composed of designated uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, the antidegradation policy, and moderating provisions, for example, mixing zones, site-specific alternative criteria, and exemptions, in A.A.C. Title 18, Chapter 11, Article 1.
26. "WQARF" means the water quality assurance revolving fund established under A.R.S. § 49-282.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-602. Credible Data

A. Data are credible and relevant to an impaired water identification or a TMDL decision when:

1. Quality Assurance Plan. A monitoring entity, which contribute data for an impaired water identification or a TMDL decision, provides the Department with a QAP that contains, at a minimum, the elements listed in subsections (A)(1)(a) through (A)(1)(f). The Department may accept a QAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be sampled, the type of surface water, and the purpose of the sampling.
    a. An approval page that includes the date of approval and the signatures of the approving officials, including the project manager and project quality assurance manager;
    b. A project organization outline that identifies all key personnel, organizations, and laboratories involved in monitoring, including the specific roles and responsibilities of key personnel in carrying out the procedures identified in the QAP and SAP, if applicable;
    c. Sampling design and monitoring data quality objectives or a SAP that meets the requirements of subsection (A)(2) to ensure that:
        i. Samples are spatially and temporally representative of the surface water,
        ii. Samples are representative of water quality conditions at the time of sampling, and
        iii. The monitoring is reproducible;
    d. The following field sampling information to assure that samples meet data quality objectives:
        i. Sampling and field protocols for each parameter or parametric group, including the sampling methods, equipment and containers, sample preservation, holding times, and any analysis

proposed for completion in the field or outside of a laboratory;

ii. Field and laboratory methods approved under subsection (A)(5);

iii. Handling procedures to identify samples and custody protocols used when samples are brought from the field to the laboratory for analysis;

iv. Quality control protocols that describe the number and type of field quality control samples for the project that includes, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;

v. Procedures for testing, inspecting, and maintaining field equipment;

vi. Field instrument calibration procedures that describe how and when field sampling and analytical instruments will be calibrated;

vii. Field notes and records that describe the conditions that require documentation in the field, such as weather, stream flow, transect information, distance from water edge, water and sample depth, equipment calibration measurements, field observations of watershed activities, and bank conditions. Indicate the procedures implemented for maintaining field notes and records and the process used for attaching pertinent information to monitoring results to assist in data interpretation;

viii. Minimum training and any specialized training necessary to do the monitoring, that includes the proper use and calibration of field equipment used to collect data, sampling protocols, quality assurance/quality control procedures, and how training will be achieved;

e. Laboratory analysis methods and quality assurance/quality control procedures that assure that samples meet data quality objectives, including:

i. Analytical methods and equipment necessary for analysis of each parameter, including identification of approved laboratory methods described in subsection (A)(5), and laboratory detection limits for each parameter;

ii. The name of the designated laboratory, its license number, if licensed by the Arizona Department of Health Services, and the name of a laboratory contact person to assist the Department with quality assurance questions;

iii. Quality controls that describe the number and type of laboratory quality control samples for the project, including, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;

iv. Procedures for testing, inspecting, and maintaining laboratory equipment and facilities;

v. A schedule for calibrating laboratory instruments, a description of calibration methods, and a description of how calibration records are maintained; and

vi. Sample equipment decontamination procedures that outline specific methods for sample collection and preparation of equipment, identify the frequency of decontamination, and describe the procedures used to verify decontamination;

f. Data review, management, and use that includes the following:

i. A description of the data handling process from field to laboratory, from laboratory to data review and validation, and from validation to data storage and use. Include the role and responsibility of each person for each step of the process, type of database or other storage used, and how laboratory and field data qualifiers are related to the laboratory result;

ii. Reports that describe the intended frequency, content, and distribution of final analysis reports and project status reports;

iii. Data review, validation, and verification that describes the procedure used to validate and verify data, the procedures used if errors are detected, and how data are accepted, rejected, or qualified; and

iv. Reconciliation with data quality objectives that describes the process used to determine whether the data collected meets the project objectives, which may include discarding data, setting limits on data use, or revising data quality objectives.

2. Sampling and analysis plan.

a. A monitoring entity shall develop a SAP that contains, at a minimum, the following elements:

i. The experimental design of the project, the project goals and objectives, and evaluation criteria for data results;

ii. The background or historical perspective of the project;

iii. Identification of target conditions, including a discussion of whether any weather, seasonal variations, stream flow, lake level, or site access may affect the project and the consideration of these factors;

iv. The data quality objectives for measurement of data that describe in quantitative and qualitative terms how the data meet the project objectives of precision, accuracy, completeness, comparability, and representativeness;

v. The types of samples scheduled for collection;

vi. The sampling frequency;

vii. The sampling periods;

viii. The sampling locations and rationale for the site selection, how site locations are benchmarked, including scaled maps indicating approximate location of sites; and

ix. A list of the field equipment, including tolerance range and any other manufacturer's specifications relating to accuracy and precision.

b. The Department may accept a SAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be samples, the type of surface water, and the purpose of the sampling.

3. The monitoring entity may include any of the following in the QAP or SAP:

a. The name, title, and role of each person and organization involved in the project, identifying specific roles and responsibilities for carrying out the procedures identified in the QAP and SAP;
b. A distribution list of each individual and organization receiving a copy of the approved QAP and SAP;
c. A table of contents;
d. A health and safety plan;
e. The inspection and acceptance requirements for supplies;
f. The data acquisition that describes types of data not obtained through this monitoring activity, but used in the project;
g. The audits and response actions that describe how field, laboratory, and data management activities and sampling personnel are evaluated to ensure data quality, including a description of how the project will correct any problems identified during these assessments; and
h. The waste disposal methods that identify wastes generated in sampling and methods for disposal of those wastes.

4. Exceptions. The Department may determine that the following data are also credible and relevant to an impaired water identification or TMDL decision when data were collected, provided the conditions in subsections (A)(5), (A)(6), and (B) are met, and where the data were collected in the surface water or segment being evaluated for impairment:
a. The data were collected before July 12, 2002 and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2);
b. The data were collected after July 12, 2002 as part of an ongoing monitoring effort by a governmental agency and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2); or
c. The instream water quality data were or are collected under the terms of a NPDES or AZPDES permit or a compliance order issued by the Department or EPA, a consent decree signed by the Department or EPA, or a sampling program approved by the Department or EPA under WQARF or CERCLA, and the Department determines that the data yield results of comparable reliability to data collected under subsections (A)(1) and (A)(2).

5. Data collection, preservation, and analytical procedures. The monitoring entity shall collect, preserve, and analyze data using methods of sample collection, preservation, and analysis established under A.A.C. R9-14-610.
6. Laboratory. The monitoring entity shall ensure that chemical and toxicological samples are analyzed in a state-licensed laboratory, a laboratory exempted by the Arizona Department of Health Services for specific analyses, or a federal or academic laboratory that can demonstrate proper quality assurance/quality control procedures substantially equal to those required by the Arizona Department of Health Services, and shall ensure that the laboratory uses approved methods identified in A.A.C. R9-14-610.

B. Documentation for data submission. The monitoring entity shall provide the Department with the following information either before or with data submission:
1. A copy of the QAP or SAP, or both, revisions to a previously submitted QAP or SAP, and any other information necessary for the Department to evaluate the data under subsection (A)(4);
2. The applicable dates of the QAP and SAP, including any revisions;
3. Written assurance that the methods and procedures specified in the QAP and SAP were followed;
4. The name of the laboratory used for sample analyses and its certification number, if the laboratory is licensed by the Arizona Department of Health Services;
5. The quality assurance/quality control documentation, including the analytical methods used by the laboratory, method number, detection limits, and any blank, duplicate, and spike sample information necessary to properly interpret the data, if different from that stated in the QAP or SAP;
6. The data reporting unit of measure;
7. Any field notes, laboratory comments, or laboratory notations concerning a deviation from standard procedures, quality control, or quality assurance that affects data reliability, data interpretation, or data validity; and
8. Any other information, such as complete field notes, photographs, climate, or other information related to flow, field conditions, or documented sources of pollutants in the watershed, if requested by the Department for interpreting or validating data.

C. Recordkeeping. The monitoring entity shall maintain all records, including sample results, for the duration of the listing cycle. If a surface water or segment is added to the Planning List or to the 303(d) List, the Department shall coordinate with the monitoring entity to ensure that records are kept for the duration of the listing.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-603. General Data Interpretation Requirements

A. The Department shall use the following data conventions to interpret data for impaired water identifications and TMDL decisions:
1. Data reported below laboratory detection limits.
a. When the analytical result is reported as <X, where X is the laboratory detection limit for the analyte and the laboratory detection limit is less than or equal to the surface water quality standard, consider the result as meeting the water quality standard:
i. Use these statistically derived values in trend analysis, descriptive statistics or modeling if there is sufficient data to support the statistical estimation of values reported as less than the laboratory detection limit; or
ii. Use one-half of the value of the laboratory detection limit in trend analysis, descriptive statistics, or modeling, if there is insufficient data to support the statistical estimation of values reported as less than the laboratory detection limit.
b. When the sample value is less than or equal to the laboratory detection limit but the laboratory detection limit is greater than the surface water quality standard, shall not use the result for impaired water identifications or TMDL decisions;

2. Identify the field equipment specifications used for each listing cycle or TMDL developed. A field sample measurement within the manufacturer's specification for accuracy meets surface water quality standards;
3. Resolve a data conflict by considering the factors identified under the weight-of-evidence determination in R18-11-605(B);
4. When multiple samples from a surface water or segment are not spatially or temporally independent, or when lake samples are from multiple depths, use the following resultant value to represent the specific dataset:
   a. The appropriate measure of central tendency for the dataset for:
      i. A pollutant listed in the surface water quality standards 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
      ii. A chronic water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2;
      iii. A surface water quality standard for a pollutant that is expressed as an annual or geometric mean;
      iv. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
      v. The surface water quality standard for radiochemicals in R18-11-109(G); or
      vi. Except for chromium, all single sample maximum water quality standards in R18-11-112.
   b. The maximum value of the dataset for:
      i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and acute water quality standard in R18-11-112;
      ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1;
      iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A); or
      iv. The 90th percentile water quality standard for nitrogen and phosphorus in R18-11-109(F) and R18-11-112.
   c. The worst case measurement of the dataset for:
      i. Surface water quality standard for dissolved oxygen under R18-11-109(E). For purposes of this subsection, worst case measurement means the minimum value for dissolved oxygen;
      ii. Surface water quality standard for pH under R18-11-109(B). For purposes of this subsection, "worst case measurement" means both the minimum and maximum value for pH.

B. The Department shall not use the following data for placing a surface water or segment on the Planning List, the 303(d) List, or in making a TMDL decision.
1. Any measurement outside the range of possible physical or chemical measurements for the pollutant or measurement equipment,
2. Uncorrected data transcription errors or laboratory errors, and
3. An outlier identified through statistical procedures, where further evaluation determines that the outlier represents a valid measure of water quality but should be excluded from the dataset.

C. The Department may employ fundamental statistical tests if appropriate for the collected data and type of surface water when evaluating a surface water or segment for impairment or in making a TMDL decision. The statistical tests include descriptive statistics, frequency distribution, analysis of variance, correlation analysis, regression analysis, significance testing, and time series analysis.

D. The Department may employ modeling when evaluating a surface water or segment for impairment or in making a TMDL decision, if the method is appropriate for the type of waterbody and the quantity and quality of available data meet the requirements of R18-11-602. Modeling methods include:
1. Better Assessment Science Integrating Source and Nonpoint Sources (BASINS),
2. Fundamental statistics, including regression analysis,
3. Hydrologic Simulation Program-Fortran (HSPF),
4. Spreadsheet modeling, and
5. Hydrologic Engineering Center (HEC) programs developed by the Army Corps of Engineers.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-604. Types of Surface Waters Placed on the Planning List and 303(d) List

A. The Department shall evaluate, at least every five years, Arizona's surface waters by considering all readily available data.
1. The Department shall place a surface water or segment on:
   a. The Planning List if it meets any of the criteria described in subsection (D), or
   b. The 303(d) List if it meets the criteria for listing described in subsection (E).
2. The Department shall remove a surface water or segment from the Planning List based on the requirements in R18-11-605(E)(1) or from the 303(d) List, based on the requirements in R18-11-605(E)(2).
3. The Department may move surface waters or segments between the Planning List and the 303(d) List based on the criteria established in R18-11-604 and R18-11-605.

B. When placing a surface water or segment on the Planning List or the 303(d) List, the Department shall list the stream reach, derived from EPA's Reach File System or National Hydrography Dataset, or the entire lake, unless the data indicate that only a segment of the stream reach or lake is impaired or not attaining its designated use, in which case, the Department shall describe only that segment for listing.

C. Exceptions. The Department shall not place a surface water or segment on either the Planning List or the 303(d) List if the non-attainment of a surface water quality standard is due to one of the following:
1. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
2. The data were collected within a mixing zone or under a variance or nutrient waiver established in a NPDES or AZPDES permit for the specific parameter and the result does not exceed the alternate discharge limitation established in the permit. The Department may use data collected within these areas for modeling or allocating loads in a TMDL decision; or

3. An activity exempted under R18-11-117, R18-11-118, or a condition exempted under R18-11-119.

D. Planning List.

1. The Department shall:
   a. Use the Planning List to prioritize surface waters for monitoring and evaluation as part of the Department's watershed management approach;
   b. Provide the Planning List to EPA; and
   c. Evaluate each surface water and segment on the Planning List for impairment based on the criteria in R18-11-605(D) to determine the source of the impairment.
2. The Department shall place a surface water or segment on the Planning List based the criteria in R18-11-605(C). The Department may also include a surface water or segment on the Planning List when:
   a. A TMDL is completed for the pollutant and approved by EPA;
   b. The surface water or segment is on the 1998 303(d) List but the dataset used for the listing:
      i. Does not meet the credible data requirements of R18-11-602, or
      ii. Contains insufficient samples to meet the data requirements under R18-11-605(D);
   c. Some monitoring data exist but there are insufficient data to determine whether the surface water or segment is impaired or not attaining, including:
      i. A numeric surface water quality standard is exceeded, but there are not enough samples or sampling events to fulfill the requirements of R18-11-605(D);
      ii. Evidence exists of a narrative standard violation, but the amount of evidence is insufficient, based on narrative implementation procedures and the requirements of R18-11-605(D)(3);
      iii. Existing monitoring data do not meet credible data requirements in R18-11-602; or
      iv. A numeric surface water quality standard is exceeded, but there are not enough sample results above the laboratory detection limit to support statistical analysis as established in R18-11-603(A)(1).
   d. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act, but insufficient current or original monitoring data exist to determine whether the surface water or segment will meet current surface water quality standards;
   e. Trend analysis using credible and scientifically defensible data indicate that surface water quality standards may be exceeded by the next assessment cycle;
   f. The exceedance of surface water quality standards is due to pollution, but not a pollutant;
   g. Existing data were analyzed using methods with laboratory detection limits above the numeric surface water quality standard but analytical methods with lower laboratory detection limits are available;
   h. The surface water or segment is expected to attain its designated use by the next assessment as a result of existing or proposed technology-based effluent limitations or other pollution control requirements under local, state, or federal authority. The appropriate entity shall provide the Department with the following documentation to support placement on the Planning List:
      i. Verification that discharge controls are required and enforceable;
      ii. Controls are specific to the surface water or segment, and pollutant of concern;
      iii. Controls are in place or scheduled for implementation; and
      iv. There are assurances that the controls are sufficient to bring about attainment of water quality standards by the next 303(d) List submission; or
   i. The surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are no federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.

E. 303(d) List. The Department shall:

1. Place a surface water or segment on the 303(d) List if the Department determines:
   a. Based on R18-11-605(D), that the surface water or segment is impaired due to a pollutant and that a TMDL decision is necessary; or
   b. That the surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.
2. Provide public notice of the 303(d) List according to the requirements of A.R.S. § 49-232 and submit the 303(d) List according to section 303(d) of the Clean Water Act.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-605. Evaluating A Surface Water or Segment For Listing and Delisting

A. The Department shall compile and evaluate all reasonably current, credible, and scientifically defensible data to determine whether a surface water or segment is impaired or not attaining.

B. Weight-of-evidence approach.

1. The Department shall consider the following concepts when evaluating data:
   a. Data or information collected during critical conditions may be considered separately from the complete dataset, when the data show that the surface water or segment is impaired or not attaining its designated use during those critical conditions, but attaining its uses during other periods. Critical conditions may include stream flow, seasonal periods, weather conditions, or anthropogenic activities;
   b. Whether the data indicate that the impairment is due to persistent, seasonal, or recurring conditions. If the data do not represent persistent, recurring, or seasonal conditions, the Department may place the surface water or segment on the Planning List;
   c. Higher quality data over lower quality data when making a listing decision. Data quality is established by the reliability, precision, accuracy, and represen-

tativeness of the data, based on factors identified in R18-11-602(A) and (B), including monitoring methods, analytical methods, quality control procedures, and the documented field and laboratory quality control information submitted with the data. The Department shall consider the following factors when determining higher quality data:

i. The age of the measurements. Newer measurements are weighted heavier than older measurements, unless the older measurements are more representative of critical flow conditions;

ii. Whether the data provide a direct measure of an impact on a designated use. Direct measurements are weighted heavier than measurements of an indicator or surrogate parameter; or

iii. The amount or frequency of the measurements. More frequent data collection are weighted heavier than nominal datasets.

2. The Department shall evaluate the following factors to determine if the water quality evidence supports a finding that the surface water or segment is impaired or not attaining:

a. An exceedance of a numeric surface water quality standard based on the criteria in subsections (C)(1), (C)(2), (D)(1), and (D)(2);

b. An exceedance of a narrative surface water quality standard based on the criteria in subsections (C)(3) and (D)(3);

c. Additional information that determines whether a water quality standard is exceeded due to a pollutant, suspected pollutant, or naturally occurring condition:

i. Soil type, geology, hydrology, flow regime, biological community, geomorphology, climate, natural process, and anthropogenic influence in the watershed;

ii. The characteristics of the pollutant, such as its solubility in water, bioaccumulation potential, sediment sorption potential, or degradation characteristics, to assist in determining which data more accurately indicate the pollutant's presence and potential for causing impairment; and

iii. Available evidence of direct or toxic impacts on aquatic life, wildlife, or human health, such as fish kills and beach closures, where there is sufficient evidence that these impacts occurred due to water quality conditions in the surface water.

d. Other available water quality information, such as NPDES or AZPDES water quality discharge data, as applicable.

e. If the Department determines that a surface water or segment does not merit listing under numeric water quality standards based on criteria in subsections (C)(1), (C)(2), (D)(1), or (D)(2) for a pollutant, but there is evidence of a narrative standard exceedance in that surface water or segment under subsection (D)(3) as a result of the presence of the same pollutant, the Department shall list the surface water or segment as impaired only when the evidence indicates that the numeric water quality standard is insufficient to protect the designated use of the surface water or segment and the Department justifies the listing based on any of the following:

i. The narrative standard data provide a more direct indication of impairment as supported by professionally prepared and peer-reviewed publications;

ii. Sufficient evidence of impairment exists due to synergistic effects of pollutant combinations or site-specific environmental factors; or

iii. The pollutant is bioaccumulative, relatively insoluble in water, or has other characteristics that indicate it is occurring in the specific surface water or segment at levels below the laboratory detection limits, but at levels sufficient to result in an impairment.

3. The Department may consider a single line of water quality evidence when the evidence is sufficient to demonstrate that the surface water or segment is impaired or not attaining.

C. Planning List.

1. When evaluating a surface water or segment for placement on the Planning List.

a. Consider at least ten spatially or temporally independent samples collected over three or more temporally independent sampling events; and

b. Determine numeric water quality standards exceedances. The Department shall:

i. Place a surface water or segment on the Planning List following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 1, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 80 percent confidence level using a binomial distribution for a given sample size; or

ii. For sample datasets exceeding those shown in Table 1, calculate the number of exceedances using the following equation: $(X \geq x \mid n, p)$ where n = number of samples; p = exceedance probability of 0.1; x = smallest number of exceedances required for listing with "n" samples; and confidence level ≥ 80 percent.

Table 1. Minimum Number of Samples Exceeding the Numeric Standard

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
10	15	3	173	181	22	349	357	41
16	23	4	182	190	23	358	367	42
24	31	5	191	199	24	368	376	43

32	39	6	200	208	25	377	385	44
40	47	7	209	218	26	386	395	45
48	56	8	219	227	27	396	404	46
57	65	9	228	236	28	405	414	47
66	73	10	237	245	29	415	423	48
74	82	11	246	255	30	424	432	49
83	91	12	256	264	31	433	442	50
92	100	13	265	273	32	443	451	51
101	109	14	274	282	33	452	461	52
110	118	15	283	292	34	462	470	53
119	126	16	293	301	35	471	480	54
127	136	17	302	310	36	481	489	55
137	145	18	311	320	37	490	499	56
146	154	19	321	329	38	500		57
155	163	20	330	338	39			
164	172	21	339	348	40			

2. When there are less than ten samples, the Department shall place a surface water or segment on the Planning List following subsection (B), if three or more temporally independent samples exceed the following surface water quality standards:
   a. The surface water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
   b. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
   c. The surface water quality standard for radiochemicals in R18-11-109(G);
   d. The surface water quality standard for dissolved oxygen under R18-11-109(E);
   e. The surface water quality standard for pH under R18-11-109(B); or
   f. The following surface water quality standards in R18-11-112:
      i. Single sample maximum standards for nitrogen and phosphorus,
      ii. All metals except chromium, or
      iii. Turbidity.
3. The Department shall place a surface water or segment on the Planning List if information in subsections (B)(2)(c), (B)(2)(d), and (B)(2)(e) indicates that a narrative water quality standard violation exists, but no narrative implementation procedure required under A.R.S. § 49-232(F) exists to support use of the information for listing.

D. 303(d) List.
1. When evaluating a surface water or segment for placement on the 303(d) List.
   a. Consider at least 20 spatially or temporally independent samples collected over three or more temporally independent sampling events; and
   b. Determine numeric water quality standards exceedances. The Department shall:
      i. Place a surface water or segment on the 303(d) List, following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 2, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 90 percent confidence level using a binomial distribution, for a given sample size; or
      ii. For sample datasets exceeding those shown in Table 2, calculate the number of exceedances using the following equation: $(X \geq x | n, p)$ where n = number of samples; p = exceedance probability of 0.1; x = smallest number of exceedances required for listing with "n" samples; and confidence level ≥ 90 percent.

Table 2. Minimum Number of Samples Exceeding the Numeric Standard

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
20	25	5	174	182	24	344	352	43
26	32	6	183	191	25	353	361	44
33	40	7	192	199	26	362	370	45
41	47	8	200	208	27	371	379	46
48	55	9	209	217	28	380	388	47
56	63	10	218	226	29	389	397	48
64	71	11	227	235	30	398	406	49
72	79	12	236	244	31	407	415	50

80	88	13	245	253	32	416	424	51
89	96	14	254	262	33	425	434	52
97	104	15	263	270	34	435	443	53
105	113	16	271	279	35	444	452	54
114	121	17	280	288	36	453	461	55
122	130	18	289	297	37	462	470	56
131	138	19	298	306	38	471	479	57
139	147	20	307	315	39	480	489	58
148	156	21	316	324	40	490	498	59
157	164	22	325	333	41	499	500	60
165	173	23	334	343	42			

2. The Department shall place a surface water or segment on the 303(d) List, following subsection (B) without the required number of samples or numeric water quality standard exceedances under subsection (D)(1), if either the following conditions occur:
   a. More than one temporally independent sample in any consecutive three-year period exceeds the surface water quality standard in:
      i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and the acute water quality standards in R18-11-112;
      ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1; or
      iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A).
   b. More than one exceedance of an annual mean, 90th percentile, aquatic and wildlife chronic water quality standard, or a bacteria 30-day geometric mean water quality standard occurs, as specified in R18-11-109, R18-11-110, R18-11-112, or 18 A.A.C. 11, Article 1, Appendix A, Table 2.
3. Narrative water quality standards exceedances. The Department shall place a surface water or segment on the Planning List if the listing requirements are met under A.R.S. § 49-232(F).

E. Removing a surface water, segment, or pollutant from the Planning List or the 303(d) List.
1. Planning List. The Department shall remove a surface water, segment, or pollutant from the Planning List when:
   a. Monitoring activities indicate that:
      i. There is sufficient credible data to determine that the surface water or segment is impaired under subsection (D), in which case the Department shall place the surface water or segment on the 303(d) List. This includes surface waters with an EPA approved TMDL when the Department determines that the TMDL strategy is insufficient for the surface water or segment to attain water quality standards; or
      ii. There is sufficient credible data to determine that the surface water or segment is attaining all designated uses and standards.
   b. All pollutants for the surface water or segment are delisted.
2. 303(d) List. The Department shall:
   a. Remove a pollutant from a surface water or segment from the 303(d) List based on one or more of the following criteria:
      i. The Department developed, and EPA approved, a TMDL for the pollutant;
      ii. The data used for previously listing the surface water or segment under R18-11-605(D) is superseded by more recent credible and scientifically defensible data meeting the requirements of R18-11-602, showing that the surface water or segment meets the applicable numeric or narrative surface water quality standard. When evaluating data to remove a pollutant from the 303(d) List, the monitoring entity shall collect the more recent data under similar hydrologic or climatic conditions as occurred when the samples were taken that indicated impairment, if those conditions still exist;
      iii. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act;
      iv. The surface water or segment no longer meets the criteria for impairment for the specific narrative water quality standard based on a change in narrative water quality standard implementation procedures;
      v. A re-evaluation of the data indicate that the surface water or segment does not meet the criteria for impairment because of a deficiency in the original analysis; or
      vi. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
   b. Remove a surface water, segment, or pollutant from the 303(d) List, based on criteria that are no more stringent than the listing criteria under subsection (D);
   c. Remove a surface water or segment from the 303(d) List if all pollutants for the surface water or segment are removed from the list;
   d. Remove a surface water, segment, or pollutant, from the 303(d) List and place it on the Planning List, if:
      i. The surface water, segment or pollutant was on the 1998 303(d) List and the dataset used in the original listing does not meet the credible data requirements under R18-11-602, or contains insufficient samples to meet the data requirements under subsection (D); or

ii. The monitoring data indicate that the impairment is due to pollution, but not a pollutant.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-606. TMDL Priority Criteria for 303(d) Listed Surface Waters or Segments

A. In addition to the factors specified in A.R.S. § 49-233(C), the Department shall consider the following when prioritizing an impaired water for development of TMDLs:
1. A change in a water quality standard;
2. The date the surface water or segment was added to the 303(d) List;
3. The presence in a surface water or segment of species listed as threatened or endangered under section 4 of the Endangered Species Act;
4. The complexity of the TMDL;
5. State, federal, and tribal policies and priorities; and
6. The efficiencies of coordinating TMDL development with the Department's surface water monitoring program, the watershed monitoring rotation, or with remedial programs.

B. The Department shall prioritize an impaired surface water or segment for TMDL development based on the factors specified in A.R.S. § 49-233(C) and subsection (A) as follows:
1. Consider an impaired surface water or segment a high priority if:
   a. The listed pollutant poses a substantial threat to the health and safety of humans, aquatic life, or wildlife based on:
      i. The number and type of designated uses impaired;
      ii. The type and extent of risk from the impairment to human health, aquatic life, or wildlife;
      iii. The pollutant causing the impairment, or
      iv. The severity, magnitude, and duration the surface water quality standard was exceeded;
   b. A new or modified individual NPDES or AZPDES permit is sought for a new or modified discharge to the impaired water;
   c. The listed surface water or segment is listed as a unique water in A.A.C. R18-11-112 or is part of an area classified as a "wilderness area," "wild and scenic river," or other federal or state special protection of the water resource;
   d. The listed surface water or segment contains a species listed as threatened or endangered under the federal Endangered Species Act and the presence of the pollutant in the surface water or segment is likely to jeopardize the listed species;
   e. A delay in conducting the TMDL could jeopardize the Department's ability to gather sufficient credible data necessary to develop the TMDL;
   f. There is significant public interest and support for the development of a TMDL;
   g. The surface water or segment has important recreational and economic significance to the public; or
   h. The pollutant is listed for eight years or more.
2. Consider an impaired surface water or segment a medium priority if:
   a. The surface water or segment fails to meet more than one designated use;
   b. The pollutant exceeds more than one surface water quality standard;
   c. A surface water quality standard exceedance is correlated to seasonal conditions caused by natural events, such as storms, weather patterns, or lake turnover;
   d. It will take more than two years for proposed actions in the watershed to result in the surface water attaining applicable water quality standards;
   e. The type of pollutant and other factors relating to the surface water or segment make the TMDL complex; or
   f. The administrative needs of the Department, including TMDL schedule commitments with EPA, permitting requirements, or basin priorities that require completion of the TMDL.
3. Consider an impaired surface water or segment a low priority if:
   a. The Department has formally submitted a proposal to delist the surface water, segment, or pollutant to EPA based on R18-11-605(E)(2). If the Department makes the submission outside the listing process cycle, the change in priority ranking will not be effective until EPA approves the submittal;
   b. The Department has modified, or formally proposed for modification, the designated use or applicable surface water quality standard, resulting in an impaired water no longer being impaired, but the modification has not been approved by EPA;
   c. The surface water or segment is expected to attain surface water quality standards due to any of the following:
      i. Recently instituted treatment levels or best management practices in the drainage area,
      ii. Discharges or activities related to the impairment have ceased, or
      iii. Actions have been taken and controls are in place or scheduled for implementation that will likely to bring the surface water back into compliance;
   d. The surface water or segment is ephemeral or intermittent. The Department shall re-prioritize the surface water or segment if the presence of the pollutant in the listed water poses a threat to the health and safety of humans, aquatic life, or wildlife using the water, or the pollutant is contributing to the impairment of a downstream perennial surface water or segment;
   e. The pollutant poses a low ecological and human health risk;
   f. Insufficient data exist to determine the source of the pollutant load;
   g. The uncertainty of timely coordination with national and international entities concerning international waters;
   h. Naturally occurring conditions are a major contributor to the impairment; and
   i. No documentation or effective analytical tools exist to develop a TMDL for the surface water or segment with reasonable accuracy.

C. The Department will target surface waters with high priority factors in subsections (B)(1)(a) through (B)(1)(d) for initiation of TMDLs within two years following EPA approval of the 303(d) List.

D. The Department may shift priority ranking of a surface water or segment for any of the following reasons:
1. A change in federal, state, or tribal policies or priorities that affect resources to complete a TMDL;
2. Resource efficiencies for coordinating TMDL development with other monitoring activities, including the Department's ambient monitoring program that monitors watersheds on a five-year rotational basis;
3. Resource efficiencies for coordinating TMDL development with Department remedial or compliance programs;
4. New information is obtained that will revise whether the surface water or segment is a high priority based on factors in subsection (B); and
5. Reduction or increase in staff or budget involved in the TMDL development.

E. The Department may complete a TMDL initiated before July 12, 2002 for a surface water or segment that was listed as impaired on the 1998 303(d) List but does not qualify for listing under the criteria in R18-11-605, if:
1. The TMDL investigation establishes that the water quality standard is not being met and the allocation of loads is expected to bring the surface water into compliance with standards,
2. The Department estimates that more than 50 percent of the cost of completing the TMDL has been spent,
3. There is community involvement and interest in completing the TMDL, or
4. The TMDL is included within an EPA-approved state workplan initiated before July 12, 2002.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through regulating the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

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

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and not more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Use any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department shall establish by rule a fee as a condition of licensure, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, articles 8 and 9 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203 except that state agencies are exempt from paying the fees.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.

2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:

(a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.

(b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.

(c) Maintenance but not construction of drainage ditches.

(d) Construction and maintenance of irrigation ditches.

(e) Maintenance of structures such as dams, dikes and levees.

4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.

5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.

6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.

8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.

9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection B shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State agencies are exempt from all fees imposed pursuant to this chapter.

10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before adopting these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.

13. Consider evidence gathered by the Arizona navigable stream adjudication commission established by section 37-1121 when deciding whether a permit is required to discharge pursuant to article 3.1 of this chapter.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant to assist the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection B, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 9 of this section.

D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

49-221. Water quality standards in general; protected surface waters list

A. The director shall:

1. Adopt, by rule, water quality standards for all WOTUS and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses. For non-WOTUS protected surface waters, the director shall apply surface water quality standards established as of January 1, 2021, until specifically changed by the director pursuant to paragraph 2 of this subsection. Rules regarding the following shall not be adopted or applied as water quality standards for non-WOTUS protected surface waters:

(a) Antidegradation.

(b) Antidegradation criteria.

(c) Outstanding Arizona waters.

2. Adopt, by rule, water quality standards for non-WOTUS protected surface waters, by December 31, 2022, consistent with paragraph 1 of this subsection and as determined necessary in the rulemaking process. In adopting those standards, the director shall consider the unique characteristics of this state's surface waters and the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

C. In setting standards pursuant to subsection A or B of this section, the director shall consider the following:

1. The protection of the public health and the environment.

2. The uses that have been made, are being made or with reasonable probability may be made of these waters.

3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.

4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.

5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.

6. Any unique physical, biological or chemical properties of the waters.

D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards that the director deems appropriate.

E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards, the director shall consider the following:

1. The protection of public health and the environment.

2. The uses that are being made or may be made of the reclaimed water.

3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration pursuant to title 3, chapter 3, article 4.1 of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

1. "Agricultural water":

(a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.

(b) Includes all of the following:

(i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.

(ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.

2. "Covered activity" means growing, harvesting, packing or holding produce. Covered activity includes processing produce to the extent that the activity is within the meaning of farm as defined in section 3-525.

3. "Harvesting" has the same meaning prescribed in section 3-525.

4. "Holding" has the same meaning prescribed in section 3-525.

5. "Packing" has the same meaning prescribed in section 3-525.

6. "Produce" has the same meaning prescribed in section 3-525.

G. The director shall maintain and publish a protected surface waters list. The department shall publish the initial list on the department's website and in the Arizona administrative register within thirty days after September 29, 2021. Not later than December 31, 2022, the department shall adopt by rule the protected surface waters list, including procedures for determining economic, social and environmental costs and benefits. Publication of the list in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 and may be appealed by any party that provides evidence of an actual adverse effect that the party appealing the decision would suffer as a result of the director's decision. All of the following apply to the protected surface water list:

1. The protected surface waters list shall include:

(a) All WOTUS.

(b) Any perennial, intermittent and ephemeral reaches and any impoundments of the following rivers, not including tributaries or reaches of waters wholly within tribal jurisdiction or reaches of waters outside of the United States:

(i) The Bill Williams river, from the confluence of the Big Sandy and Santa Maria rivers at 113°31'38.617"w, 34°18'22.373"n, to its confluence with the Colorado river at 114°8'9.854"w, 34°18'9.33"n.

(ii) The Colorado river, from the Arizona-Utah border at 111°32'35.741"w, 36°58'51.698"n, to the Arizona-Mexico border at 114°43'12.564"w, 32°43'6.218"n.

(iii) The Gila river, from the Arizona-New Mexico border at 109°2'52.8"w, 32°41'11.2015"n, to the confluence with the Colorado river at 114°33'28.145"w, 32°43'14.408"n.

(iv) The Little Colorado river, from the confluence of the east and west forks of the Little Colorado river at 109°28'7.131"w, 33°59'39.852"n, to its confluence with the Colorado river at 111°49'4.693"w, 36°12'10.243"n.

(v) The Salt river, from the confluence of the Black and White rivers at 110°13'39.5"w, 33°44'6.082"n, to the confluence with the Gila river at 112°18'5.704"w, 33°22'42.978"n.

(vi) The San Pedro river, from the Arizona-Mexico border at 110°9'1.704"w, 31°20'2.387"n, to the confluence with the Gila river at 110°47'0.905"w, 32°59'5.671"n.

(vii) The Santa Cruz river, from its origins in the Canelo Hills of southeastern Arizona at 110°37'3.968"w, 31°27'39.21"n, to its confluence with the Gila river at 111°33'26.02"w, 32°41'39.058"n.

(viii) The Verde river, from Sullivan lake at 112°28'10.588"w, 34°52'11.136"n, to its confluence with the Salt river at 111°39'48.32"w, 33°33'20.538"n.

(c) Any non-WOTUS waters of the state that are added under paragraphs 3 and 4 of this subsection.

2. Notwithstanding paragraph 1 of this subsection, the protected surface waters list shall not contain any of the following non-WOTUS waters:

(a) Canals in the Yuma project and ditches, canals, pipes, impoundments and other facilities that are operated by districts organized under title 48, chapters 18, 19, 20, 21 and 22 and that are not used to directly deliver water for human consumption, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner and operator of the ditch or canal until the owner and operator withdraws its request.

(b) Irrigated areas, including fields flooded for agricultural production.

(c) Ornamental and urban ponds and lakes such as those owned by homeowners' associations and golf courses, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner of the ornamental or urban pond or lake until the owner withdraws its request.

(d) Swimming pools and other bodies of water that are regulated pursuant to section 49-104, subsection B.

(e) Livestock and wildlife water tanks and aquaculture tanks that are not constructed within a protected surface water.

(f) Stormwater control features.

(g) Groundwater recharge, water reuse and wastewater recycling structures, including underground storage facilities and groundwater savings facilities permitted under title 45, chapter 3.1 and detention and infiltration basins, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner of the groundwater recharge, water reuse or wastewater recycling structure until the owner withdraws its request.

(h) Water-filled depressions created as part of mining or construction activities or pits excavated to obtain fill, sand or gravel.

(i) All waste treatment systems components, including constructed wetlands, lagoons and treatment ponds, such as settling or cooling ponds, designed to either convey or retain, concentrate, settle, reduce or remove pollutants, either actively or passively, from wastewater before discharge or to eliminate discharge.

(j) Groundwater.

(k) Ephemeral waters except for those prescribed in paragraph 1, subdivision (b) of this subsection.

(l) Lakes and ponds owned and managed by the United States department of defense and other surface waters located on and that do not leave United States department of defense property, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the United States department of defense until it withdraws its request.

3. Unless listed in paragraph 2 of this subsection, the director shall add the following non-WOTUS surface waters to the protected surface waters list:

(a) All lakes, ponds and reservoirs that are public waters used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water.

(b) Perennial waters or intermittent waters of the state that are used as a drinking water source, including ditches and canals.

(c) Perennial or intermittent tributaries to the Bill Williams river, the Colorado river, the Gila river, the Little Colorado river, the Salt river, the San Pedro river, the Santa Cruz river and the Verde river.

(d) Perennial or intermittent public waters used for recreational or commercial fish consumption.

(e) Perennial or intermittent public waters used for water-based recreation such as swimming, wading, boating and other types of recreation in and on the water.

(f) Perennial or intermittent wetlands adjacent to waters on the protected surface waters list.

(g) Perennial or intermittent waters of the state that cross into another state, the Republic of Mexico or the reservation of a federally recognized tribe.

4. The director may add additional non-WOTUS surface waters to the protected surface waters list if all of the following apply:

(a) The water is not required to be listed under paragraph 1 or 3 of this subsection.

(b) The water is not excluded under paragraph 2 of this subsection.

(c) The economic, environmental and social benefits of adding the water outweigh the economic, environmental and social costs of excluding the water from the list.

5. The director shall remove any erroneously listed, non-WOTUS waters from the protected surface waters list when the water is excluded under paragraph 2 of this subsection and shall not regulate discharges to those waters in the interim.

6. The director shall remove non-WOTUS waters from the protected surface waters list when the water is not required to be listed under paragraph 3 of this subsection and the economic, environmental and social benefits of removing the water outweigh the economic, environmental and social costs of retaining the water on the list.

7. The director, on an emergency basis, may add a water to the protected surface waters list if the director discovers an imminent and substantial danger to public health or welfare or the environment, if the water would otherwise qualify to be added under paragraph 3 of this subsection. Notwithstanding any other law, the emergency addition shall take effect immediately on the director's determination that describes the imminent and substantial danger in writing. Within thirty days after the director's determination, the department shall publish a notice of that determination in the Arizona administrative register and on the department's website. Waters added under this subsection shall be incorporated into the protected surface waters list during the next rulemaking that follows the addition.

49-223. Aquifer water quality standards

A. Primary drinking water maximum contaminant levels established by the administrator before August 13, 1986 are adopted as drinking water aquifer water quality standards. The director may only adopt additional aquifer water quality standards by rule. Within one year after the administrator establishes additional primary drinking water maximum contaminant levels, the director shall open a rule making docket pursuant to section 41-1021 for adoption of those maximum contaminant levels as drinking water aquifer water quality standards. If substantial opposition is demonstrated in the rule making docket regarding a particular constituent, the director may adopt for that constituent the maximum contaminant level as a drinking water aquifer water quality standard upon making a finding that this level is appropriate for adoption in Arizona as an aquifer water quality standard. In making this finding, the director shall consider whether the assumptions about technologies, costs, sampling and analytical methodologies and public health risk reduction used by the administrator in developing and implementing the maximum contaminant level are appropriate for establishing a drinking water aquifer water quality standard. For purposes of this subsection "substantial opposition" means information submitted to the director that explains with reasonable specificity why the maximum contaminant level is not appropriate as an aquifer water quality standard.

B. The director may adopt by rule numeric drinking water aquifer water quality standards for pollutants for which the administrator has not established primary drinking water maximum contaminant levels or for which a maximum contaminant level has been established but the director has determined it to be inappropriate as an aquifer water quality standard pursuant to subsection A of this section. These standards shall be based on the protection of human health. In establishing numeric drinking water aquifer water quality standards, the director shall rely on technical protocols appropriate for the development of aquifer water quality standards and shall base the standards on credible medical and toxicological evidence that has been subjected to peer review.

C. Any person may petition the director to adopt a numeric drinking water aquifer quality standard for any pollutant for which no drinking water aquifer quality standard exists. The director shall grant the petition and institute rule making proceedings adopting a numeric standard as provided under subsection B of this section within one hundred eighty days if the petition shows that the pollutant is a toxic pollutant, that the pollutant has been, or may in the future be, detected in any of the state's drinking water aquifers, and that there exists technical information on which a numeric standard might reasonably be based. Within one year of the commencement of the rule making proceeding, the director shall either adopt a numeric standard or make and publish a finding that, pursuant to subsection B of this section, the development of a numeric standard is not possible. The decision to not adopt a numeric standard shall, for purposes of judicial review, be treated in the same manner as a rule adopted pursuant to title 41, chapter 6.

D. For purposes of assessing compliance with each aquifer water quality standard adopted pursuant to this section, the director shall for purposes of articles 3 and 4 of this chapter, and may for purposes of other provisions of this title, identify sampling and analytical protocols appropriate for detecting and measuring the pollutant in the aquifers in the state.

E. Within one year from the reclassification of an aquifer to a non-drinking water status, pursuant to section 49-224, the director shall adopt water quality standards for that aquifer. For any pollutants which were not the basis for the reclassification, the applicable standard shall be identical with the standard for those pollutants adopted pursuant to subsections A and B of this section. For any pollutants which were the basis for reclassification, the standard shall be sufficient to achieve the purpose for which the aquifer was reclassified but shall minimize unnecessary degradation of the aquifer by taking into consideration the potential long-term uses of the aquifer and the short-term and long-term benefits of the activities resulting in discharges into the aquifer.

F. The director shall adopt water quality standards for an aquifer for which a petition has been submitted pursuant to section 49-224, subsection D sufficient to achieve the non-drinking water use for which that aquifer was classified, taking into consideration the potential long-term uses of that aquifer and the short-term and long-term benefits of the discharging activities creating that aquifer.

G. In any action pursuant to this title, aquifer water quality protection provisions, including monitoring requirements, may be imposed only for pollutants for which aquifer water quality standards have been established that are likely to be present in a discharge. Indicator parameters and quality assurance parameters appropriate for such pollutants also may be specified.

49-224. Aquifer identification, classification and reclassification

A. Not later than June 30, 1987 the director shall, by rule, identify and define the boundaries of all aquifers in this state utilizing, to the maximum extent possible, data available from the department of water resources.

B. All aquifers in this state identified and defined under subsection A of this section and any other aquifers subsequently discovered, identified and defined shall be classified for drinking water protected use unless the classification is changed in the manner provided in subsection C of this section.

C. The director, after consulting with the appropriate groundwater users advisory council established pursuant to title 45, chapter 2, article 2 if the aquifer is in an active management area, and a public hearing held pursuant to section 49-208, may change the classification of an aquifer or part of an aquifer for a protected use other than drinking water on making all of the following findings:

1. The identified aquifer or part of an aquifer is or will be so hydrologically isolated from other aquifers or other parts of the same aquifer that there is no reasonable probability that poorer quality water from the identified aquifer or part of an aquifer will cause or contribute to a violation of aquifer water quality standards in other aquifers or parts of the same aquifer.

2. Water from the identified aquifer or part of an aquifer is not being used as drinking water.

3. The short-term and long-term benefits to the public that would result from the degradation of the quality of the water in the identified aquifer or part of an aquifer below standards established pursuant to section 49-223, subsections A and B would significantly outweigh the short-term and long-term costs to the public of such degradation. Benefits and costs to be considered include economic, social and environmental.

D. Owners or operators of facilities whose discharges are solely responsible for creating an aquifer may petition the director for a classification of the aquifer for a non-drinking water use. The director may, by rule, classify that aquifer for a non-drinking water use upon making the findings prescribed in subsection C, paragraphs 1 and 2 of this section.

E. The director shall provide for public participation in proceedings under this section pursuant to section 49-208 and shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification.

Gmail

Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

ADEQ - AWQS Rulemaking - Inquiry Response

Jon Rezabek <rezabek.jon@azdeq.gov> Tue, May 6, 2025 at 6:33 AM
To: GRRC - ADOA <grrc@azdoa.gov>, Simon Larscheidt <simon.larscheidt@azdoa.gov>, Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

GRRC,

Concerning Items D1 through 5 in the Council Meeting agenda for 5/6/25, Council Member Thorwald had a number of inquiries on these items during the 4/29/25 Study Session.
ADEQ has developed the following response to one of the inquiries, which was, roughly:

Q: *How does a facility that is or is planning on potentially "discharging" a pollutant know whether their activity is subject to Aquifer Protection Program (APP) regulation?*

A: An APP applicability analysis starts with the assumption that "*...any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director ... [u]nless otherwise provided by this article..." --* A.R.S. § 49-241(A).

From that assumption, a potential discharging activity may fall out of APP applicability based on an examination of the definitions of the operative words in A.R.S. § 49-241(A), including:

- "Discharge" is defined at A.R.S. § 49-201(12) as, *"...[f]or purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.*

- "Facility" is defined at A.R.S. § 49-201(19) as,*"...any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge."*

- "Pollutant" is defined at A.R.S. § 49-201(35) as,*"...fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances."*

Furthermore, analysis of A.R.S. § 49-241, Subsection B may be necessary to determine applicability of the activity. In summary, this subsection delineates:

- a list of 10 categorical discharging facilities, automatically required to attain APP permit coverage to operate, unless
- the activity falls under one of the statutory exemptions to APP at A.R.S. § 49-250(B), or
- the director determines that a facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone.

  "[u]nless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article (1) Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons. (2) Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations. (3) Injection wells. (4) Land treatment facilities. (5) Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine. (6) Mine tailings piles and ponds. (7) Mine leaching operations. (8) Underground water storage facilities. (9) Sewage treatment facilities, including on-site wastewater treatment facilities. (10) Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage."

Additionally, A.R.S. 49-250(A) allows the the director to exempt classes or categories of facilities from APP requirements

by rule under certain circumstances. This list of "Class Exemptions" can be found at A.A.C. R18-9-103.

Besides undergoing the above analysis, which ADEQ welcomes preliminary questions on, the rule allows for a potential applicant to formally request a "Determination of Applicability" (DOA) under A.A.C. R18-9-106. An ADEQ APP - DOA form is attached to this email for review.

Thank you,

Jon Rezabek
Legal Specialist
Arizona Department of Environmental Quality

1110 W. Washington St., #160
Phoenix, AZ 85007

O: 602-771-8219
AZDEQ.gov

DOA Review Request Form_05 2024.doc
241K

AQUIFER PROTECTION PERMIT DETERMINATION OF APPLICABILITY (DOA)

INSTRUCTIONS

This form enables the staff of the ADEQ Groundwater Protection Value Stream to determine the applicability of A.R.S. §§ 49-241 through 49-252 to an operation or an activity that may result in a discharge regulated under Articles 1, 2, and 3 of the Arizona Administrative Code (A.A.C.). Please answer all questions and where applicable, provide sufficient detail for the conceptual or existing facility or activity to explain your answers. Attach additional reference sheets along with any design plans, site plans, maps, etc., that may assist us in this review.

GENERAL APPLICATION PROCESS

1) Applicant submits the DOA application including any attachments.
2) Applicant satisfies any deficiencies identified during the review process.
3) ADEQ makes a Determination of Applicability.
4) ADEQ sends the final bill.
5) Applicant pays the bill.
6) The project manager signs the Determination of Applicability.
7) ADEQ mails the Determination of Applicability.

FEES

The Department shall assess and collect an hourly rate fee for the number of review hours required to provide a water quality protection service, billed monthly and up to the maximum fee. A.A.C. R18-14-102 &103. Fee rates and maximum fees are available at: https://azdeq.gov/GroundwaterIndPermitsFees

APPLICANT

The DOA application form must be signed by the applicant; i.e. a "person who is engaging or who proposes to engage in the operation or activity" (A.A.C. R18-9-106(B)(2)). ADEQ will not accept a DOA application form signed by a third party, such as the client's representative or consultant.

HOW LONG DOES THE APPLICATION PROCESS TAKE?

The time frame specified by A.A.C. R18-9-106 is 45 days.

WITHDRAWING YOUR APPLICATION

An application may be withdrawn by the applicant at any time during the application process in accordance with A.A.C. R18-1-517. You may withdraw your application by submitting a written request to the reviewer assigned to your project. A final bill will be assessed at the time of withdrawal.

WHERE DO I SUBMIT MY APPLICATION?

Submit your DOA application to:

Arizona Department of Environmental Quality
Water Quality Division
Groundwater Protection and Reuse Section
1110 West Washington Street
Phoenix, AZ 85007

WHERE DO I GET HELP?

Program guidance can be found on our website at: http://www.azdeq.gov/environ/water/permits/app.html. A copy of the rules and statutes relating to the DOA can also be found on this website. It is strongly recommended that you review the applicable rules and statutes to ensure that you provide a complete and accurate application. ADEQ recommends scheduling a pre-application meeting to go over the various details of the program (The Project Manager's first hour of the pre-application meeting is free). During the application process, you are encouraged to communicate with the project team to resolve any issues that may arise during the process.

2 Facility Name [A.A.C. R18-9-106.B.1]

Facility Name _____

☐ New ☐ Currently Operating

3 Facility Address and Location Information [A.A.C. R18-9-106.B.1]

Address _____

_____

City _____ State _____ Zip _____

County _____

Township _____ Range _____ Section _____ Qtr1 _____ Qtr2 _____ Qtr3 _____

Latitude _____ "N Longitude _____ " "W ☐ NAD27 ☐ NAD83

GENERAL INFORMATION

1 Applicant – Person signing the application [A.A.C. R18-9-106.B.2]

(Check One) ☐ Owner ☐ Operator ☐ Owner and Operator Email _____

Name _____ Phone _____

Title _____ Business _____

Mailing Address _____ City _____ State _____ Zip _____

4 Certification Statement [A.A.C. R18-9-A201(B)(7)]

I certify under penalty of law that this Aquifer Protection Permit application and all attachments were prepared under my direction or authorization and all information is, to the best of my knowledge, true, accurate and complete. I also certify that the APP discharging facilities described in this form is or will be designed, constructed, operated, and/or enclosed in accordance with the terms and conditions the Aquifer Protection Permit and applicable requirements of Arizona Revised Statutes Title 49, Chapter 2, and Arizona Administrative Code Title 18, Chapter 9 regarding aquifer protection permits. I am aware that there are significant penalties for submitting false information, including permit revocation as well as the possibility of fine and imprisonment for knowing violations.

Print Name _____

_____ _____

Signature Date

Pursuant to A.R.S. § 41-1030:

(1) ADEQ shall not base a licensing decision, in whole or in part, on a requirement or condition not specifically authorized by statute or rule. General authority in a statute does not authorize a requirement or condition unless a rule is made pursuant to it that specifically authorizes the requirement or condition.

(2) Prohibited licensing decisions may be challenged in a private civil action. Relief may be awarded to the prevailing party against ADEQ, including reasonable attorney fees, damages, and all fees associated with the license application.

(3) ADEQ employees may not intentionally or knowingly violate the requirement for specific licensing

The purpose of a Determination of Applicability application review is to evaluate if there are discharging facilities or any discharging activities regulated by the Aquifer Protection Permit requirements. The evaluation of the conceptual or existing facility/activity includes whether there are exemptions from the APP requirements or if there is a General APP that may be applicable. Please provide the following information:

1. List any potential categorical discharging facilities (see definition provided in the attachment to this form). Categorical facilities include surface impoundments, solid waste disposal facilities, sewage treatment facilities, and others.
    a. For each facility listed, indicate whether it has operated in the past, is currently operating, is not yet constructed, or is constructed but not yet operating.

2. List any activity that could potentially be considered a discharge (see definition provided in the attachment to this form). Examples of discharge include wastewater disposal on the ground surface, placement of non-inert material on the ground surface, or other activities that place pollutants on the ground surface in a manner that there is a reasonable probability that the pollutant will reach an aquifer.

a. For each activity listed, indicate whether it has occurred in the past, is currently occurring, or has not yet occurred.

3. Describe the potential categorical discharging facility and/or discharging activity.

4. Provide a site diagram that includes the potential categorical discharging facility and/or discharging activity. Include a North arrow and scale, and label all potential discharging facilities and discharge locations.

5. Provide a process flow diagram that shows the process that produces the potential discharge or materials that go to a discharging facility and/or discharging activity.

6. Provide a description of any exemption or general permit that you think may apply to the potential categorical discharging facility and/or activity. Include any documentation to support this conclusion, for example, laboratory data showing a material is inert, design documentation showing that a structure meets the tank exemption (see Additional Information Related to Tanks and Sumps), closure documentation (see Additional Information Related to Closed Facilities), etc. "Exemptions" and "General Permits" sections at the end of this document may be helpful in providing documentation that an exemption or general permit criteria are met.

7. List any environmental permits held for the operation, facility or activity. Provide the permit number and the name of the issuing entity.

ADDITIONAL INFORMATION RELATED TO TANKS AND SUMPS

a. Is the structure stationary?
b. Is the structure constructed of material compatible with the anticipated materials to be contained?
c. Is the structure constructed of concrete, steel, plastic, fiberglass or other non-earthen material?
d. Is the structure constructed of material that is resistant to wear caused by any equipment that will be placed in or enter the structure for purposes of repair or cleanout?
e. Does the structure provide substantial structural support?
f. Are all joints sealed and maintained so as not to leak?
g. Is the structure capable of fully containing the material that is to be held without overflow?

ADDITIONAL INFORMATION RELATED TO CLOSED FACILITIES

List each closed facility in the format provided (Attachment 1) and provide the following information in the "Justification/Documentation" section:

- all inflows and outflows to the facility
- the source of inflows and outflows (include a process flow diagram)
- dates discharge started and ended
- discharge description, characterization
- discharge location, volumes, frequency
- method of transfer into and out of facility
- date ADEQ approved clean closure of the facility
- description of any remedial or reclamation activity/action

For each closed facility listed in Attachment 1, indicate in the "Statute/Rule/Policy" section, which of the following criteria apply. Attach additional sheets and references as needed.

- Facility ceased operation before Jan. 1, 1986 (A.R.S. 49-201.7)
- As of August 13, 1986, facility was not engaged in any activity for which the facility was designed and that was previously operated with no intent to resume operation (A.R.S. 49-201.7)
- Facility's post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed (A.R.S. 49-201.7)
- Facility had new installations or modifications after January 1, 1986 to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sump and diversions (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications primary purpose is to manage, treat, or contain surface or subsurface flows (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications are NOT used to produce a marketed commodity (Substantive Policy Statement 3013.000)

ATTACHMENT 1			
SUMMARY OF CLOSED FACILITIES AND JUSTIFICATION			
Closed Facility	Date Closed	Statute/Rule/Policy	Justification/Documentation

DEFINITIONS

AQUIFER – (A.R.S. §49-201) means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.

AQUIFER PROTECTION PERMIT - means an individual or general permit issued under A.R.S. §§ 49-203, 49-241 through 252, and A.A.C. Title 18 Chapter 9, Articles 1, 2 and 3.

CATEGORICAL DISCHARGING FACILITY – means (A.R.S. §49-241.B)
1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
3. Injection wells.
4. Land treatment facilities.
5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
6. Mine tailings piles and ponds.
7. Mine leaching operations.
8. Underground water storage facilities.
9. Sewage treatment facilities, including on-site wastewater treatment facilities.
10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

CLOSED FACILITY – means (A.R.S. §49-201.7):

(a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation as provided by A.R.S. § 49-201.

(b) A facility that has been approved as a clean closure by the director as provided by A.R.S. § 49-201.

(c) A facility at which any post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed as provided by A.R.S. § 49-201.

(d) Any facility designed and operated to manage, treat or contain surface or subsurface flows at or from a closed facility (as defined in A.R.S. 49-201(7)(a)-(c)), to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sumps and diversions, even if such facilities were installed or modified after January 1, 1986, so long as the facility's primary purpose is to manage, treat, or contain surface or subsurface or subsurface flows and not for the production of a marketed commodity.

DISCHARGE – (A.R.S. §49-201) means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the Aquifer Protection Permit program prescribed by Title 49, Article 3, Chapter 2 of the Arizona Revised Statutes, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

DRYWELL - A.R.S. §49-331) means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended.

FACILITY – (A.R.S. §49-201) means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

INERT MATERIAL – (A.R.S. §49-201) means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

POLLUTANT - (A.R.S. §49-201) means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

SEWAGE TREATMENT FACILITY – (A.A.C. R18-9-101) means a plant or system for sewage treatment and disposal, except an on-site wastewater treatment facility, that consists of treatment works, disposal works, and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices.

SURFACE IMPOUNDMENT - (A.A.C. R18-9-101) means a pit, pond or lagoon, having a surface dimension that is equal to or greater than its depth, which is used for the storage, holding, settling, treatment or discharge of liquid pollutants or pollutants containing free liquids.

TANK – (A.R.S. §49-201) means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.

EXEMPTIONS

EXEMPTIONS – A.R.S. §49-250B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.
2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.
3. The noncommercial use of consumer products generally available to and used by the public.
4. Ponds used for watering livestock and wildlife.
5. Mining overburden returned to the excavation site including any common material which has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.
6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.
7. Discharge to a community sewer system.
8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.
9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.
10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.
11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.
12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.
13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.
14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.
15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.
16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.
17. Solid waste and special waste facilities when rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.
18. Facilities used in:
    (a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
    (b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.
    (c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions which have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.
20. Storage, treatment or disposal of inert material.
21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.
22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.
23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:
    (a) Fire fighting system testing and maintenance.
    (b) Potable water sources, including waterline flushings.
    (c) Irrigation drainage and lawn watering.
    (d) Routine external building wash down without detergents.
    (e) Pavement wash water where no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.
    (f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.
    (g) Foundation or footing drains in which flows are not contaminated with process materials.
    (h) Occupational safety and health administration or mining safety and health administration safety equipment.
24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.
25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply

Articles 1, 2, and 3 do not apply to:

1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

R18-9-103. Class Exemptions

Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94-580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10.

GENERAL PERMITS

General Aquifer Protection Permits (GPs) are permits by rule or statute. The rules are extensive and can be accessed on the Secretary of State's website at: http://www.azsos.gov/public_services/Title_18/18-09.htm Specific citations for general permits by rule are: Type 1: A.A.C. R18-9-B301, Type 2: A.A.C. R18-9-C301, Type 3: A.A.C. R18-9-D301, Type 4: A.A.C. R18-9-E301

The statutory general permits are:
49-245.01. Storm water general permit
A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.
2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water
A. A general permit is issued for the following discharges:
1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The vadose zone injection wells are registered pursuant to section 49-332.
(b) The discharge occurs only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration made to subdivision (a) of this paragraph.
(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.
(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.
(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.
(b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.
(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.

3. Point source discharges to waters of the United States from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit.
(b) The discharges occur only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

AQUIFER PROTECTION PERMIT DETERMINATION OF APPLICABILITY (DOA)

INSTRUCTIONS

This form enables the staff of the ADEQ Groundwater Protection Value Stream to determine the applicability of A.R.S. §§ 49-241 through 49-252 to an operation or an activity that may result in a discharge regulated under Articles 1, 2, and 3 of the Arizona Administrative Code (A.A.C.). Please answer all questions and where applicable, provide sufficient detail for the conceptual or existing facility or activity to explain your answers. Attach additional reference sheets along with any design plans, site plans, maps, etc., that may assist us in this review.

GENERAL APPLICATION PROCESS

1) Applicant submits the DOA application including any attachments.
2) Applicant satisfies any deficiencies identified during the review process.
3) ADEQ makes a Determination of Applicability.
4) ADEQ sends the final bill.
5) Applicant pays the bill.
6) The project manager signs the Determination of Applicability.
7) ADEQ mails the Determination of Applicability.

FEES

The Department shall assess and collect an hourly rate fee for the number of review hours required to provide a water quality protection service, billed monthly and up to the maximum fee. A.A.C. R18-14-102 &103. Fee rates and maximum fees are available at: https://azdeq.gov/GroundwaterIndPermitsFees

APPLICANT

The DOA application form must be signed by the applicant; i.e. a "person who is engaging or who proposes to engage in the operation or activity" (A.A.C. R18-9-106(B)(2)). ADEQ will not accept a DOA application form signed by a third party, such as the client's representative or consultant.

HOW LONG DOES THE APPLICATION PROCESS TAKE?

The time frame specified by A.A.C. R18-9-106 is 45 days.

WITHDRAWING YOUR APPLICATION

An application may be withdrawn by the applicant at any time during the application process in accordance with A.A.C. R18-1-517. You may withdraw your application by submitting a written request to the reviewer assigned to your project. A final bill will be assessed at the time of withdrawal.

WHERE DO I SUBMIT MY APPLICATION?

Submit your DOA application to:

Arizona Department of Environmental Quality
Water Quality Division
Groundwater Protection and Reuse Section
1110 West Washington Street
Phoenix, AZ 85007

WHERE DO I GET HELP?

Program guidance can be found on our website at: http://www.azdeq.gov/environ/water/permits/app.html. A copy of the rules and statutes relating to the DOA can also be found on this website. It is strongly recommended that you review the applicable rules and statutes to ensure that you provide a complete and accurate application. ADEQ recommends scheduling a pre-application meeting to go over the various details of the program (The Project Manager's first hour of the pre-application meeting is free). During the application process, you are encouraged to communicate with the project team to resolve any issues that may arise during the process.

2 Facility Name [A.A.C. R18-9-106.B.1]

Facility Name _____

☐ New ☐ Currently Operating

3 Facility Address and Location Information [A.A.C. R18-9-106.B.1]

Address _____

_____

City _____ State _____ Zip _____

County _____

Township _____ Range _____ Section _____ Qtr1 _____ Qtr2 _____ Qtr3 _____

Latitude _____ "N Longitude _____ " "W ☐ NAD27 ☐ NAD83

GENERAL INFORMATION

1 Applicant – Person signing the application [A.A.C. R18-9-106.B.2]

(Check One) ☐ Owner ☐ Operator ☐ Owner and Operator Email _____

Name _____ Phone _____

Title _____ Business _____

Mailing Address _____ City _____ State _____ Zip _____

4 Certification Statement [A.A.C. R18-9-A201(B)(7)]

I certify under penalty of law that this Aquifer Protection Permit application and all attachments were prepared under my direction or authorization and all information is, to the best of my knowledge, true, accurate and complete. I also certify that the APP discharging facilities described in this form is or will be designed, constructed, operated, and/or enclosed in accordance with the terms and conditions the Aquifer Protection Permit and applicable requirements of Arizona Revised Statutes Title 49, Chapter 2, and Arizona Administrative Code Title 18, Chapter 9 regarding aquifer protection permits. I am aware that there are significant penalties for submitting false information, including permit revocation as well as the possibility of fine and imprisonment for knowing violations.

Print Name _____

_____ _____

Signature Date

Pursuant to A.R.S. § 41-1030:

(1) ADEQ shall not base a licensing decision, in whole or in part, on a requirement or condition not specifically authorized by statute or rule. General authority in a statute does not authorize a requirement or condition unless a rule is made pursuant to it that specifically authorizes the requirement or condition.

(2) Prohibited licensing decisions may be challenged in a private civil action. Relief may be awarded to the prevailing party against ADEQ, including reasonable attorney fees, damages, and all fees associated with the license application.

(3) ADEQ employees may not intentionally or knowingly violate the requirement for specific licensing

The purpose of a Determination of Applicability application review is to evaluate if there are discharging facilities or any discharging activities regulated by the Aquifer Protection Permit requirements. The evaluation of the conceptual or existing facility/activity includes whether there are exemptions from the APP requirements or if there is a General APP that may be applicable. Please provide the following information:

1. List any potential categorical discharging facilities (see definition provided in the attachment to this form). Categorical facilities include surface impoundments, solid waste disposal facilities, sewage treatment facilities, and others.
    a. For each facility listed, indicate whether it has operated in the past, is currently operating, is not yet constructed, or is constructed but not yet operating.

2. List any activity that could potentially be considered a discharge (see definition provided in the attachment to this form). Examples of discharge include wastewater disposal on the ground surface, placement of non-inert material on the ground surface, or other activities that place pollutants on the ground surface in a manner that there is a reasonable probability that the pollutant will reach an aquifer.

a. For each activity listed, indicate whether it has occurred in the past, is currently occurring, or has not yet occurred.

3. Describe the potential categorical discharging facility and/or discharging activity.

4. Provide a site diagram that includes the potential categorical discharging facility and/or discharging activity. Include a North arrow and scale, and label all potential discharging facilities and discharge locations.

5. Provide a process flow diagram that shows the process that produces the potential discharge or materials that go to a discharging facility and/or discharging activity.

6. Provide a description of any exemption or general permit that you think may apply to the potential categorical discharging facility and/or activity. Include any documentation to support this conclusion, for example, laboratory data showing a material is inert, design documentation showing that a structure meets the tank exemption (see Additional Information Related to Tanks and Sumps), closure documentation (see Additional Information Related to Closed Facilities), etc. "Exemptions" and "General Permits" sections at the end of this document may be helpful in providing documentation that an exemption or general permit criteria are met.

7. List any environmental permits held for the operation, facility or activity. Provide the permit number and the name of the issuing entity.

ADDITIONAL INFORMATION RELATED TO TANKS AND SUMPS

a. Is the structure stationary?
b. Is the structure constructed of material compatible with the anticipated materials to be contained?
c. Is the structure constructed of concrete, steel, plastic, fiberglass or other non-earthen material?
d. Is the structure constructed of material that is resistant to wear caused by any equipment that will be placed in or enter the structure for purposes of repair or cleanout?
e. Does the structure provide substantial structural support?
f. Are all joints sealed and maintained so as not to leak?
g. Is the structure capable of fully containing the material that is to be held without overflow?

ADDITIONAL INFORMATION RELATED TO CLOSED FACILITIES

List each closed facility in the format provided (Attachment 1) and provide the following information in the "Justification/Documentation" section:

- all inflows and outflows to the facility
- the source of inflows and outflows (include a process flow diagram)
- dates discharge started and ended
- discharge description, characterization
- discharge location, volumes, frequency
- method of transfer into and out of facility
- date ADEQ approved clean closure of the facility
- description of any remedial or reclamation activity/action

For each closed facility listed in Attachment 1, indicate in the "Statute/Rule/Policy" section, which of the following criteria apply. Attach additional sheets and references as needed.

- Facility ceased operation before Jan. 1, 1986 (A.R.S. 49-201.7)
- As of August 13, 1986, facility was not engaged in any activity for which the facility was designed and that was previously operated with no intent to resume operation (A.R.S. 49-201.7)
- Facility's post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed (A.R.S. 49-201.7)
- Facility had new installations or modifications after January 1, 1986 to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sump and diversions (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications primary purpose is to manage, treat, or contain surface or subsurface flows (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications are NOT used to produce a marketed commodity (Substantive Policy Statement 3013.000)

ATTACHMENT 1			
SUMMARY OF CLOSED FACILITIES AND JUSTIFICATION			
Closed Facility	Date Closed	Statute/Rule/Policy	Justification/Documentation

DEFINITIONS

AQUIFER – (A.R.S. §49-201) means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.

AQUIFER PROTECTION PERMIT - means an individual or general permit issued under A.R.S. §§ 49-203, 49-241 through 252, and A.A.C. Title 18 Chapter 9, Articles 1, 2 and 3.

CATEGORICAL DISCHARGING FACILITY – means (A.R.S. §49-241.B)
1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
3. Injection wells.
4. Land treatment facilities.
5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
6. Mine tailings piles and ponds.
7. Mine leaching operations.
8. Underground water storage facilities.
9. Sewage treatment facilities, including on-site wastewater treatment facilities.
10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

CLOSED FACILITY – means (A.R.S. §49-201.7):

(a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation as provided by A.R.S. § 49-201.

(b) A facility that has been approved as a clean closure by the director as provided by A.R.S. § 49-201.

(c) A facility at which any post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed as provided by A.R.S. § 49-201.

(d) Any facility designed and operated to manage, treat or contain surface or subsurface flows at or from a closed facility (as defined in A.R.S. 49-201(7)(a)-(c)), to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sumps and diversions, even if such facilities were installed or modified after January 1, 1986, so long as the facility's primary purpose is to manage, treat, or contain surface or subsurface or subsurface flows and not for the production of a marketed commodity.

DISCHARGE – (A.R.S. §49-201) means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the Aquifer Protection Permit program prescribed by Title 49, Article 3, Chapter 2 of the Arizona Revised Statutes, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

DRYWELL - A.R.S. §49-331) means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended.

FACILITY – (A.R.S. §49-201) means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

INERT MATERIAL – (A.R.S. §49-201) means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

POLLUTANT - (A.R.S. §49-201) means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

SEWAGE TREATMENT FACILITY – (A.A.C. R18-9-101) means a plant or system for sewage treatment and disposal, except an on-site wastewater treatment facility, that consists of treatment works, disposal works, and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices.

SURFACE IMPOUNDMENT - (A.A.C. R18-9-101) means a pit, pond or lagoon, having a surface dimension that is equal to or greater than its depth, which is used for the storage, holding, settling, treatment or discharge of liquid pollutants or pollutants containing free liquids.

TANK – (A.R.S. §49-201) means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.

EXEMPTIONS

EXEMPTIONS – A.R.S. §49-250B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.
2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.
3. The noncommercial use of consumer products generally available to and used by the public.
4. Ponds used for watering livestock and wildlife.
5. Mining overburden returned to the excavation site including any common material which has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.
6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.
7. Discharge to a community sewer system.
8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.
9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.
10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.
11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.
12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.
13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.
14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.
15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.
16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.
17. Solid waste and special waste facilities when rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.
18. Facilities used in:
    (a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
    (b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.
    (c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions which have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.
20. Storage, treatment or disposal of inert material.
21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.
22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.
23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:
    (a) Fire fighting system testing and maintenance.
    (b) Potable water sources, including waterline flushings.
    (c) Irrigation drainage and lawn watering.
    (d) Routine external building wash down without detergents.
    (e) Pavement wash water where no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.
    (f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.
    (g) Foundation or footing drains in which flows are not contaminated with process materials.
    (h) Occupational safety and health administration or mining safety and health administration safety equipment.
24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.
25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply

Articles 1, 2, and 3 do not apply to:

1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

R18-9-103. Class Exemptions

Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94-580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10.

GENERAL PERMITS

General Aquifer Protection Permits (GPs) are permits by rule or statute. The rules are extensive and can be accessed on the Secretary of State's website at: http://www.azsos.gov/public_services/Title_18/18-09.htm Specific citations for general permits by rule are: Type 1: A.A.C. R18-9-B301, Type 2: A.A.C. R18-9-C301, Type 3: A.A.C. R18-9-D301, Type 4: A.A.C. R18-9-E301

The statutory general permits are:
49-245.01. Storm water general permit
A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.
2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water
A. A general permit is issued for the following discharges:
1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The vadose zone injection wells are registered pursuant to section 49-332.
(b) The discharge occurs only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration made to subdivision (a) of this paragraph.
(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.
(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.
(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.
(b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.
(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.

3. Point source discharges to waters of the United States from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit.
(b) The discharges occur only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

D-3.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 11 (Microbiological Contaminants)

Amend: R18-11-406

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: May 6, 2025

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

FROM: Council Staff

DATE: April 22, 2025

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

Amend: R18-11-406

Staff Update:

As a reminder, this rulemaking from the Department of Environmental Quality was tabled at the May 6, 2025 Council meeting in order for the Council to have sufficient time to review supplemental information provided by the Department. This supplemental information was forwarded to Council members and also included as part of the materials for the meeting scheduled June 3, 2025.

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend one (1) rule in Title 18, Chapter 11, regarding Aquifer Water Quality Standards. The Department is proposing to make amendments and additions to Chapter 11 as part of a four part rulemaking package. The Department is required by A.R.S. § 49-223(A) to adopt Aquifer Water Quality Standards (AWQS) with these standards being based on maximum contaminant levels (MCLs). These MCLs are prescribed by the Environmental Protection Agency (EPA) and the Department is required to adopt the same MCLs unless there is a showing of substantial opposition, which allows the Department to prescribe different standards if the Department or stakeholder can show that the EPA levels are not appropriate for Arizona. The Department has

indicated to Department staff that this substantial opposition language is unique to Arizona and the Department believes Arizona to be the only state to have this type of language.

For this part of the rulemaking package, the Department has indicated that they received substantial opposition to the EPA regulations concerning microbiological contaminants. The Department currently uses Total coliform test for microbiological contaminants, which the Department has indicated causes a high number of false positives and requires retestings. The Department believes these false positive retestings result in tens of thousands of dollars spent in unnecessary testing. The Department is proposing to change the testing perimeters to Fecal Coliform or E.Coli. The Department has indicated that Total Coliforms is too general of a term and many are naturally occurring. The Department believes the change will better identify those contaminants that actually pose a risk to human health.

The Department is proposing to amend the rule to reflect this substantial opposition to EPA guidance by stating that a permit holder shall test for microbiological contaminants based on either fecal coliform or E.coli, with the test being determined by the requirements of the Aquifer Protection Permit (APP). The rule is also being amended to decrease the amount of time a permit holder has to conduct a repeat sample if microbiological contaminants are detected.

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

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

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

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

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

The Department indicates it did review three studies relevant to this rulemaking.

- MCL Assumptions Report – Arsenic Aquifer Water Quality Standards Technical Support: The Department indicates that this report was used to review Microbiological Contaminants at 78 Federal Register 10270 in order to inform the Department on the subject matter and its applicability in the AWQS setting, which included looking at technologies, costs, sampling, and analytical methodologies for public health risks reduction.
- Draft Economic Impact Statement for Arsenic Proposed AWQS: The Department indicates that this report informed DEQ on the economic impact of the subject matter of the rulemaking.
- State-Based AWQS Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support: The Department indicates that this study was used to review EPA assumptions regarding the MCL for Microbiological Contaminants and potential alternatives based on medical and toxicological evidence.

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

The Department states that this rulemaking is being taken by the Arizona Department of Environmental Quality (ADEQ) in order to adopt an adjustment to the Safe Drinking Water Act Maximum Contaminant Level (MCL) for Microbiological Contaminants as an Aquifer Water Quality Standard (AWQS) pursuant to Arizona Revised Statutes (A.R.S.) § 49-223. ADEQ has determined that this rulemaking will impact the regulated community, ADEQ customers, the environment, and may impact human health. The Department indicates that the AWQSs are designed to protect the State's aquifers, all of which have been designated for drinking water-protected use (see A.R.S. § 49-224(B)). The Department states the AWQSs are primarily used in ADEQ's Aquifer Protection Permit program (APP), and (to a lesser extent) in some remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the voluntary Remediation Program (VRP), and elsewhere.

The Department states that the full scope of stakeholders who may incur direct impacts from this rulemaking include individual APP Permittees, such as Mines, Industrial Facilities and Wastewater Treatment Plants, as well as rate payers to municipal drinking water systems, ADEQ, the general public and the environment. The Department indicates that while not all costs and benefits are borne evenly, these are the identified groups generally impacted from this Microbiological Contaminants AWQS rulemaking. The Department states that whereas permittees will continue to incur costs (primarily for routine and repeat sampling) to comply with the new/proposed AWQS, these costs are expected to decrease in comparison to the costs of complying with the current AWQS. The Department states that these potential cost savings are attributable to the expectation that the routine sampling and repeat sampling requirements under the new AWQS would result in fewer "false positive" samples, thereby reducing the need for follow-up sampling and unwarranted corrective actions for facilities falsely deemed to be non-compliant. The Department indicates that benefits in the form of cost saving could also accrue to community water system and their clientele due to a reduction of Microbiological Contaminants in the groundwater systems and their clientele due to a reduction in Microbiological Contaminants in the groundwater, under the proposed AWQS. The Department states that as many as 1.8 million Arizonans could be potentially affected in this way.

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

The Department states that the controlling statute A.R.S. § 49-223 does not allow ADEQ to conduct any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking. The Department indicates that it simply requires ADEQ to open a rulemaking docket pursuant to A.R.S. § 41-1021 for adoption of new or adjusted MCL as an AWQS within one year of the MCLs establishment or adjustment.

6. What are the economic impacts on stakeholders?

The Department says that compared to the current AWQS, the indicated changes to the AWQS are intended to maintain the same (or better) levels of protection with respect to human health, while potentially resulting in significant costs saving to impacted permittees (due to the expectations that the modified sampling requirements would substantially reduce the incident of "false positive" results). The Department indicates that, as such, many of the stakeholder categories that would typically be impacted by the costs of the new regulation would actually benefit from the reduced cost burdens under the proposed new AWQS. The Department indicates that from a total of 434 Aquifer Protection permittees in Arizona, it is estimated that 153 to 300 permittees are required to sample for Microbiological Contaminants. This subset of 153 to 300 permittees would be the impacted stakeholder group that would potentially experience cost savings under the proposed AWQS.

The Department believes some new costs will be incurred, despite the fact that some infrastructure for processing permits is already in place. The Department anticipates that hundreds of permits may need to be amended to update monitoring tables that include Microbiological Contaminant indicator parameters. The Department indicates that any additional costs would generally be covered by increased fees paid by permittees.

The Department believes, generally, the state and the constituents of the state benefit from this rulemaking through the protection of the aquifer resources as an asset for drinking water use both now and in the future, pursuant to statutory mandate at A.R.S. § 49-224. The Department states that savings could accrue to the people of the State of Arizona, generally, through aquifers (as a local, convenient and {in the right circumstances} inexpensive sources for drinking water) remaining a viable asset to community water portfolios and individual well users alike. In addition, the Department states that following EPA, quantified benefits are measured in terms of reduced loss of life and costs associated with treatment for disease. Additionally, the Department states that reduced sampling requirements of permittees would potentially result in some loss of business (and associated reductions in employment) for firms engaged in sample analysis. The Department goes on to say the potential loss of direct jobs would in turn (in theory at least) generate additional employment losses through reductions in indirect and induced (secondary) economic activity, and subsequent tax revenues.

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

The Department indicates that there were changes between the proposed draft and final rules before the Council. The changes are summarized below and can be found in full at pg. 25 of the NFR preamble. Council Staff believes the changes are non-substantive and meets the requirements of A.R.S. § 41-1025.

- R18-406(F):

    - Replacing the term “presence or absence” with “detection or non-detection”, this was in response to a public comments in which the Department agreed with stakeholders that detection was a better description of the process.
- R18-11-406(F)(1):
    - Replaced “exceedance” with “detection”, to align with changes made above.
    - Replaced “of” with “for”, for semantic purposes.
- R18-11-406(F)(2)
    - Replaced “exceedance” with “detection”, to align with changes made above.
    - Replaced “of” with “for”, for semantic purposes.

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

The Department indicates it received 8 public comments as it relates to this rulemaking. The Department indicates that they conducted stakeholder meetings on 9/29/22, 6/8/23, 9/11/23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, and 2/20/25. The Department has also indicated to Department staff that stakeholders were given an opportunity to review and comment on the rules after changes were made in response to the public comments. The comments will be summarized below, and the full comments can be found in the materials and on pages 25-32 in the preamble.

Of the 8 comments, 5 came from utilities, 1 came from a citizen, and 2 came from interest groups. 1 comment was in support, 4 comments were seeking clarification on the presence language and what constitutes presence, in which the Department changed to detection, 1 comment was seeking clarification on the steps for substantial opposition, and 2 comments were opposed to not following the EPA standards. Both opposing comments came from interest groups.

The first opposition comment (Comment #5, pg. 27-28) states that they felt the EPA standards were protective and increases the risk to Arizona Communities. The Department responded by saying that while the Department is proposing to use a different standard (total coliform vs. fecal coliform and E.coli), the level of protection will not drop and the non-EPA method will result in cost savings. The Department has indicated that the EPA standard results in high numbers of false positives and additional costs/labor related to retesting. The Department indicated that they used the following standard work to determine that the EPA guidance was not the best choice for Arizona. Additionally, the Department has indicated to Department staff that Fecal Coliform and E.Coli testing will result in the same amount of correct positive tests but will not have the same number of false positives.

The second opposition comment (Comment #6, pg, 29-30) states that the Department should not deviate from EPA standards and states that the deviation increases the risk of exposure and damaging the water system. The Departments replied by stating that they considered the requirements found at 40 CFR 141.63(c) related to total coliform, but ultimately decided against because fecal coliform and E.colu are more appropriate for exacting a threat to human health.

Council staff believes that the department adequately addressed the comments in accordance with A.R.S. § 41-1052(D)(7).

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

This specific rulemaking does not create a permit or a license. The Department's other proposed rulemakings before the Council do require a permit or license and are addressed in those particular rulemakings. As a summary of those permitting requirements, they are specific to AWP programs and it would not be technically feasible to issue a general permit under A.R.S. § 41-1037(A)(3).

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

The Department indicates that these rules are not more stringent than corresponding federal laws.

11. Conclusion

This regular rulemaking by the Department seeks to amend one rule regarding aquifer water quality standards. The Department specifically seeks to amend the rule by changing the current standard for microbiological contaminant testing for Aquifer Protect Permit holders. The Department currently follows the EPA standard for microbiological contaminants by using total coliforms. The Department is normally required to follow EPA standards unless there is substantial opposition. The Department indicated that there has been substantial opposition because of the number of false positives generated by the current testing of total coliforms. The Department has proposed an alternative testing method of fecal coliform and e.coli because this will result in fewer false positives and will not increase the risks for public health. The Department believes this will reduce costs for stakeholders because there will be fewer retestings.

The Department is seeking a standard 60-day delayed effective date.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 W. Washington St.
Suite 160
Phoenix, AZ 85007
602-771-2300

KATIE HOBBS
GOVERNOR

KAREN PETERS
DIRECTOR

March 13, 2025

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

Re: Aquifer Water Quality Standards Update Regular Rulemaking: Title 18, Environmental Quality, Chapters 9 and 11

Dear Chair Klein:

The Arizona Department of Environmental Quality (ADEQ) hereby submits this final rulemaking package to the Governor's Regulatory Review Council (GRRC) for consideration and approval at the Council Meeting scheduled for May 6th, 2025.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. §§ 41-1039, 41-1052 and A.A.C. R1-6-201:

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

(A)(1)(a) The public record closed for all rules on December 16th, 2024 at 11:59 p.m.

(A)(1)(b) The rulemaking activity does relate to a five-year review report. The report on 18 AAC 11, Articles 4 and 5 was approved on November 3rd, 2020.

(A)(1)(c) The rulemaking activity does not establish a new fee.

(A)(1)(d) The rulemaking does not contain a fee increase.

(A)(1)(e) An immediate effective date is not requested.

(A)(1)(f) The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

(A)(1)(g) The Department's preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S. § 41-1055(B)(3)(a) (*see* subheading IV, below).

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

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

(A)(2) Five (5) Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule (*see* subheading IV, below);
(A)(3) The preambles contain economic, small business, and consumer impact statements that contain the information required by A.R.S. § 41-1055 (*see* subheading IV, below);
(A)(4) The preambles contain comments received by the agency, both written and oral, concerning the proposed rule (*see* subheading IV, below);
(A)(5) No analyses were submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
(A)(6) No materials were incorporated by reference in this rulemaking;
(A)(7) The general and specific statutes authorizing the rule, including relevant statutory definitions (*see* subheading IV, below);
(A)(8) All statutes referred to in the definitions are represented in the general and specific statues authorizing the rule.

III. Governor's office approvals pursuant to A.R.S. § 41-1039:

(A) ADEQ received prior written approval from the Governor's Office twice. Once for Title 18, Chapter 11, Article 4 on August 24, 2022 and then again for Title 18, Chapter 9, Articles 1 and 2 on February 5th, 2024 (*see* subheading IV, below);
(B) ADEQ received written final approval from the Governor's Office for this rulemaking on March 11th, 2025 (*see* subheading IV, below).

IV. List of documents enclosed (25 documents total):

- One (1) Cover Letter (R1-6-201(A)(1));
  - AWQS_CL.pdf
- One (1) JLBC email (R1-6-201(A)(1)(g));
  - AWQS_JLBC.pdf
- Five (5) NFRMs (R1-6-201(A)(2));
  - AWQS_NFRM_18_AAC_9_Impl.pdf
  - AWQS_NFRM_18_AAC_11_As.pdf
  - AWQS_NFRM_18_AAC_11_U.pdf
  - AWQS_NFRM_18_AAC_11_DBP.pdf
  - AWQS_ NFRM_18_AAC_11_MBC.pdf
- Five (5) EISs (R1-6-201(A)(3));
  - AWQS_EIS_18_AAC_9_Impl.pdf
  - AWQS_EIS_18_ AAC_11_As.pdf
  - AWQS_EIS_18_ AAC_11_U.pdf
  - AWQS_EIS_18_ AAC_11_DBP.pdf
  - AWQS_EIS_18_ AAC_11_MBC.pdf
- Five (5) Public Comments Received Documents (R1-6-201(A)(4));

- AWQS_Cmts_18_AAC_9_Impl.pdf
- AWQS_Cmts_18_ AAC_11_As.pdf
- AWQS_Cmts_18_ AAC_11_U.pdf
- AWQS_Cmts_18_ AAC_11_DBP.pdf
- AWQS_Cmts_18_ AAC_11_MBC.pdf

- Five (5) General and Specific Authorizing Statutes (R1-6-201(A)(7));
  - 49-104 - Powers and duties of the department and director.pdf
  - 49-203 - Powers and duties of the director and department.pdf
  - 49-221 - Water quality standards in general; protected surface waters list.pdf
  - 49-223 - Aquifer water quality standards.pdf
  - 49-224 - Aquifer identification, classification and reclassification.pdf
- Three (3) A.R.S. § 41-1039 Governor's Approvals
  - 8_24_22_Gov_Approval.pdf
  - 2_5_24_Gov_Approval.pdf
  - 25_3_11_Gov_Approval.pdf

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

Sincerely,

Karen Peters, Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY STANDARDS

PREAMBLE

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

August 24, 2022, &

February 5, 2024

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

R18-11-406 Amend

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

Authorizing statute: A.R.S. §§ 49-221, and 49-223.

Implementing statute: A.R.S. §§ 49-221, and 49-223.

4. The effective date of the rule:

July 7, 2025

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

Not applicable.

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

Not applicable.

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

Notice of Proposed Rulemaking: 30 A.A.R. 3421, Issue Date: November 15, 2024, Issue Number: 46, File Number: R24-232.

Notice of Rulemaking Docket Opening: 30 A.A.R. 2136, Issue Date: June 28, 2024, Issue Number: 26, File Number: R24-114.

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

Name: Jon Rezabek

Title: Legal Specialist

Division: Water Quality

Address: Arizona Department of Environmental Quality

1110 W. Washington Ave.

Phoenix, AZ 85007

Telephone: (602) 771-8219

Fax: (602) 771-2366

Email: awqs@azdeq.gov

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

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

***Introduction*:**

General Explanation of the Collective Rulemaking: The Arizona Department of Environmental Quality (ADEQ) is required under A.R.S. § 49-223(A) to open a rulemaking docket for the adoption of federal drinking water maximum contaminant levels (MCLs) as state aquifer water quality standards (AWQSs) within one year of the Environmental Protection Agency's (EPA's) establishment of new or adjusted MCLs. AWQSs for Arsenic, Bromate, Chlorite, Haloacetic Acids, Microbiological Contaminants, Total Trihalomethanes and Uranium with corresponding MCLs are either unestablished as AWQSs or are established but currently have a misaligned value as the standard. MCLs for the seven (7) pollutants can be viewed at 40 *Code of Federal Regulations* (C.F.R.) 141.60 *et seq.* A.R.S. § 49-223(A) requires ADEQ to move forward with the adoption of MCLs as AWQSs through the rulemaking process unless substantial opposition to the adoption is received from stakeholders. Upon receipt of substantial opposition, ADEQ may adopt for that pollutant the verbatim MCL as an AWQS, but only upon a finding that the MCL is appropriate for adoption in Arizona as an AWQS. In making this finding, ADEQ must consider whether the assumptions used by the EPA in developing and implementing the MCLs are appropriate for establishing an Arizona state AWQSs. The listed assumptions for consideration are technology, cost, sampling and analytical methodologies and public health risk reduction. If ADEQ determines the MCL is inappropriate as an AWQS, the Department may establish an alternative AWQS for the pollutant with an MCL. The alternative AWQS must be:

(1) Based on the protection of human health and shall rely on technical protocols appropriate for the development of AWQSs, and

(2) Based on credible medical and toxicological evidence that has been subjected to peer review.

Subject Matter of this NFRM: This *Notice of Final Rulemaking* (NFRM) proposes an alternate AWQS for Microbiological Contaminants from the MCL for Microbiological Contaminants. The original MCL for Microbiological Contaminants was established through Final Rule by the Environmental Protection Agency (EPA), published in the *Federal Register* at 78 *Federal Register* 10270.

Standard Work Development: In approaching and preparing for the execution of the requirements in A.R.S. § 49-223, ADEQ developed a guidance document or "standard work" as the language of the statute leaves a number of determinations to the discretion of the Department. An example of this is whether an MCL is "appropriate" as an AWQS or relying on "technical protocols" appropriate for the development of an alternative AWQS. These statutorily-based and reasoned procedures were developed and released to the public for comment in the summer of 2023. They can be viewed at the following webpage: https://www.azdeq.gov/rulemaking/awqs-update/resources.

Substantial Opposition: ADEQ has received substantial opposition from stakeholders on the proposal to adopt the Microbiological Contaminants MCL as an AWQS. "Substantial opposition" is defined in A.R.S. § 49-223(A) as "information submitted to the director that explains with reasonable specificity why the [MCL] is not appropriate as an [AWQS]." Its functionality in the procedure laid out in A.R.S. § 49-223 is explained above in the subsection entitled, *General Explanation of the Collective Rulemaking*. The submitted opposition includes current permittees voicing concerns about the high numbers of false positive samples of Total Coliform that would have tested negative had Fecal Coliform or *E.coli* been the indicator parameter used in the standard instead. Details of the hardships encountered by the regulated community include hundreds of hours of labor in verification or repeat sampling. This, along with shipping and laboratory testing costs, amount to tens of thousands of dollars in unnecessary spending. With this series of AWQS rulemakings, ADEQ proposes to establish or align AWQSs for Arsenic, Bromate, Chlorite, Haloacetic Acids, Total Trihalomethanes and Uranium verbatim with the MCL. However, given the substantial opposition received on the Microbiological Contaminants MCL, ADEQ was prompted to follow the procedure in A.R.S. § 49-223(A) for determining whether the Microbiological Contaminants MCL is appropriate as an Arizona state AWQS. ADEQ used its newly developed "standard work" as explained above in executing this requirement. The conclusion is that the MCL is inappropriate (*See* "'Inappropriate' Determination for the Microbiological Contaminants MCL (A.R.S. § 49-223(A))" for detail below). Thereafter, ADEQ followed the procedure for establishing an alternative AWQS for Microbiological Contaminants, pursuant to A.R.S. § 49-223(B), also using the newly developed "standard work". The conclusion is that an alternative AWQS should be established, which is proposed via this NFRM (*See* "Alternative AWQS Development and Setting for Microbiological Contaminants (A.R.S. § 49-223(B))" for detail below).

What is the MCL for Microbiological Contaminants? The MCL for Microbiological Contaminants involves a sampling

procedure that can be found at 40 C.F.R. 141.63(c). The essential part of the MCL is that a system must sample for Total Coliform and *E.coli* routinely. Upon a positive result of Total Coliform, the system must sample for *E.coli*. A positive result from the *E.coli* repeat sample (following a positive Total Coliform routine sample) constitutes a violation of the standard. Furthermore, upon a positive result of a routine *E.coli* sample, the system must repeat the sample for *E.coli*. A positive result from the *E.coli* repeat sample (following a positive *E.coli* routine sample) constitutes a violation of the standard. Additionally, a system violates the standard when:

(1) it fails to take a repeat sample following an *E.coli*-positive routine sample, or

(2) it fails to test for *E.coli* when any repeat sample tests positive for Total Coliform.

What is the current AWQS for Microbiological Contaminants?

The current AWQS for Microbiological Contaminants involves a similar sampling procedure to that of the corresponding MCL. The standard can be found at A.A.C. R18-11-406(F). The essential part of the current AWQS is that a facility must sample for Total Coliform routinely. Upon a positive Total Coliform routine sample, a Total Coliform repeat sample shall be taken within two weeks of the time the sample results are reported. A positive Total Coliform repeat sample following a positive Total Coliform routine sample constitutes a violation of the standard.

Associated Rulemakings ADEQ proposes a total of five (5) NFRMs in the collective AWQS Update rulemaking. Three (3) of the five (5) NFRMs propose to establish or align the AWQSs with the MCLs in *Arizona Administrative Code*, (A.A.C.) Title 18, Chapter 11, Article 4 for pollutants Arsenic, Bromate, Chlorite, Haloacetic Acids, Total Trihalomethanes and Uranium. This NFRM's scope is limited to Microbiological Contaminants and proposes an alternative AWQS to the corresponding MCL under the procedure described in A.R.S. § 49-223 and above. A second NFRM's scope includes Arsenic. A third NFRM's scope includes Uranium. A fourth NFRM's scope includes the four (4) disinfection byproducts, which are Bromate, Chlorite, Haloacetic Acids and Total Trihalomethanes. A fifth and final NFRM includes in its scope a proposed new section and some amendments to A.A.C., Title 18, Chapter 9, Articles 1 and 2. With the fifth NFRM, ADEQ proposes a rule detailing implementation of new or adjusted AWQSs into existing Individual Aquifer Protection Program permits (APPs), along with adjacent amendments to existing rule to make way for this purpose.

What are Aquifer Water Quality Standards and what is their purpose? Aquifer Water Quality Standards or "AWQSs" are protective groundwater standards that were put in place and designated by the Arizona Legislature to preserve Arizona's aquifer quality for drinking water-protected use (*See* A.R.S. § 49-224(B)).

How are Aquifer Water Quality Standards Used? The AWQSs are used in ADEQ's Aquifer Protection Program (APP), and, to a lesser extent, remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), and elsewhere.

"Inappropriate" Determination for the Microbiological Contaminants MCL (A.R.S. § 49-223(A)) ADEQ developed a "standard work" procedure for conducting an "appropriateness" determination pursuant to A.R.S. § 49-223(A). The "standard work" can be reviewed on ADEQ's website at https://www.azdeq.gov/rulemaking/awqs-update/resources. ADEQ's review of EPA's assumptions on technology, costs, sampling and analytical methodologies and public health risk reduction resulted in significant concern for the costs, analytical methods and public health risk reduction assumptions in particular. ADEQ found that the MCL at 40 C.F.R. 141.63(c) is simply inappropriate as is for verbatim adoption as an AWQS and applicability upon the facilities regulated by the APP program, such as Wastewater Treatment Plants, Mines and Industrial facilities. One of the main reasons is that the MCL is designed for Public Water Systems, not APP type facilities. Specifically, this is because the Microbiological Contaminants MCL requires routine sampling of both Total Coliform and *E.coli* parameters. Thereafter, upon a positive result of either Total Coliform or E.coli, a repeat sample is required for both parameters. Violation occurs when a positive result is obtained from an *E. coli* repeat sample that occurs after a total coliform-positive routine sample. Violation also occurs when a positive result is obtained from a Total Coliform repeat sample that occurs after an *E. coli*-positive routine sample. ADEQ has found that the Total Coliform parameter is a very general indicator of coliforms in a sampling well, many of which occur naturally and are not indicative of a threat to human health. In particular, Total Coliform is too broad of an indicator parameter to signal fecal coliform health concerns. On the contrary, ADEQ has found that Fecal Coliform and *E.coli* are more exacting indicators or surrogates of fecal coliforms, which are dangerous to human health. Additionally, when a permittee samples for Total Coliform and receives a positive result, more often than not, the result is what is known as a "false positive", signaling non-health threatening coliforms in a sample. ADEQ notes that false positives have led to a number of permittees having to perform accelerated or more frequent monitoring intervals pursuant to the permits unnecessarily, which have associated costs.

Alternative AWQS Development and Proposal for Microbiological Contaminants (A.R.S. § 49-223(B)) After determining that the MCL for Microbiological Contaminants is inappropriate as an AWQS, ADEQ followed the "standard work" procedure for alternative AWQS development and establishment. ADEQ is proposing an appropriate alternative Microbiological Contaminants AWQS based upon the detection or non-detection of either Fecal Coliform or *E.coli* in a 100-milliliter sample (depending on the requirement of the permit). Upon detection during a routine Fecal Coliform sample, a repeat sample of either Fecal Coliform or *E.coli* with a detect result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Upon a detect result of a routine *E.coli* sample, a repeat sample of *E.coli* with a detect result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Through research and consultation, ADEQ determined that *E. coli* is a better indicator of fecal contamination than total or fecal coliforms and that total coliform positive samples are known to result in a "false positive". A "false positive" in a Total Coliform context is when a sample result is positive, but the cause of the positive result indicates a type of total coliform that does not originate in fecal contamination and is not dangerous to human health and occurs

naturally. A common "false positive" is when a positive Total Coliform sample is actually indicating rust in a well. Additionally, ADEQ considered the language of 40 C.F.R. 141.63(c), the state of existing Individual APP and Reclaimed Water permits, the Department's mission to protect human health and the environment, as well as costs to permittees, analytical methodologies and public health risk reduction. Ultimately, ADEQ determined that shifting away from Total Coliform as an indicator parameter for an alternative Microbiological Contaminants AWQS and moving towards Fecal Coliform and *E.coli* is appropriate. Specifically, Fecal Coliform and *E.coli* are more exacting at indicating a threat to human health. The decision to configure the AWQS proposal to allow permittees to utilize Fecal Coliform or *E.coli* was due to the fact that protecting human health is not diminished under any of the possible orientations and existing permittees are sampling for both parameters already in some cases. Allowing permittees to keep those sampling traditions and optimize a sampling orientation from a cost effective perspective are all factors that led to ADEQ's proposal.

Sampling and Analytical Methodologies. In the Baseline Monitoring Requirement subsection of the final rule at R18-9-A215(E)(4), the following is provided,

> "[s]ampling for each pollutant with a new or adjusted AWQS shall be conducted using Arizona Department of Health Services-approved (ADHS) methods under A.A.C. R9-14-610, including methods on the ADHS Director Approved List, if available. If an ADHS-approved method does not exist, sampling shall be conducted using an appropriate EPA-approved method or a method specified by the ADEQ Director."

At the time this NFRM was compiled, wastewater methods for some of the pollutants with new or adjusted AWQSs were not ADHS-Approved (*see* A.A.C. Title 9, Chapter 14, Article 6, Tables 6.2.A and 6.2.B). In March 2025, ADEQ formally requested that the following sampling methods be reviewed and considered for addition to ADHS's "Director Approved" list of sampling methods pursuant to A.A.C. R9-14-610, found published outside of the rule on ADHS's website, here: https://www.azdhs.gov/documents/preparedness/state-laboratory/lab-licensure-certification/environmental-laboratory/application/application-part-e.pdf

Table 1. Analytical Methods for Baseline Monitoring

Analyte	**Analytical Method**
Arsenic	EPA 200.8, SM 3113B, SM 3114B
Bromate	EPA 300.1, EPA 317.0 Rev 2.0, EPA 321.8, EPA 326.0
Chlorite	EPA 300.0, EPA 300.1, EPA 317.0 Rev 2.0, EPA 326.0
Haloacetic Acids	EPA 552.1, EPA 552.2, EPA 552.3, SM 6251B
Fecal coliform	SM 9223B
E. coli	SM 9223B
Total Trihalomethanes	EPA 502.2, EPA 524.2, EPA 551.1, SM 6251B
Uranium (Total)	EPA 200.8

* "EPA" - Environmental Protection Agency; "SM" - Standard Methods

Applicability of Microbiological Contaminants AWQS Indicator Parameters to Baseline Monitoring. The associated NFRM for Title 18, Chapter 9, Articles 1 and 2 specifies in Final Rule R18-9-A215(C) that all persons with issued individual permits as of a new or adjusted AWQS effective date shall begin Baseline Monitoring, pursuant to R18-9-A215(E), for a new or adjusted AWQS within three months. Additionally, the Final Rule or AWQS for Microbiological Contaminants in this NFRM specifies that either Fecal Coliform or *E. coli* may be used in routine monitoring as indicator parameters. ADEQ understands that for various reasons, issued APP permits may be sampling for one or both or none of these indicator parameters already. In accordance with the rule, ADEQ's expectation is that an applicable permittee may choose one or both indicator parameters for the purpose of Baseline Monitoring under Final Rule R18-9-A215.

Who are the stakeholders to this rulemaking? The stakeholders for this rulemaking are predominantly the permittees of the APP, and to a lesser extent, remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP). Other stakeholders include private well owners, community water systems and the constituents they serve, as well as all Arizonans who benefit from the state's aquifers being protected for drinking water use.

What has been the stakeholder process thus far for this rulemaking? ADEQ has conducted a number of general and specific stakeholder meetings, as well as tribal listening sessions, concerning this rulemaking. The dates of those events are as follows: 9/29/22, 6/8/23, 9/11//23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25 and others. A repository of stakeholder materials can be found published on ADEQ's website here: https://www.azdeq.gov/rulemaking/awqs-update/resources.

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

State-Based AWQS Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support:

Summary: This report provides information to the Department for the purpose of "standard work" guidance in determining an appropriate alternative AWQS for microbiological contaminants per A.R.S. § 49-223(B).

Study Resource: Provided recommendations on the establishment of an alternative AWQS to the Microbiological Contaminants MCL based on credible medical and toxicological evidence that has been subjected to peer review, as well as technical protocols appropriate in the development of an AWQS.

Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Reference: LaPat-Polasko, L., Hoagland-Stamatovski, B., and Brenton, H. (2023). State-Based AWQS Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support. Matrix New World Engineering, Land

Surveying and Landscape Architecture, PC.

MCL Assumptions Report – Microbiological Standards Aquifer Water Quality Standards Technical Support:

Summary: This report provides a review of the EPA assumptions used to establish the MCL for Microbiological Contaminants at 78 *Federal Register* 10270. The assumptions reviewed are listed in A.R.S. § 49-223(A) and include technologies, costs, sampling and analytical methodologies and public health risk reduction.

Study Resource: Provided review of the EPA assumptions used to establish the MCL for Microbiological Contaminants at 78 *Federal Register* 10270 in order to inform ADEQ further on the subject matter and its applicability in the AWQS setting.

Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Reference: LaPat-Polasko, L., Hoagland-Stamatovski, B., and Brenton, H. (2023). MCL Assumptions Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support. Matrix New World Engineering, Land Surveying and Landscape Architecture, PC.

Draft Economic Impact Statement for Microbiological Contaminants Proposed AWQS:

Summary: This report provides the Department a draft economic impact statement on the proposed Microbiological Contaminants AWQS modeled after the requirements of A.R.S. § 41-1055.

Study Resource: This report informs ADEQ on the economic impact of the subject matter of the rulemaking.

Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Reference: McClure Consulting LLC with The Natelson Dale Group, Inc. (2024). Draft Economic Impact Statement for Microbiological Contaminants Proposed AWQS. McClure Consulting LLC with The Natelson Dale Group, Inc.

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

Not applicable.

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

This Economic, Small Business, and Consumer Impact Statement (EIS) has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this EIS has the scope of an amendment to R18-11-406(F) in Title 18, Chapter 11, Article 4 of the

Arizona Administrative Code (A.A.C.) This rulemaking action is being taken by the Arizona Department of Environmental Quality (ADEQ) in order to adopt an adjustment to the Safe Drinking Water Act Maximum Contaminant Level (MCL) for Microbiological Contaminants as an Aquifer Water Quality Standard (AWQS) pursuant to Arizona Revised Statutes (A.R.S.) § 49-223. A.R.S. § 49-223 mandates that within one year after the EPA establishes or adjusts an MCL, the ADEQ Director shall open a rule making docket pursuant to A.R.S. § 41-1021 for adoption of the MCL as an AWQS. As is detailed in Section 7 of this Notice of Final Rulemaking (NFRM), ADEQ conducted the rulemaking in conformance with the statutory administrative procedure in A.R.S. Title 41, Chapter 6, and is hereby submitting this EIS, in conformance with the requirements of A.R.S. §§ 41-1055 and 41-1035. ADEQ has determined that this rulemaking will impact the regulated community, ADEQ customers, the environment, and may impact human health. This EIS was developed to evaluate the rulemaking's impacts and compare the benefits and detriments of adopting an alternative AWQS to the corresponding MCL. The AWQSs are designed to protect the State's aquifers, all of which have been designated for drinking water-protected use (*see* A.R.S. § 49-224(B)). The AWQSs are primarily used in ADEQ's Aquifer Protection Permit program (APP), and (to a lesser extent) in some remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), and elsewhere.

B. A summary of the EIS:

General & Specific Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include APP permittees, such as Mines, Industrial Facilities and Wastewater Treatment Plants, as well as rate payers to municipal drinking water systems, ADEQ, the general public and the environment. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the Microbiological Contaminants AWQS rulemaking.

Costs to permittees to meet the new AWQS for Microbiological Contaminants are None to Minimal. In fact, ADEQ expects cost savings in many cases. The proposed AWQS for microbiological contaminants does not propose a numeric change in water quality standards, but instead proposes to implement more efficient/effective monitoring protocols. In this regard, the EIS generally follows a key premise of the Matrix Report: that the primary cost impact of the proposed AWQS would be a *reduction* in permittee sampling costs due to the reduced incidence of false-positive routine testing, repeat tests and accelerated monitoring thereafter. Consistent with the Matrix Report, the EIS estimates the cost *savings* related to more efficient sampling protocols. The EIS follows the format of the cost analysis in the Matrix Report, which evaluates *incremental* changes (reductions) in permittee costs compared to baseline conditions (i.e., costs under the current AWQS compared to costs under the proposed AWQS).

In addition to creating cost savings for permittees, the proposed AWQS would potentially generate economic benefits in terms of a reduction in cases of illness and death associated with microbiological contamination. In particular, the improved sampling protocols are expected to allow for quicker identification of incidents of contamination, allowing for more timely implementation

of corrective measures (according to ADEQ staff, the higher incidence of false-positive test results under the existing protocols – and the associated need for retesting – can result in delays in identifying actual cases of contamination, potentially resulting in disease outbreaks that could otherwise be contained sooner). These potentially significant health benefits are not quantified in the EIS, as ADEQ and their consultant do not have sufficient information to develop such estimates. However, following the methodology of the Matrix Report, the EIS provides *general* estimates of the annual economic benefits attributable to regulation of Microbiological Contaminants. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).

Costs. Whereas permittees will continue to incur costs (primarily for routine and repeat sampling) to comply with the new/proposed AWQS, these costs are expected to *decrease* in comparison to the costs of complying with the current AWQS. These potential cost savings are attributable to the expectation that the routine sampling and repeat sampling requirements under the new AWQS would result in fewer "false positive" samples, thereby reducing the need for follow-up sampling and unwarranted corrective actions for facilities falsely deemed to be non-compliant. Statewide, the cost savings to permittees are estimated to range from $882,000 to $1.7 million annually (in 2023 dollars).

Benefits. Based on available time series data from ADHS and CDC, the Matrix Report estimates that regulation of Microbiological Contaminants results in 80 fewer cases of illness and 0.3 fewer deaths per year (statewide). In monetary terms, these prevented illnesses and deaths represent annual statewide benefits of $3.5 million per year (in 2023 dollars).

Specific impacts

From a total 434 Aquifer Protection permittees in Arizona, it is estimated (based on the Matrix Report) that 153 to 300 permittees annually are required to sample for Microbiological Contaminants. This subset of 153 to 300 permittees would be the impacted stakeholder group that would potentially experience cost savings under the proposed AWQS. In Arizona, the potentially affected benefiting population consists primarily of private well users throughout the state (estimated at 350,000 persons in total), although some of these will be effectively excluded from the additional benefits of the higher AWQS because existing Microbiological Contaminant levels in some wells are already zero. Benefits in the form of cost savings could also accrue to community water systems and their clientele due to a reduction of Microbiological Contaminants in the groundwater, under the proposed AWQS. As many as 1.8 million Arizonans could be potentially affected in this way.

Stakeholder Process

ADEQ has conducted a number of general and specific stakeholder meetings concerning this rulemaking, including tribal listening

sessions and rule language sessions with major industry associations and their counsel, representing a majority of the individual APP regulated parties. The dates of those events are as follows: 9/29/22, 6/8/23, 9/11//23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25 and others. A repository of stakeholder materials can be found published on ADEQ's dedicated AWQS Rulemaking website here: https://www.azdeq.gov/rulemaking/awqs-update/resources.

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

Costs to Stakeholders

Individual APP Permittees (hereinafter: "permittees") will be the primary bearers of costs associated with this rulemaking. Permittees are discussed under the following three categories:

- Mines, where treatment conditions can vary noticeably from typical urban waste processing.
- Industrial facilities, with treatment conditions that can vary according to the industrial processes involved.
- Wastewater Treatment Plants, including mostly those treating urban-related wastewater.

Other potential costs to stakeholders addressed include the following:

- Rate payers in municipal systems, where rates could conceivably increase to cover increased costs for expanded treatment.
- Regulated parties under ADEQ remediation programs such as WQARF and VRP (minimal impact).
- Some permittees are assumed to be small businesses, and are additionally addressed as a segmented category.
- ADEQ, although any additional staff efforts and other expenses associated with monitoring proposed expanded treatment requirements will generally be covered through permittees' fee increases.

Benefits to Stakeholders

Generally, the state and the constituents of the state benefit from this rulemaking through the protection of the aquifer resource as an asset for drinking water use both now and in the future, pursuant to statutory mandate at A.R.S. § 49-224. More specifically, ADEQ and its consultant have attempted to quantify the benefit of the rulemaking to the extent possible in terms of health benefits related to forgone diseases. In Arizona, the immediate health-affected population consists primarily of private well users throughout the state, under certain qualifying conditions. Private well water consumers are generally limited to areas where discharged water treatment contaminant levels would improve based on the proposed AWQSs.

Other benefit categories include the following:

- Community water systems (CWSs) and their clientele. Savings could accrue to CWSs due to reduced Microbiological Contaminants in the groundwater under the proposed AWQS. Any savings would presumably be passed on to customers.
- State costs, where some state-supported medical costs would decrease, with diseases forgone.

D. Benefit/Cost Analysis:

Not all permittees will be burdened with the requirement to alter their facility in order to come into compliance with the proposed AWQSs and thereby incur the related costs, for any one of the following reasons or combinations of reasons:

- Permittees' existing treatment methods/technologies are already adequate to meet the target standard;
- The contaminant in wastewater subject to treatment exists at a level below the proposed AWQS; and
- Ambient levels of the contaminant in groundwater exceed the proposed AWQS, in which case the permittee need only be held to a "no further degradation" standard (*see* A.A.C. R18-9-A205(C), A.R.S. § 49-243(B)(2) and (3)).

Cost impacts in this EIS relate primarily to potential cost *savings* to permittees due to the more efficient (and more effective) sampling protocols under the proposed AWQS. According to ADEQ's database of permittees, an estimated total of 434 permits are divided among the categories shown below:

Category	**# Permittees**
Mines	35
Industrial Facilities	56
Wastewater Treatment Plants	343
Total	**434**
*Small Businesses as a segmented category	135

Key modeling factors used in this analysis are the following:

Factors	**Key source references**	**Notes**
	Costs	
Total APP's	Matrix report, page 25	The Matrix Report evaluates two alternatives for a new AWQS: 1. ADEQ would adopt the EPA's MCL as the AWQS; or 2. ADEQ would develop and establish an appropriate alternative AWQS (for which the Matrix Report assumed that the routine and repeat samples would both be Fecal Coliform). Per direction of ADEQ staff, the EIS considers a proposed AWQS that would require testing *E. coli* for the routine sample, with all required repeat samples testing for *E. coli*. Where appropriate, the Matrix Report factors have been applied to the AWQS proposal considered in the EIS.
Type and number of facilities impacted by changes in AWQS	Matrix report, page 25	
Sampling frequency	Matrix report, page 25	
Coliform type(s) sampled	Matrix report (with updated assumptions provided by ADEQ staff)	
False-positive percentages by sample type	Matrix report, page 25	
Sampling costs by sample type	Matrix report, Chart 8	
Benefits		
Annual cases of illness and annual number of deaths related to microbiological contamination of drinking water in Arizona (these are assumed to be prevented by compliance with the AWQS	Matrix report, page 24	Illnesses and deaths related to microbiological contamination of drinking water are assumed to be prevented by compliance with the AWQS and are therefore interpreted as "benefits" of the AWQS. For

and are therefore interpreted as "benefits" of the AWQS) – for purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS		purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).
Average cost per case of illness caused by foodborne pathogens	Matrix report, page 25	
Value of statistical life (VSL)	Matrix report, page 25	
General		
Information about permittees by type of activity served, including size	APP Permittee Database	Categorizations of permittees and also the total number are as interpreted by ADEQ and consultant
Amounts in October 2023 $	https://data.bls.gov/cgi-bin/cpicalc.pl	

Approach to the EIS for Microbiological Contaminants. ADEQ and its consultant rely on estimates prepared by the authors of the "MCL Assumptions Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support", prepared by Matrix New World Engineering, Land Surveying and Landscape Architecture, PC. in 2023 ("Matrix Report") (*see* Heading No. 8 of this NFRM). This information was supplemented by the Matrix Report's source material (primarily from the EPA), which takes into account multiple factors affecting potential costs and benefits.

Health Risk Reduction (Benefits)

The EIS measures the economic benefits of the AWQS in terms of the monetized value of illnesses and deaths that would be prevented by compliance with the State's AWQS for Microbiological Contaminants. These calculations are based on the following steps:

- Estimate the annual number of cases of enteric disease that would occur in Arizona in the absence of effective AWQS for microbiological contaminants;
- Estimate the annual number of deaths that would result from outbreaks transmitted by water in Arizona in the absence of effective AWQS;
- Calculate the costs associated with treatment of estimated cases of enteric disease; and
- Calculate the monetary value of lives lost due to disease outbreaks transmitted by water (using "Value of Statistical Life" data).

Based on available time series data from ADHS and CDC, the Matrix Report estimates that the AWQS would create the following benefits in terms of prevented illnesses and deaths:

- Prevention of 80 cases of illness per year
- Prevention of 0.3 deaths per year
- Avoided costs of $2,397.76 per case of illness prevented

- Value of Statistical Life (VSL) of $11.1 million

Using the above factors, the Matrix Report calculates total benefits from the AWQS of $3.5 million per year. For purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).

The proposed AWQS would potentially generate economic benefits in terms of a reduction in cases of illness and death associated with microbiological contamination. In particular, the improved sampling protocols are expected to allow for quicker identification of incidents of contamination, allowing for more timely implementation of corrective measures (according to ADEQ staff, the higher incidence of false-positive test results under the existing protocols – and the associated need for retesting – can result in delays in identifying actual cases of contamination, potentially resulting in disease outbreaks that could otherwise be contained sooner). These potentially significant health benefits are not quantified in the EIS, as the consulting team does not have sufficient information to develop such estimates.

Cost Analysis

Consistent with the Matrix Report, the cost analysis provided in this EIS is based on the premise that the proposed AWQS would result in cost *reductions* (to permittees and the State) compared to the existing AWQS. The cost savings would result from revised sampling protocols intended to significantly reduce the occurrence of false-positive test results (while more quickly identifying contaminants that are of actual concern from a public health perspective). Within the framework provided in the Matrix Report, these cost savings are calculated in terms of the avoided costs of follow-up sampling compared to estimated costs under the existing AWQS protocols. As such, the calculated "costs" are negative (compared to baseline levels) and therefore can actually be interpreted as benefits rather than costs.

The Matrix report evaluates two alternatives for a new AWQS:

1. ADEQ would adopt the EPA's MCL as the AWQS; or
2. ADEQ would develop and establish an appropriate alternative AWQS (for which Matrix assumed that the routine and repeat samples would both be Fecal Coliform).

The EIS considers a proposed AWQS that would require testing *E. coli* for the routine sample, with all required repeat samples testing for *E. coli*. Where appropriate, the Matrix Report factors have been applied to the AWQS proposal considered in the EIS.

Cost factors/assumptions derived from the Matrix report are summarized below.

Costs of Sample Analysis. The Matrix Report estimated ranges of costs for the sample analysis by contacting four ADHS certified laboratories. If the contacted laboratories offered more than one analysis method, the least expensive method was used. The following are the range of costs used for the Matrix analysis (and also in the EIS):

- Total coliform: $25 - $50

- *E. coli*: $25 - $50

Costs for labor, reporting, and administrative work were assumed in the Matrix Report based on the author's knowledge and previous experience with APPs. These assumptions are outlined on the tables below.

Work Costs per False-Positive Sample

Work Category	Hours	Rate	Cost
Labor	8	$95	$760
Data analysis	4	$125	$500
Reporting	20	$100	$2,000
Administrative	4	$100	$400
TOTAL:	**36**	**--**	**$3,660**

Breakdown of Work Costs based Coliform Type per False-Positive Sample

Category	Total Coliform	*E. Coli*
Sampling Cost (labor, analysis, consumables)	$795 - $820	$795 - $820
Reporting Costs	$2,500	$2,500
Administrative Costs	$400	$400
TOTAL:	**$3,695 - $3,720**	**$3,695 - $3,720**

Note: Consumables include ice, gloves, etc. for collecting samples. Assumed to be approximately $10 per sample.

In the EIS, the factors summarized above have been applied to the proposed AWQS. The costs of sampling under the current AWQS and the proposed AWQS are calculated on the table on the next page.

Total and Incremental Sampling Costs Per Year Statewide (in 2023 dollars)

Factor	Current AWQS (Baseline)		Proposed AWQS	
	Low	High	Low	High
Total APP's	434	434	434	434
Facilities required to sample for coliforms	153	300	153	300
Sampling frequency (times per year)	4	4	4	4
Routine coliform samples per year	612	1,200	612	1,200
Coliform type sampled (routine)	Total	Total	*E. Coli*	*E. Coli*
False-positive percentage	43%	43%	4%	4%
Repeat samples triggered by false positives	263	516	24	48
Coliform type sampled (repeat)	Total	Total	*E. Coli*	*E. Coli*
Total cost per sample (by type):				
Total coliform	$3,695	$3,720	$3,695	$3,720
E. Coli	$3,695	$3,720	$3,695	$3,720
Aggregate (statewide) sampling costs/year:				
Routine samples	$2,261,340	$4,464,000	$2,261,340	$4,464,000

Repeat samples	$972,375	$1,919,520	$90,454	$178,560
Total	*$3,233,716*	*$6,383,520*	*$2,351,794*	*$4,642,560*
Cost Increase (Reduction) Compared to Baseline	***N/A***	***N/A***	***($881,923)***	***($1,740,960)***

Source: ADEQ and consultant.

1. **Part I – Benefit / Cost Stakeholder Matrix:**

Minimal	Moderate	Substantial	Significant
$500,000 or less	$500,000 to $5 million	Greater than $5 million	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Note: all benefits and cost figures in this document are in annualized amounts.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
Costs to Stakeholders			
Cost stakeholders	General: The EIS follows the format of the cost analysis in the Matrix Report, which essentially looks at *incremental* changes in permittee costs compared to baseline conditions (i.e., costs under the current AWQS compared to costs under the proposed AWQS). An underlying premise of the Matrix Report analysis (and therefore the EIS) is that more efficient sampling requirements under the proposed AWQS would result in a significantly lower occurrence of false-positive test results and would therefore *reduce* compliance costs without compromising (while potentially improving) water quality standards		Significant
Permittees, generally	In general, microbiological contaminants are more likely to be generated within Wastewater Treatment Facilities, and also in treated wastewater. Microbiological Contaminants also can enter groundwater under certain conditions		Moderate: AWQS would potentially reduce costs for routine and repeat sampling (by $882,000 to $1.7 million per year statewide)
Mines	Microbiological Contaminants are least likely to be found in mine-related water being treated, compared to other permittee types		
Industrial activities	Microbiological Contaminants would not be particularly likely to be occurring in industrial-related water being treated, compared to other permittee types		
Wastewater Treatment Plants	This category of permittee type is most likely to be dealing with Microbiological Contaminants, because of the urban-use connection		
Rate payers in municipal systems	Private citizens and businesses could potentially benefit from reduced user fees for wastewater processing, based on reduced costs to permittees under the revised AWQS. However, these benefits are likely to be minimal (given the relatively small cost savings on a per-system basis)		Proposed AWQS is expected to reduce compliance costs to permittees, which could potentially be passed on to rate payers in the form of lower rates; in practice, rate

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
			reductions are likely to be minimal Minimal. Aggregate revenues would potentially decrease in proportion to the cost savings from reduced sampling requirements. Given state-wide cost savings of $882,000 to $1.7 million per year, cost savings on a per-system basis are likely to be minimal
Small businesses as a segmented category	Coming into compliance with new standards. Small businesses are generally cost-disadvantaged when compared to larger businesses because treatment costs generally decline as the scale (processing capacity) of a processing facility increases.		Moderate. Overall, the AWQS would potentially create moderate cost savings to permittees compared to the existing AWQS
ADEQ	ADEQ believes some new costs will be incurred, despite the fact that some infrastructure for processing permits is already in place. ADEQ anticipates that hundreds of permits may need to be amended to update monitoring tables that include Microbiological Contaminant indicator parameters. Any additional costs incurred would generally be covered by increased fees paid by permittees.	Minimal	
Benefits to Stakeholders			
State of Arizona and its Constituents, generally	Savings could accrue to the people of the State of Arizona, generally, through aquifers (as a local, convenient and {in the right circumstance} inexpensive sources for drinking water) remaining a viable asset to community water portfolios and individual well users alike		Significant
Private well users, health benefits: In Arizona, the more immediately affected population consists primarily of private well users throughout the state.	Following EPA, quantified benefits are measured in terms of reduced loss of life and illness and costs associated with treatment for disease.		Moderate: Potential health benefits attributable to existing AWQS are estimated at $3.5 million per year; this benefit would not change by virtue of the proposed new AWQS Significant: Potential reduction in the impacts of disease outbreaks (by virtue of more rapid identification and mitigation of contamination

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
Community water systems (CWSs) and their clientele	Savings could potentially accrue to CWSs due to reduced microbiological contaminants in the ground water. Any savings would presumably be passed on to customers.		Significant
State costs	Some state-supported medical costs would decrease (this benefit already exists under existing AWQS and would continue under new AWQS)		Significant
State revenue effects	Reduced sampling requirements of permittees would potentially result in some loss of business (and associated reductions in employment) for firms engaged in sample analysis. The potential loss of direct jobs would in turn (in theory at least) generate additional employment losses through reductions in indirect and induced (secondary) economic activity, and subsequent tax revenues	Minimal. Lost State income taxes are estimated to be $6,700 per year due to direct and secondary losses of employment	

2. Part II – Individual Stakeholder Summaries / Calculations:

The following subsection provides an explanatory discussion of expected stakeholder costs and benefits. The subsection outlines the key factors and analysis used to determine the impact findings reported in Part 1 of subsection D, above.

***Costs to Stakeholders*:**

Permittees in General

Compared to the current AWQS, the indicated changes to the AWQS are intended to maintain the same (or better) levels of protection with respect to human health, while potentially resulting in significant cost savings to impacted permittees (due to the expectation that the modified sampling requirements would substantially reduce the incidence of "false positive" results). As such, many of the stakeholder categories that would typically be impacted by the costs of new regulation would actually benefit from *reduced* cost burdens under the proposed new AWQS.

Estimated cost savings to permittees are based on factors in the Matrix report, applied to the proposed AWQS (as defined by ADEQ staff). Consistent with the Matrix report, the EIS focuses strictly on potential cost savings related to the issue of reducing false-positive test results (due to more efficient requirements for contaminant sampling under the new AWQS); the analysis does not quantify other potential costs savings such as reduced costs for assessments and correction actions (reductions in false-positive test results would presumably reduce the incidence of unwarranted assessments).

Mines

Because mines are not necessarily associated, locationally or otherwise, with water treated for household consumption, Microbiological Contaminants are likely to be minimal compared with discharge systems that have an urban connection.

The 35 permittees operating mining facilities can be quite complex, potentially involving multiple water control structures (dams, retention areas, etc.) in conjunction with treatment processes. The concentrate leach process for extracting copper, a common practice in Arizona, is also water-intensive.

Industrial Facilities

This category of permittee is generally processing wastewater generated from an industrial process. Consequently, water treatment technology options are partially dictated by the particular type of waste created through the industrial activity. For some industrial processes, water use will involve treatments similar to those for households, therefore microbiological contamination would potentially be an issue; but other industrial processes will have minimal or no connection to microbiological contamination. The estimated number of industrial wastewater processing permittees is 56.

Wastewater Treatment Plants

The 343 permittees in this category are generally treating wastewater from typical municipal/urban-type sources, and so will typically have significant potential for microbiological contamination. Key subcategories in this group are listed below and provide a sense of the range of activities to which treatments are being applied. Some of these are tied to municipalities, and some are treating waste streams from planned communities, RV parks, correctional institutions, military installations, or similar developments that may be remote from or otherwise not connected to a central wastewater treatment collection and processing system.

- City/Town; Other Urban (subdivisions, single-purpose facilities such as schools)
- Hospitality/Travel/Recreation
- Military Base
- Prison/Jail
- Water Recharge, Other Processing

Rate payers in municipal systems (community water systems (CWSs))

Private citizens and businesses could potentially benefit from reduced user fees for wastewater processing, based on reduced costs to permittees under the revised AWQS. However, these benefits are likely to be minimal (given the relatively small cost savings on a per-system basis).

Small businesses as a segmented category

(See also subsection F below, addressing the probable effects of the proposed rulemaking on small businesses.) Cost burdens on small businesses will tend to be proportionately greater than for large businesses. Not only are they less likely to have specific expertise needed to meet proposed modified standards in-house, but also small businesses tend to be disadvantaged because

treatment costs generally decline as the scale (processing capacity) of a processing facility increases, so larger processing facilities can process wastes at a smaller unit cost.

ADEQ

ADEQ may need additional staff or staff time to address advanced treatment processes and related testing, etc. However, any such costs should be covered by fees paid by permittees for ADEQ services.

***Benefits to Stakeholders*:**

Private well users (and CWSs users)

The relevant affected group for this benefit consists of consumers of permittee-treated water that ends up in water supply chains. There are two segments to the benefiting stakeholders:

1. Some Community water systems (CWSs, or municipal water treatment utility operators), for systems in which groundwater is a water source, along with customers of those water utilities. These stakeholders are likely to jointly benefit from reduced sampling requirements and costs, with cost savings presumably passed on to customers, because groundwater quality has improved due to permittees' actions in meeting revised AWQS.
2. The population served by private wells, where there is no intermediary utility processing their water for consumption. This affected group benefits from diseases forgone due to water quality standards related to Microbiological Contaminants.

The first segment is addressed below under the section *Community water systems (CWSs) and their clientele.*

Segment 2. As more fully documented in the Matrix Report, one major purpose of fecal pollution detection is to identify the presence of pathogens related to fecal waste sources and potential health risks (from the many bacterial, protozoan, and viral enteric pathogens that can cause diseases). Water quality monitoring to detect fecal pollution usually applies microbial fecal indicators to represent numerous potential pathogens.

Based on available time series data from ADHS and CDC, the Matrix report estimates that the AWQS would create the following benefits in terms of prevented illnesses and deaths:

- Prevention of 80 cases of illness per year
- Prevention of 0.3 deaths per year

Community water systems (CWSs) and their clientele

This affected group (segment 1 as noted above) includes a portion of customers of municipal or water utility water systems. Estimates of this segment of the population, served by water sources that included groundwater, were derived from data at the Arizona Department of Water Resources website (https://www.azwater.gov/ama/ama-data) which gave quantities of water use by municipal and other user types, by source, including groundwater, along with populations served by various categories of providers. An estimated 2.04 million Arizonans would be affected in this way (by both existing and proposed AWQS).

State cost savings

The proposed AWQS would potentially create incremental health benefits compared to existing policy by allowing for more rapid identification of contamination (and therefore more proactive containment of potential disease outbreaks). Related to these potential health benefits, the proposed AWQS would potentially result in some reduction in state-supported medical costs.

E. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking:

General:

As permittees would be subject to more efficient sampling requirements under the proposed AWQS, the need for employment related to sampling and sample analysis would potentially decrease somewhat. In this EIS, this effect is simulated through the RIMS II modeling system described, as applied to this analysis (see next subsection below entitled "Regional Input-Output Modeling System (RIMS) Model Explanation"). Summarized results of the modeling process are tabulated below. Unless noted otherwise, results represent the low end of estimates where a range of potential annualized costs has been given in subsection D, above, to avoid potential confusion and overstatement related to this impact measure. The model translates expected annualized costs to employment and earnings based on relationships of those elements within the industry category that most closely matches that of the permittees (and is documented within the RIMS II system – NAICS code 2213: Water, sewage, and other systems). In the summary of the model as tabulated below for the contaminant of Microbiological Contaminants, direct employment and earnings resulting from permittees' investment in equipment are shown separately from the total multiplier (direct plus secondary) job-generating effects of this investment.

RIMS II modeling outputs and key input factors	
Annualized Costs (with financing etc.)/Increased "Output"	($881,923)
Jobs Per Million Dollars in Output	1.80
Earnings Per Dollar of Output	$0.17
New Wastewater Treatment Direct Jobs Created	(1.59)
New Annual Earnings for Direct Jobs Created	($148,229)
Total New Jobs (Direct + Secondary)	(4.87)
Effective Income Tax Rate	2.1%
Estimated Total Annual State Income Taxes (Direct and Secondary)	($6,732)

Source: RIMS II model for Arizona; ADEQ & consultant.

Regional Input-Output Modeling System (RIMS) Model Explanation:

This subsection discusses the Regional Input-Output Modeling System (RIMS II - As provided by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce) modeling analysis supporting the jobs-related economic impact of the proposed wastewater treatment investments / expansions in the State of Arizona. All impacts estimated through this analysis are provided

for the statewide level of geography and are not intended to estimate impacts for sub-state geographic areas (e.g., metropolitan statistical area [MSA], county, etc.). Results of these analyses are shown in Parts E (employment) and G (state taxes) of the document.

The analysis assumes the investments to upgrade the wastewater facilities will include installing new wastewater-specific equipment (which may also include expanding the size of the facility, although that is not addressed in this analysis), which will increase the productive capacity of these wastewater facilities. For the purposes of this analysis, the "productive capacity" is assumed to be the annualized equivalent of capital investments (and additional operating costs would also be part of this, and such costs are included in the analysis where available). Cost (and benefit) figures shown in this document are annualized, having been calculated as such by the original data providers, generally from EPA and the Matrix Report.

The annualizations generally were based on assumptions of the payback of proposed investments having a 20-year lifespan (and an installation period was sometimes included) and an annual interest rate of 7.0%. ADEQ and its consultant further assumed that wastewater treatment plants' revenues (such as user fee increases) would increase by commensurate amounts to cover the annualized costs of the proposed improvements. This increase in revenue ("Output") allows ADEQ and its consultant to apply final-demand multipliers to estimate the number of new jobs and earnings (associated with these jobs) in the state that would result from the proposed investments. The RIMS II model generates economic multipliers for jobs, earnings, and output, based on the industry NAICS code 2213: Water, sewage, and other systems, for direct, indirect, and household (induced) effects. Along with the increases in employment and earnings generated by the proposed investments, the new earnings would also generate state income tax revenue for the State. Based on data from the BEA and the Arizona Department of Revenue (ADOR), ADEQ and its consultant derived an estimated effective state income rate of 2.1% (The State flat income tax rate, at the time this EIS was prepared, is 2.5%. The net income tax rate of 2.1% reflects deductions for the average wage and salary worker and other adjustments).

F. A statement on the probable impact of the rules on small business:

Economic costs to comply with AWQSs that are borne by small businesses may be considerable. Small businesses tend to be disadvantaged because treatment costs generally decline as the scale (processing capacity) of a processing facility increases. Besides the potential need for additional personnel or additional training, permittees may need to hire technical expertise on a consulting basis to determine the most appropriate and cost-effective treatment technologies that apply to any one permittee's particular conditions.

1. An identification of the small businesses subject to the rules:

Small businesses constitute a distinct category for which the impacts of rulemaking need to be considered. For this EIS and those addressing the other contaminants, impacted small businesses will be wastewater facility permittees meeting the following criteria:

- According to A.R.S. 41-1001 and as applied in this EIS, "'Small business' means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than $4 million in its last fiscal year."
- ADEQ and its consultant used a database of permittees, which had partial flow data, to screen permittees for this measure. Lacking further operational-level data for permittees, ADEQ and its consultant also screened permittees to identify "businesses" as opposed to governmental entities, and small businesses, constituting those that did not appear to be associated with a larger entity.

Based on the screening processes described above, in which the number of permittees that are also small businesses is estimated with limited precision, ADEQ and its consultant estimated that small businesses make up just over 30% of permittees, or 135 entities in total. As noted previously in this EIS, not all of these facilities will necessarily need to incur costs to meet the proposed AWQS.

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

Permittees small and large have systems already in place for the basic administrative and other managerial duties related to compliance to existing AWQSs. To the extent that is the case, any additional duties would constitute an expansion of existing processes rather than new systems. Also, there is a possibility that permittees would need to hire a consultant for technical expertise to select and integrate new technology into existing treatment processes.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

A.R.S. § 41-1035 Methods	ADEQ Decision to use or not use and reason
1. Establishing less stringent compliance or reporting requirements in the rule for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243). ADEQ does allow permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS (*see* Chapter 9 NFRM).
2. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243). ADEQ does allow permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS (*see* Chapter 9 NFRM).
3. Consolidating or simplifying the rule's compliance or reporting requirements for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243).

A.R.S. § 41-1035 Methods	ADEQ Decision to use or not use and reason
4. Establishing performance standards for small businesses to replace design or operational standards in the rule	Not used. In administering the APP program, performance, design and operational standards are all built into a review of a facility's employment of the best available demonstrated control technologies, processes, operating methods or other alternatives. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243).
5. Exempting small businesses from any or all requirements of the law	Not used. In administering the APP program, all persons discharging a pollutant into the environment must obtain an APP permit under A.R.S. § 49-241, unless exempted through A.R.S. § 49-250. Eliminating small business from the scope of the APP program is not supported by statute and would undermine the purpose of the program, to protect the state's aquifers to a drinking water standard (*see* A.R.S. §§ 49-223, 224, 241, 243).

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

Potential savings could accrue to community water systems due to reduced Microbiological Contaminants in the groundwater under the proposed AWQS, and such savings could be substantial and would presumably be passed on to customers. As many as 1.8 million Arizonans could potentially be affected.

G. A statement of the probable effect on state revenues:

To the extent that costs to upgrade treatment facilities result in higher user fees, additional fees could be taxable within the state's transaction privilege tax system. ADEQ and its consultant have not attempted to quantify any such effect. Investments in treatment technology and processes by permittees could result in additional hires to operate equipment, which in turn would generate additional employment through indirect and induced (secondary) economic activity, and subsequent tax revenues. Employment effects are addressed in subsection D, above. As noted therein, estimated state taxes for direct and secondary employment generated by investments in Microbiological Contaminants technology (using the low end of costs where ranges are given) are approximately $6,700.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

The controlling statute at A.R.S. § 49-223 does not allow ADEQ to conduct any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking. It simply requires ADEQ to open a rule making docket pursuant to A.R.S. § 41-1021 for adoption of a new or adjusted MCL as an AWQS within one year of the MCL's establishment or adjustment.

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

Reference material used in this EIS comes mainly from the *MCL Assumptions Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support* prepared by Matrix New World Engineering, Land Surveying and Landscape Architecture, PC (Matrix Report) for ADEQ in 2023 (*see* Heading No. 8 above for citation). Other reference material was used to a lesser extent (*see* Heading No. 8 above). ADEQ and its consultant also made selective use of EPA documents addressing

specific contaminants referenced extensively by the Matrix Report. EPA documentation is the typical standard for assumed legitimacy with respect to actions assessed and implemented by ADEQ. ADEQ and its consultant reviewed the Matrix Report and engaged with Matrix principals in direct consultation regarding aspects of their documentation in the preparation of this EIS. EPA documentation was generally available online.

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

R18-11-406(F) - Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

- Replaced "presence or absence" with "detection or non-detection" as the latter terms reference the minimum detection level (MDL) of the sampling instrument or method which is more apt, more appropriate than the previous terms.

R18-11-406(F)(1) - Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

- Replaced "of" with "for" three times for non-substantive, semantic purposes.
- Replaced "exceedance" with "detection" in order to align with the change to subsection (F) explained above.

R18-11-406(F)(2) - Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

- Replaced "of" with "for" three times for non-substantive, semantic purposes.
- Replaced "exceedance" with "detection" in order to align with the change to subsection (F) explained above.

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

Comment 1: Utility

Concerning the proposed alternative AWQS for Microbiological Contaminants, our current APP monitoring table utilizes the unit Most Probable Number (MPN) with a limit of (< 2.2) for *E. coli* monitoring. Will the units stay the same with this change in standard? Will Presence / Absence (P/A) be installed instead?

ADEQ Response 1:

ADEQ appreciates the comment. No, P/A will not be used for the *E. coli* indicator parameter utilized in the proposed AWQS for microbiological contaminants. Rather, detection or non-detection of either Fecal Coliform or *E. coli* is used. This means, for *E. coli*, "detect / non-detect" is likely to appear in the applicable APP monitoring tables along with a footnote stating that "non-detect" means a result of < 2.2 MPN or < 1 CFU, depending on the unit used in the permit.

Comment 2: Utility

If there is significant opposition to any of the parameters does ADEQ then not proceed with that particular parameter?

ADEQ Response 2:

ADEQ appreciates the comment. The answer to that question is – not necessarily. "Substantial Opposition" is a term defined in

A.R.S. § 49-223(A) as, "... information submitted to the director that explains with reasonable specificity why the [MCL] is not appropriate as an [AWQS]." Upon receipt of "substantial opposition", the Department must conduct a statutorily delineated procedure that leads to a determination of whether the MCL is "appropriate" as an AWQS. More information on that process can be found here: https://www.azdeq.gov/rulemaking/awqs-update/resources . ADEQ has received substantial opposition from stakeholders on the proposal to adopt the Microbiological Contaminants MCL as an AWQS (*see* heading No. 7, subsection "Substantial Opposition" for more information).

Comment 3: Concerned Citizen

If there are any lab people on the call, can they answer if there are sampling methods associated with the proposed Microbiological Contaminants AWQS that will provide a presence/absence (P/A) result for fecal coliforms? I know P/A exists for Total Coliforms and *E. coli*. I found this statement in a Google search, "*[t]he P/A tests for the presence/absence of indicator organisms in a water sample. This is usually observed in the form of a color change after an incubation period. Two common P/A tests are: H2S-producing bacteria P/A test Total Coliform and E. coli P/A Test.*" I am not sure P/A exists for fecal coliform.

ADEQ Response 3:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed Microbiological Contaminants AWQS, ADEQ has revised the rule language, essentially swapping the "absence / presence" binary with "detection / non-detection". Under the new language, any *E. coli* detection result from routine sampling would need to be followed by a repeat *E. coli* sample within 5 days of becoming aware of the result. A repeat sample that results in a detection of *E. coli* would constitute a violation of the Microbiological Contaminants AWQS. Additionally, ADEQ conducted some research which shows that Eurofins Scientific laboratory testing services offers a Fecal Coliform testing method (SM 9222D) separately from the EPA Total Coliform method (EPA 1604). Both methods have an 8-hour holding time. Source: https://www.eurofinsus.com/media/447768/appendix-d-section-5-attachment-holdtime-container-list_2016-july.pdf.
Also, Standard Method 9222D is a membrane filtration test for fecal coliforms and is offered by local labs in Arizona.
This method can detect fecal coliforms from 20 - 60 CFU/100 mL. Source: https://www.nemi.gov/methods/method_summary/5587/. Also, please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 4: Utility

We support the proposed alternate AWQS for microbiological contaminants with the following minor edits to the language:

1. If a routine sample ~~of Fecal Coliform~~ is positive for Fecal Coliform, a 100-milliter repeat sample ~~of either Fecal Coliform or *E. coli*~~ shall be taken within five days of becoming aware of the exceedance for analysis of Fecal Coliform or *E. coli*.

2. If a routine sample ~~of *E. coli*~~ is positive for *E. coli*, a 100-milliter repeat sample ~~of *E. coli*~~ shall be taken within five days of becoming aware of the exceedance for analysis of *E. coli*…

ADEQ Response 4:

ADEQ appreciates the comment. Due to this comment and others submitted on the proposed Microbiological Contaminants AWQS, ADEQ has revised the rule language, essentially swapping the "absence / presence" binary with "detection / non-detection". Under the new language, any Fecal Coliform detection result from routine sampling would need to be followed by a repeat Fecal Coliform or *E. coli* sample within 5 days of becoming aware of the detection result. A repeat sample that results in a detection of either parameter would constitute a violation of the Microbiological Contaminants AWQS. The Fecal Coliform indicator parameter is understood by ADEQ to encompass many species of fecal-derived, potentially harmful species therein; whereas, the *E. coli* parameter is a single, potentially harmful species. *E. coli* is used in this setting as an indicator; meaning that if it is detected in a sample, other potentially harmful species are likely to be present as well. Because the Fecal Coliform parameter encompasses within its scope *E. coli* and a number of other fecal-derived species, ADEQ believes an *E. coli* repeat sample is appropriate if either Fecal Coliform or *E. coli* were sampled routinely. Please note that for the *E. coli* indicator parameter, “detect / non-detect” is likely to appear in the applicable APP monitoring tables along with a footnote stating that “non-detect” means a result of <2.2 MPN or <1 CFU, depending on the unit used in the permit. Additionally, ADEQ conducted some research which shows that Eurofins Scientific laboratory testing services offers a Fecal Coliform testing method (SM 9222D) separately from the EPA Total Coliform method (EPA 1604). Both methods have an 8-hour holding time. Source: https://www.eurofinsus.com/media/447768/appendix-d-section-5-attachment-holdtime-container-list_2016-july.pdf.
Also, Standard Method 9222D is a membrane filtration test for fecal coliforms and is offered by local labs in Arizona.
This method can detect fecal coliforms from 20 - 60 CFU/100 mL. Source:
https://www.nemi.gov/methods/method_summary/5587/. Also, please find a table in Heading No. 7, subheading “Sampling and Analytical Methodologies” explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 5: Interest Group

We are deeply concerned about the proposed deviations from U.S. Environmental Protection Agency (EPA) standards for uranium, *E. coli*, and other pollutants. Arizona’s aquifers are invaluable resources that sustain drinking water supplies, ecological systems, and cultural heritage. Protecting these resources with robust, science-based standards is essential to ensure public health and environmental sustainability. We urge ADEQ to adopt the most protective standards possible by aligning AWQS with EPA’s maximum contaminant levels (MCLs) and guidelines for all pollutants under consideration, including arsenic, uranium, and *E. coli*. Prolonged delays in adopting federal standards leave Arizona communities vulnerable to contamination and illness.

ADEQ Response 5:

ADEQ appreciates the comment. There are seven (7) MCLs proposed for adoption as AWQSs within the scope of the collective "AWQS Update" rulemaking. All MCLs except for Microbiological Contaminants are being adopted as AWQSs verbatim. This includes uranium cited by the commenter.

For the alternative Microbiological Contaminants AWQS, ADEQ believes the proposed AWQS is equally effective as the corresponding MCL, but deviates from the MCL's employment of "Total Coliform" as an indicator parameter, utilizing the more precise "Fecal Coliform" and "*E. coli*" indicator parameters instead. Pursuant to A.R.S. § 49-223, ADEQ received "substantial opposition" to adoption of the Microbiological Contaminants MCL, mostly concerning the high numbers of "false positive" samples of Total Coliform that would have tested negative had Fecal Coliform or *E. coli* been the indicator parameter used in the standard instead. Details of the hardships encountered by the regulated community include hundreds of hours of labor in verification or repeat sampling. This, along with shipping and laboratory testing costs, amount to tens of thousands of dollars in unnecessary spending.

Given the substantial opposition received on the Microbiological Contaminants MCL, ADEQ was prompted to follow the procedure in A.R.S. § 49-223(A) for determining whether the Microbiological Contaminants MCL is appropriate as an Arizona state AWQS. ADEQ used its newly developed "standard work" as explained in Heading No. 7 above. ADEQ developed this "standard work" procedure for conducting an "appropriateness" determination pursuant to A.R.S. § 49-223(A). The "standard work" can be reviewed on ADEQ's website at https://www.azdeq.gov/rulemaking/awqs-update/resources. Concerning the Microbiological Contaminants MCL, ADEQ's review of EPA's assumptions on technology, costs, sampling and analytical methodologies and public health risk reduction resulted in significant concern for the costs, analytical methods and public health risk reduction assumptions in particular. ADEQ found that the MCL at 40 C.F.R. 141.63(c) is simply inappropriate as-is for verbatim adoption as an AWQS and applicability upon the facilities regulated by Arizona's APP program, such as Wastewater Treatment Plants, Mines and Industrial facilities. One of the main reasons is that the MCL is designed for Public Water Systems, not APP type facilities. Specifically, this is because the Microbiological Contaminants MCL requires routine sampling of both Total Coliform and *E. coli* parameters. Thereafter, upon a positive result of either Total Coliform or *E. coli*, a repeat sample is required for both parameters. Violation occurs when a positive result is obtained from an *E. coli* repeat sample that occurs after a total coliform-positive routine sample. Violation also occurs when a positive result is obtained from a Total Coliform repeat sample that occurs after an *E. coli*-positive routine sample. ADEQ found that the Total Coliform parameter is a very general indicator of coliforms in a sampling well, many of which occur naturally and are not indicative of a threat to human health. In particular, Total Coliform is too broad of an indicator parameter to signal fecal coliform health concerns in an APP regulatory program setting. On the contrary, ADEQ has found that Fecal Coliform and *E. coli* are more exacting indicators or surrogates of fecal coliforms, which are dangerous to human health. Additionally, when a permittee samples for Total Coliform and receives a

positive result, more often than not, the result is what is known as a “false positive”, signaling non-health threatening coliforms in a sample. ADEQ notes that false positives have led to a number of permittees having to perform accelerated or more frequent monitoring intervals pursuant to the permits unnecessarily, which have associated costs.

After determining that the MCL for Microbiological Contaminants was inappropriate as an AWQS, ADEQ followed the “standard work” procedure for alternative AWQS development and establishment. ADEQ is proposing with this final rule an appropriate alternative Microbiological Contaminants AWQS based upon the detection or non-detection of either Fecal Coliform or *E. coli* in a 100-milliliter sample (depending on the requirement of the permit). Upon a detection result for a routine Fecal Coliform sample, a repeat sample of either Fecal Coliform or *E. coli* with a “detect” result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Upon a detection result for a routine *E. coli* sample, a repeat sample for *E. coli* with a “detect” result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Through research and consultation, ADEQ determined that *E. coli* is a better indicator of fecal contamination than total or fecal coliforms and that Total Coliform positive samples are known to result in a “false positive”. A “false positive” in a Total Coliform sampling context is when a sample result is positive, but the cause of the positive result indicates a type of total coliform that does not originate in fecal contamination, is not dangerous to human health and occurs naturally. A common “false positive” is when a positive Total Coliform sample is actually indicating rust in a well. Additionally, ADEQ considered the language of 40 C.F.R. 141.63(c), the state of existing Individual APP and Reclaimed Water permits, the Department’s mission to protect human health and the environment, as well as costs to permittees, analytical methodologies and public health risk reduction. Ultimately, ADEQ determined that shifting away from Total Coliform as an indicator parameter for an alternative Microbiological Contaminants AWQS and moving towards Fecal Coliform and *E. coli is appropriate*. Specifically, Fecal Coliform and *E. coli* are more exacting at indicating a threat to human health. The decision to configure the AWQS proposal to allow permittees to utilize Fecal Coliform or *E. coli* was due to the fact that protecting human health is not diminished under any of the possible orientations and existing permittees are sampling for both parameters already in some cases. Allowing permittees to keep those sampling traditions and optimize a sampling orientation from a cost effective perspective are all factors that led to ADEQ’s proposal.

Comment 6: Interest Group

E. coli and Fecal Coliform Standards. *E. coli* and fecal coliform serve as critical indicators of fecal contamination and pathogen presence in groundwater. EPA’s guidelines for these indicators are based on decades of rigorous research and are designed to minimize risks of gastrointestinal illness and waterborne disease outbreaks. We strongly oppose ADEQ’s proposal to adopt alternative standards for *E. coli* and fecal coliform that deviate from EPA guidelines. Such deviations are highly problematic for the following reasons:

1. Inadequate Public Health Protection: ADEQ's proposed alternative standards would allow higher concentrations of *E. coli* and fecal coliform in groundwater than EPA's established limits for recreational and potable water. This could significantly increase the risk of pathogen exposure, particularly for communities relying on groundwater for drinking and recreation.
2. Contradiction of Established Science: EPA's standards are grounded in decades of epidemiological studies that demonstrate the link between elevated *E. coli* levels and disease outbreaks. Any deviation undermines the credibility and effectiveness of Arizona's water quality protections.
3. Environmental and Ecological Risks: Groundwater contamination often affects interconnected surface water systems. Weakening *E. coli* standards could exacerbate contamination in rivers, streams, and reservoirs, threatening aquatic ecosystems and biodiversity. As Arizona's aquifers often discharge into surface waters, contaminants like fecal coliform can migrate from groundwater to surface water, compounding the public health risks and damaging ecosystems. This connectivity between groundwater and surface water underscores the importance of robust water quality standards that address all potential pathways for contamination.
4. Economic and Social Costs: Relaxed standards could result in increased public health expenses, decreased trust in water quality management, and greater costs associated with contamination events.

We strongly urge ADEQ to align *E. coli* and fecal coliform standards with EPA's protective guidelines. Ensuring consistency with federal standards will bolster public confidence in Arizona's water quality management and safeguard both human and ecological health.

ADEQ Response 6:

ADEQ appreciates the comment. Generally, please reference the response to Comment No. 5 above. It is important to understand that ADEQ's adoption of an alternative AWQS from the Microbiological Contaminants MCL deviates only slightly from the MCL and remains equally as protective. The MCL requires routine sampling of both Total Coliform and *E. coli* parameters. Thereafter, upon a positive result of either Total Coliform or *E. coli*, a repeat sample is required for both parameters. Violation occurs when a positive result is obtained from an *E. coli* repeat sample that occurs after a total coliform-positive routine sample. Violation also occurs when a positive result is obtained from a Total Coliform repeat sample that occurs after an *E. coli*-positive routine sample. ADEQ found that the Total Coliform parameter is a very general indicator of coliforms in a sampling well, many of which occur naturally and are not indicative of a threat to human health. In particular, Total Coliform is too broad of an indicator parameter to signal Fecal Coliform health concerns in the APP regulatory program setting. On the contrary, ADEQ has found that Fecal Coliform and *E. coli* are more exacting indicators or surrogates of fecal coliforms, which are dangerous to human health. Additionally, when a permittee samples for Total Coliform and receives a positive result, more often than not, the result is what is known as a "false positive", signaling non-health threatening coliforms in a sample. ADEQ notes that false positives have led to a

number of permittees having to perform accelerated or more frequent monitoring intervals pursuant to the permits unnecessarily, which have associated costs.

With this final rule, ADEQ is establishing an appropriate alternative Microbiological Contaminants AWQS based upon the detection or non-detection of either Fecal Coliform or *E. coli* in a 100-milliliter sample (depending on the requirement of the permit). Upon a detection result for a routine Fecal Coliform sample, a repeat sample of either Fecal Coliform or *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Upon a detection result for a routine *E. coli* sample, a repeat sample for *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants.

1. ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective of public health and is oriented more appropriately for the AWQS setting. Again, the MCL utilized indicator parameters Total Coliform and *E. coli* to be routinely sampled; then, upon a positive result, both repeat sampled. Upon a repeat positive, the MCL has been formally violated. Compare with the alternative AWQS, which utilizes indicator parameters Fecal Coliform and *E. coli* to be routinely sampled; then, upon a detect result, a repeat sample of one or the other parameter is required, depending on the permit. Upon a repeat "detect" result, the AWQS has been formally violated. ADEQ notes that the Fecal Coliform parameter is *more* exacting than Total Coliform when it comes to identifying a risk to public health.
2. ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective of public health and is oriented more appropriately for the AWQS setting as is demonstrated in the previous paragraph. Additionally, ADEQ engaged experts composed of epidemiologists and toxicologists, among other professionals to assist in the process of reviewing EPA's MCL development assumptions. Following statutory mandate and careful consideration of the totality of the appropriate considerations, ADEQ determined that a slight deviation from the MCL was appropriate given the statutory mandate. In making this determination, ADEQ considered the language of the MCL at 40 C.F.R. 141.63(c), the state of existing Individual APP and Reclaimed Water permits, the Department's mission to protect human health and the environment, as well as costs to permittees, analytical methodologies and public health risk reduction. Ultimately, ADEQ determined that shifting away from Total Coliform as an indicator parameter for an alternative Microbiological Contaminants AWQS and moving towards Fecal Coliform and *E. coli* is appropriate, pursuant to A.R.S. § 49-223. Specifically, indicator parameters Fecal Coliform and *E. coli* are more exacting at indicating a threat to human health. The decision to configure the AWQS proposal to allow permittees to utilize Fecal Coliform or *E. coli* was due to the fact that protecting human health is not diminished under any of the possible orientations and existing permittees are sampling for both parameters already in some cases. Allowing permittees to keep those sampling traditions and optimize a sampling orientation from a cost effective perspective are all factors that led to ADEQ's proposal.

3. As is stated and explained above, ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective as the corresponding MCL and is oriented more appropriately for the AWQS setting.

4. As is stated and explained above, ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective as the corresponding MCL and is oriented more appropriately for the AWQS setting.

In summary, ADEQ's alternative Microbiological Contaminants AWQS is oriented in a similar and equally protective manner as the corresponding MCL. Also, the alternative Microbiological Contaminants AWQS is oriented more appropriately for the AWQS setting. ADEQ believes the alternative Microbiological Contaminants AWQS is appropriately protective of public health and the environment and conforms to the mandate at A.R.S. § 49-223.

Comment 8: Utility

Overall, we commend and agree with ADEQ's approach, and anticipate efficiencies with the microbiological contaminants AWQS replacing indicator parameter Total Coliform with *E. coli*.

ADEQ Response 8:

ADEQ appreciates the comment.

Comment 9: Utility

A non-detection of *E. coli* should be specified as < 2.2 Most Probable Number (MPN)/100 ml sample. This threshold is specified on all permits.

ADEQ Response 9:

ADEQ appreciates the comment. For *E. coli*, "detect / non-detect" will appear in the applicable APP monitoring tables along with a footnote stating that "non-detect" means a result of < 2.2 MPN or < 1 CFU, depending on the unit used in the permit.

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

There are no other matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking.

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

This rulemaking does not create a requirement for a permit.

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

Federal law is not applicable to the subject matter of the rule.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the

competitiveness of business in this state to the impact on business in other states:

Not applicable.

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

Not applicable.

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

Not applicable.

16. The full text of the rule follows:

Rule text begins on the next page.

TITLE 18. DEPARTMENT OF ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY STANDARDS

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

Section

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

Section

R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

A. No Change

B. No Change

C. No Change

D. No Change

E. No Change

F. Aquifer water quality standard for microbiological contaminants. The aquifer water quality standard for microbiological contaminants is based upon the ~~presence or absence~~ detection or non-detection of ~~total coliforms~~ either Fecal Coliform or *E.coli* in a 100-milliliter sample, depending on the requirement in the permit. ~~If a sample is total coliform-positive, a 100-milliliter repeat sample shall be taken within two weeks of the time the sample results are reported. Any total coliform-positive repeat sample following a total coliform-positive sample constitutes a violation of the aquifer water quality standard for microbiological contaminants.~~

1. If a routine sample for Fecal Coliform results in a detection, a 100-milliliter repeat sample of either Fecal Coliform or *E.coli* shall be taken within five (5) days of becoming aware of the detection. A repeat sample for Fecal Coliform or for *E.coli* resulting in a detection following a routine Fecal Coliform sample that resulted in a detection constitutes a violation of the aquifer water quality standard for microbiological contaminants.
2. If a routine sample for *E.coli* results in a detection, a 100-milliliter repeat sample for *E.coli* shall be taken within five (5) days of becoming aware of the detection. A repeat sample for *E.coli* resulting in a detection following a routine *E.coli* sample that resulted in a detection constitutes a violation of the aquifer water quality standard for microbiological contaminants.

G. No Change

AWP NFRM Economic Impact Statement (EIS) - 18 AAC 11 - Microbiological Contaminants

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

This Economic, Small Business, and Consumer Impact Statement (EIS) has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An Identification of the Rulemaking:

The rulemaking addressed by this EIS has the scope of an amendment to R18-11-406(F) in Title 18, Chapter 11, Article 4 of the Arizona Administrative Code (A.A.C.) This rulemaking action is being taken by the Arizona Department of Environmental Quality (ADEQ) in order to adopt an adjustment to the Safe Drinking Water Act Maximum Contaminant Level (MCL) for Microbiological Contaminants as an Aquifer Water Quality Standard (AWQS) pursuant to Arizona Revised Statutes (A.R.S.) § 49-223. A.R.S. § 49-223 mandates that within one year after the EPA establishes or adjusts an MCL, the ADEQ Director shall open a rule making docket pursuant to A.R.S. § 41-1021 for adoption of the MCL as an AWQS. As is detailed in Section 7 of this Notice of Final Rulemaking (NFRM), ADEQ conducted the rulemaking in conformance with the statutory administrative procedure in A.R.S. Title 41, Chapter 6, and is hereby submitting this EIS, in conformance with the requirements of A.R.S. §§ 41-1055 and 41-1035. ADEQ has determined that this rulemaking will impact the regulated community, ADEQ customers, the environment, and may impact human health. This EIS was developed to evaluate the rulemaking's impacts and compare the benefits and detriments of adopting an alternative AWQS to the corresponding MCL. The AWQSs are designed to protect the State's aquifers, all of which have been designated for drinking water-protected use (*see* A.R.S. § 49-224(B)). The AWQSs are primarily used in ADEQ's Aquifer Protection Permit program (APP), and (to a lesser extent) in some remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), and elsewhere.

B. A summary of the EIS:

General & Specific Impacts

The full scope of stakeholders who may incur direct impacts from this rulemaking include APP permittees, such as Mines, Industrial Facilities and Wastewater Treatment Plants, as well as rate payers to municipal drinking water systems, ADEQ, the general public and the environment. While not all costs and benefits are borne evenly, these are the identified groups generally impacted from the Microbiological Contaminants AWQS rulemaking.

Costs to permittees to meet the new AWQS for Microbiological Contaminants are None to Minimal. In fact, ADEQ expects cost savings in many cases. The proposed AWQS for microbiological contaminants does not propose a numeric change in water quality standards, but instead proposes to implement more efficient/effective monitoring protocols. In this regard, the EIS generally follows a key premise of the Matrix Report: that the primary cost impact of the proposed AWQS would be a *reduction* in permittee sampling costs due to the reduced incidence of false-positive routine testing, repeat tests and accelerated monitoring thereafter. Consistent with the Matrix Report, the EIS estimates the cost *savings* related to more efficient sampling protocols. The EIS follows the format of the cost analysis in the Matrix Report, which evaluates *incremental* changes (reductions) in permittee costs compared to baseline conditions (i.e., costs under the current AWQS compared to costs under the proposed AWQS).

In addition to creating cost savings for permittees, the proposed AWQS would potentially generate economic benefits in terms of a reduction in cases of illness and death associated with microbiological contamination. In particular, the improved sampling protocols are expected to allow for quicker identification of incidents of contamination, allowing for more timely implementation of corrective measures (according to ADEQ staff, the higher incidence of false-positive test results under the existing protocols – and the associated need for retesting – can result in delays in identifying actual cases of contamination, potentially resulting in disease outbreaks that could otherwise be contained sooner). These potentially significant health benefits are not quantified in the EIS, as ADEQ and their consultant do not have sufficient information to develop such estimates. However, following the methodology of the Matrix Report, the EIS provides *general* estimates of the annual economic benefits attributable to regulation of Microbiological Contaminants. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).

Costs. Whereas permittees will continue to incur costs (primarily for routine and repeat sampling) to comply with the new/proposed AWQS, these costs are expected to *decrease* in comparison to the costs of complying with the current AWQS. These potential cost savings are attributable to the expectation that the routine sampling and repeat sampling requirements under the new AWQS would result in fewer "false positive" samples, thereby reducing the need for follow-up sampling and unwarranted corrective actions for facilities falsely deemed to be non-compliant. Statewide, the cost savings to permittees are estimated to range from $882,000 to $1.7 million annually (in 2023 dollars).

Benefits. Based on available time series data from ADHS and CDC, the Matrix Report estimates that regulation of Microbiological Contaminants results in 80 fewer cases of illness and 0.3 fewer deaths per year (statewide). In monetary terms, these prevented illnesses and deaths represent annual statewide benefits of $3.5 million per year (in 2023 dollars).

Specific impacts

From a total 434 Aquifer Protection permittees in Arizona, it is estimated (based on the Matrix Report) that 153 to 300 permittees annually are required to sample for Microbiological Contaminants. This subset of 153 to 300 permittees would be the impacted stakeholder group that would potentially experience cost savings under the proposed AWQS. In Arizona, the potentially affected benefiting population consists primarily of private well users throughout the state (estimated at 350,000 persons in total), although some of these will be effectively excluded from the additional benefits of the higher AWQS because existing Microbiological Contaminant levels in some wells are already zero. Benefits in the form of cost savings could also accrue to community water systems and their clientele due to a reduction of Microbiological Contaminants in the groundwater, under the proposed AWQS. As many as 1.8 million Arizonans could be potentially affected in this way.

Stakeholder Process

ADEQ has conducted a number of general and specific stakeholder meetings concerning this rulemaking, including tribal listening sessions and rule language sessions with major industry associations and their counsel, representing a majority of the individual APP regulated parties. The dates of those events are as follows: 9/29/22, 6/8/23, 9/11//23, 12/12/23, 12/13/23, 4/29/24, 8/8/24, 1/8/25, 2/20/25 and others. A repository of stakeholder materials can be found published on ADEQ's dedicated AWQS Rulemaking website here: https://www.azdeq.gov/rulemaking/awqs-update/resources.

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

Costs to Stakeholders

Individual APP Permittees (hereinafter: "permittees") will be the primary bearers of costs associated with this rulemaking. Permittees are discussed under the following three categories:

- Mines, where treatment conditions can vary noticeably from typical urban waste processing.
- Industrial facilities, with treatment conditions that can vary according to the industrial processes involved.
- Wastewater Treatment Plants, including mostly those treating urban-related wastewater.

Other potential costs to stakeholders addressed include the following:

- Rate payers in municipal systems, where rates could conceivably increase to cover increased costs for expanded treatment.
- Regulated parties under ADEQ remediation programs such as WQARF and VRP (minimal impact).
- Some permittees are assumed to be small businesses, and are additionally addressed as a segmented category.
- ADEQ, although any additional staff efforts and other expenses associated with monitoring proposed expanded treatment requirements will generally be covered through permittees' fee increases.

Benefits to Stakeholders

Generally, the state and the constituents of the state benefit from this rulemaking through the protection of the aquifer resource as an asset for drinking water use both now and in the future, pursuant to statutory mandate at A.R.S. § 49-224. More specifically, ADEQ and its consultant have attempted to quantify the benefit of the rulemaking to the extent possible in terms of health benefits related to forgone diseases. In Arizona, the immediate health-affected population consists primarily of private well users throughout the state, under certain qualifying conditions. Private well water consumers are generally limited to areas where discharged water treatment contaminant levels would improve based on the proposed AWQSs.

Other benefit categories include the following:

- Community water systems (CWSs) and their clientele. Savings could accrue to CWSs due to reduced Microbiological Contaminants in the groundwater under the proposed AWQS. Any savings would presumably be passed on to customers.
- State costs, where some state-supported medical costs would decrease, with diseases forgone.

D. Benefit/Cost Analysis:

Not all permittees will be burdened with the requirement to alter their facility in order to come into compliance with the proposed AWQSs and thereby incur the related costs, for any one of the following reasons or combinations of reasons:

- Permittees' existing treatment methods/technologies are already adequate to meet the target standard;
- The contaminant in wastewater subject to treatment exists at a level below the proposed AWQS; and
- Ambient levels of the contaminant in groundwater exceed the proposed AWQS, in which case the permittee need only be held to a "no further degradation" standard (*see* A.A.C. R18-9-A205(C), A.R.S. § 49-243(B)(2) and (3)).

Cost impacts in this EIS relate primarily to potential cost *savings* to permittees due to the more efficient (and more effective) sampling protocols under the proposed AWQS. According to ADEQ's database of permittees, an estimated total of 434 permits are divided among the categories shown below:

Category	# Permittees
Mines	35
Industrial Facilities	56
Wastewater Treatment Plants	343
Total	**434**

Category	# Permittees
*Small Businesses as a segmented category	135

Key modeling factors used in this analysis are the following:

Factors	Key source references	Notes
Costs		
Total APP's	Matrix report, page 25	The Matrix Report evaluates two alternatives for a new AWQS: 1. ADEQ would adopt the EPA's MCL as the AWQS; or 2. ADEQ would develop and establish an appropriate alternative AWQS (for which the Matrix Report assumed that the routine and repeat samples would both be Fecal Coliform). Per direction of ADEQ staff, the EIS considers a proposed AWQS that would require testing *E. coli* for the routine sample, with all required repeat samples testing for *E. coli*. Where appropriate, the Matrix Report factors have been applied to the AWQS proposal considered in the EIS.
Type and number of facilities impacted by changes in AWQS	Matrix report, page 25	
Sampling frequency	Matrix report, page 25	
Coliform type(s) sampled	Matrix report (with updated assumptions provided by ADEQ staff)	
False-positive percentages by sample type	Matrix report, page 25	
Sampling costs by sample type	Matrix report, Chart 8	
Benefits		
Annual cases of illness and annual number of deaths related to microbiological contamination of drinking water in Arizona (these are assumed to be prevented by compliance with the AWQS and are therefore interpreted as "benefits" of the AWQS) – for purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS	Matrix report, page 24	Illnesses and deaths related to microbiological contamination of drinking water are assumed to be prevented by compliance with the AWQS and are therefore interpreted as "benefits" of the AWQS. For purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).
Average cost per case of illness caused by foodborne pathogens	Matrix report, page 25	
Value of statistical life (VSL)	Matrix report, page 25	
General		
Information about permittees by type of activity served, including size	APP Permittee Database	Categorizations of permittees and also the total number are as interpreted by ADEQ and consultant
Amounts in October 2023 $	https://data.bls.gov/cgi-bin/cpicalc.pl	

Approach to the EIS for Microbiological Contaminants. ADEQ and its consultant rely on estimates prepared by the authors of the "MCL Assumptions Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support", prepared by Matrix New World Engineering, Land Surveying and Landscape Architecture, PC. in 2023 ("Matrix Report") (*see* Heading No. 8 of this NFRM). This information was supplemented by the Matrix Report's source material (primarily from the EPA), which takes into account multiple factors affecting potential costs and benefits.

Health Risk Reduction (Benefits)

The EIS measures the economic benefits of the AWQS in terms of the monetized value of illnesses and deaths that would be prevented by compliance with the State's AWQS for Microbiological Contaminants. These calculations are based on the following steps:

- Estimate the annual number of cases of enteric disease that would occur in Arizona in the absence of effective AWQS for microbiological contaminants;
- Estimate the annual number of deaths that would result from outbreaks transmitted by water in Arizona in the absence of effective AWQS;
- Calculate the costs associated with treatment of estimated cases of enteric disease; and

- Calculate the monetary value of lives lost due to disease outbreaks transmitted by water (using "Value of Statistical Life" data).

Based on available time series data from ADHS and CDC, the Matrix Report estimates that the AWQS would create the following benefits in terms of prevented illnesses and deaths:

- Prevention of 80 cases of illness per year
- Prevention of 0.3 deaths per year
- Avoided costs of $2,397.76 per case of illness prevented
- Value of Statistical Life (VSL) of $11.1 million

Using the above factors, the Matrix Report calculates total benefits from the AWQS of $3.5 million per year. For purposes of the EIS, health-related benefits are understood to be the same for both the existing AWQS and the proposed AWQS. These general estimates of economic benefits are provided for contextual purposes (i.e., they quantify the existing benefits of regulating Microbiological Contaminants irrespective of proposed adjustments to the AWQS and therefore are not represented to be *incremental* benefits associated with the proposed AWQS).

The proposed AWQS would potentially generate economic benefits in terms of a reduction in cases of illness and death associated with microbiological contamination. In particular, the improved sampling protocols are expected to allow for quicker identification of incidents of contamination, allowing for more timely implementation of corrective measures (according to ADEQ staff, the higher incidence of false-positive test results under the existing protocols – and the associated need for retesting – can result in delays in identifying actual cases of contamination, potentially resulting in disease outbreaks that could otherwise be contained sooner). These potentially significant health benefits are not quantified in the EIS, as the consulting team does not have sufficient information to develop such estimates.

Cost Analysis

Consistent with the Matrix Report, the cost analysis provided in this EIS is based on the premise that the proposed AWQS would result in cost *reductions* (to permittees and the State) compared to the existing AWQS. The cost savings would result from revised sampling protocols intended to significantly reduce the occurrence of false-positive test results (while more quickly identifying contaminants that are of actual concern from a public health perspective). Within the framework provided in the Matrix Report, these cost savings are calculated in terms of the avoided costs of follow-up sampling compared to estimated costs under the existing AWQS protocols. As such, the calculated "costs" are negative (compared to baseline levels) and therefore can actually be interpreted as benefits rather than costs.

The Matrix report evaluates two alternatives for a new AWQS:

1. ADEQ would adopt the EPA's MCL as the AWQS; or
2. ADEQ would develop and establish an appropriate alternative AWQS (for which Matrix assumed that the routine and repeat samples would both be Fecal Coliform).

The EIS considers a proposed AWQS that would require testing *E. coli* for the routine sample, with all required repeat samples testing for *E. coli*. Where appropriate, the Matrix Report factors have been applied to the AWQS proposal considered in the EIS. Cost factors/assumptions derived from the Matrix report are summarized below.

Costs of Sample Analysis. The Matrix Report estimated ranges of costs for the sample analysis by contacting four ADHS certified laboratories. If the contacted laboratories offered more than one analysis method, the least expensive method was used. The following are the range of costs used for the Matrix analysis (and also in the EIS):

- Total coliform: $25 - $50
- *E. coli*: $25 - $50

Costs for labor, reporting, and administrative work were assumed in the Matrix Report based on the author's knowledge and previous experience with APPs. These assumptions are outlined on the tables below.

Work Costs per False-Positive Sample

Work Category	Hours	Rate	Cost
Labor	8	$95	$760
Data analysis	4	$125	$500
Reporting	20	$100	$2,000
Administrative	4	$100	$400
TOTAL:	**36**	**--**	**$3,660**

Breakdown of Work Costs based Coliform Type per False-Positive Sample

Category	Total Coliform	*E. Coli*

Sampling Cost (labor, analysis, consumables)	$795 - $820	$795 - $820
Reporting Costs	$2,500	$2,500
Administrative Costs	$400	$400
TOTAL:	**$3,695 - $3,720**	**$3,695 - $3,720**

Note: Consumables include ice, gloves, etc. for collecting samples. Assumed to be approximately $10 per sample.

In the EIS, the factors summarized above have been applied to the proposed AWQS. The costs of sampling under the current AWQS and the proposed AWQS are calculated on the table on the next page.

Total and Incremental Sampling Costs Per Year Statewide (in 2023 dollars)

Factor	Current AWQS (Baseline)		Proposed AWQS	
	Low	High	Low	High
Total APP's	434	434	434	434
Facilities required to sample for coliforms	153	300	153	300
Sampling frequency (times per year)	4	4	4	4
Routine coliform samples per year	612	1,200	612	1,200
Coliform type sampled (routine)	Total	Total	*E. Coli*	*E. Coli*
False-positive percentage	43%	43%	4%	4%
Repeat samples triggered by false positives	263	516	24	48
Coliform type sampled (repeat)	Total	Total	*E. Coli*	*E. Coli*
Total cost per sample (by type):				
Total coliform	$3,695	$3,720	$3,695	$3,720
E. Coli	$3,695	$3,720	$3,695	$3,720
Aggregate (statewide) sampling costs/year:				
Routine samples	$2,261,340	$4,464,000	$2,261,340	$4,464,000
Repeat samples	$972,375	$1,919,520	$90,454	$178,560
Total	*$3,233,716*	*$6,383,520*	*$2,351,794*	*$4,642,560*
Cost Increase (Reduction) Compared to Baseline	***N/A***	***N/A***	***($881,923)***	***($1,740,960)***

Source: ADEQ and consultant.

1. Part I – Benefit / Cost Stakeholder Matrix:

Minimal	Moderate	Substantial	Significant
$500,000 or less	$500,000 to $5 million	Greater than $5 million	Cost/Burden cannot be calculated, but the Department expects it to be significant.

Note: all benefits and cost figures in this document are in annualized amounts.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
Costs to Stakeholders			
Cost stakeholders	General: The EIS follows the format of the cost analysis in the Matrix Report, which essentially looks at *incremental* changes in permittee costs compared to baseline conditions (i.e., costs under the current AWQS compared to costs under the proposed AWQS). An underlying premise of the Matrix Report analysis (and therefore the EIS) is that more efficient sampling requirements under the proposed AWQS would result in a significantly lower occurrence of false-positive test		Significant

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
	results and would therefore *reduce* compliance costs without compromising (while potentially improving) water quality standards		
Permittees, generally	In general, microbiological contaminants are more likely to be generated within Wastewater Treatment Facilities, and also in treated wastewater. Microbiological Contaminants also can enter groundwater under certain conditions		Moderate: AWQS would potentially reduce costs for routine and repeat sampling (by $882,000 to $1.7 million per year statewide)
Mines	Microbiological Contaminants are least likely to be found in mine-related water being treated, compared to other permittee types		
Industrial activities	Microbiological Contaminants would not be particularly likely to be occurring in industrial-related water being treated, compared to other permittee types		
Wastewater Treatment Plants	This category of permittee type is most likely to be dealing with Microbiological Contaminants, because of the urban-use connection		
Rate payers in municipal systems	Private citizens and businesses could potentially benefit from reduced user fees for wastewater processing, based on reduced costs to permittees under the revised AWQS. However, these benefits are likely to be minimal (given the relatively small cost savings on a per-system basis)		Proposed AWQS is expected to reduce compliance costs to permittees, which could potentially be passed on to rate payers in the form of lower rates; in practice, rate reductions are likely to be minimal Minimal. Aggregate revenues would potentially decrease in proportion to the cost savings from reduced sampling requirements. Given state-wide cost savings of $882,000 to $1.7 million per year, cost savings on a per-system basis are likely to be minimal
Small businesses as a segmented category	Coming into compliance with new standards. Small businesses are generally cost-disadvantaged when compared to larger businesses because treatment costs generally decline as the scale (processing capacity) of a processing facility increases.		Moderate. Overall, the AWQS would potentially create moderate cost savings to permittees compared to the existing AWQS
ADEQ	ADEQ believes some new costs will be incurred, despite the fact that some infrastructure for processing permits is already in place. ADEQ anticipates that hundreds of permits may need to be amended to update monitoring tables that include Microbiological Contaminant indicator parameters. Any additional costs incurred would generally be covered by increased fees paid by permittees.	Minimal	
Benefits to Stakeholders			

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/ Increases in Revenue
State of Arizona and its Constituents, generally	Savings could accrue to the people of the State of Arizona, generally, through aquifers (as a local, convenient and {in the right circumstance} inexpensive sources for drinking water) remaining a viable asset to community water portfolios and individual well users alike		Significant
Private well users, health benefits: In Arizona, the more immediately affected population consists primarily of private well users throughout the state.	Following EPA, quantified benefits are measured in terms of reduced loss of life and illness and costs associated with treatment for disease.		Moderate: Potential health benefits attributable to existing AWQS are estimated at $3.5 million per year; this benefit would not change by virtue of the proposed new AWQS Significant: Potential reduction in the impacts of disease outbreaks (by virtue of more rapid identification and mitigation of contamination
Community water systems (CWSs) and their clientele	Savings could potentially accrue to CWSs due to reduced microbiological contaminants in the ground water. Any savings would presumably be passed on to customers.		Significant
State costs	Some state-supported medical costs would decrease (this benefit already exists under existing AWQS and would continue under new AWQS)		Significant
State revenue effects	Reduced sampling requirements of permittees would potentially result in some loss of business (and associated reductions in employment) for firms engaged in sample analysis. The potential loss of direct jobs would in turn (in theory at least) generate additional employment losses through reductions in indirect and induced (secondary) economic activity, and subsequent tax revenues	Minimal. Lost State income taxes are estimated to be $6,700 per year due to direct and secondary losses of employment	

2. Part II – Individual Stakeholder Summaries / Calculations:

The following subsection provides an explanatory discussion of expected stakeholder costs and benefits. The subsection outlines the key factors and analysis used to determine the impact findings reported in Part 1 of subsection D, above.

***Costs to Stakeholders*:**

Permittees in General

Compared to the current AWQS, the indicated changes to the AWQS are intended to maintain the same (or better) levels of protection with respect to human health, while potentially resulting in significant cost savings to impacted permittees (due to the expectation that the modified sampling requirements would substantially reduce the incidence of "false positive" results). As such, many of the stakeholder categories that would typically be impacted by the costs of new regulation would actually benefit from *reduced* cost burdens under the proposed new AWQS.

Estimated cost savings to permittees are based on factors in the Matrix report, applied to the proposed AWQS (as defined by ADEQ staff). Consistent with the Matrix report, the EIS focuses strictly on potential cost savings related to the issue of reducing false-positive test results (due to more efficient requirements for contaminant sampling under the new AWQS); the analysis does not quantify other potential costs savings such as reduced costs for assessments and correction actions (reductions in false-positive test results would presumably reduce the incidence of unwarranted assessments).

Mines

Because mines are not necessarily associated, locationally or otherwise, with water treated for household consumption, Microbiological Contaminants are likely to be minimal compared with discharge systems that have an urban connection.

The 35 permittees operating mining facilities can be quite complex, potentially involving multiple water control structures (dams, retention areas, etc.) in conjunction with treatment processes. The concentrate leach process for extracting copper, a common practice in Arizona, is also water-intensive.

Industrial Facilities

This category of permittee is generally processing wastewater generated from an industrial process. Consequently, water treatment technology options are partially dictated by the particular type of waste created through the industrial activity. For some industrial processes, water use will involve treatments similar to those for households, therefore microbiological contamination would potentially be an issue; but other industrial processes will have minimal or no connection to microbiological contamination. The estimated number of industrial wastewater processing permittees is 56.

Wastewater Treatment Plants

The 343 permittees in this category are generally treating wastewater from typical municipal/urban-type sources, and so will typically have significant potential for microbiological contamination. Key subcategories in this group are listed below and provide a sense of the range of activities to which treatments are being applied. Some of these are tied to municipalities, and some are treating waste streams from planned communities, RV parks, correctional institutions, military installations, or similar developments that may be remote from or otherwise not connected to a central wastewater treatment collection and processing system.

- City/Town; Other Urban (subdivisions, single-purpose facilities such as schools)
- Hospitality/Travel/Recreation
- Military Base
- Prison/Jail
- Water Recharge, Other Processing

Rate payers in municipal systems (community water systems (CWSs))

Private citizens and businesses could potentially benefit from reduced user fees for wastewater processing, based on reduced costs to permittees under the revised AWQS. However, these benefits are likely to be minimal (given the relatively small cost savings on a per-system basis).

Small businesses as a segmented category

(See also subsection F below, addressing the probable effects of the proposed rulemaking on small businesses.) Cost burdens on small businesses will tend to be proportionately greater than for large businesses. Not only are they less likely to have specific expertise needed to meet proposed modified standards in-house, but also small businesses tend to be disadvantaged because treatment costs generally decline as the scale (processing capacity) of a processing facility increases, so larger processing facilities can process wastes at a smaller unit cost.

ADEQ

ADEQ may need additional staff or staff time to address advanced treatment processes and related testing, etc. However, any such costs should be covered by fees paid by permittees for ADEQ services.

***Benefits to Stakeholders*:**

Private well users (and CWSs users)

The relevant affected group for this benefit consists of consumers of permittee-treated water that ends up in water supply chains. There are two segments to the benefiting stakeholders:

1. Some Community water systems (CWSs, or municipal water treatment utility operators), for systems in which groundwater is a water source, along with customers of those water utilities. These stakeholders are likely to jointly benefit from reduced sampling requirements and costs, with cost savings presumably passed on to customers, because groundwater quality has improved due to permittees' actions in meeting revised AWQS.
2. The population served by private wells, where there is no intermediary utility processing their water for consumption. This affected group benefits from diseases forgone due to water quality standards related to Microbiological Contaminants.

The first segment is addressed below under the section *Community water systems (CWSs) and their clientele.*
Segment 2. As more fully documented in the Matrix Report, one major purpose of fecal pollution detection is to identify the presence of pathogens related to fecal waste sources and potential health risks (from the many bacterial, protozoan, and viral enteric pathogens that can cause diseases). Water quality monitoring to detect fecal pollution usually applies microbial fecal indicators to represent numerous potential pathogens.
Based on available time series data from ADHS and CDC, the Matrix report estimates that the AWQS would create the following benefits in terms of prevented illnesses and deaths:

- Prevention of 80 cases of illness per year
- Prevention of 0.3 deaths per year

Community water systems (CWSs) and their clientele

This affected group (segment 1 as noted above) includes a portion of customers of municipal or water utility water systems. Estimates of this segment of the population, served by water sources that included groundwater, were derived

from data at the Arizona Department of Water Resources website (https://www.azwater.gov/ama/ama-data) which gave quantities of water use by municipal and other user types, by source, including groundwater, along with populations served by various categories of providers. An estimated 2.04 million Arizonans would be affected in this way (by both existing and proposed AWQS).

State cost savings

The proposed AWQS would potentially create incremental health benefits compared to existing policy by allowing for more rapid identification of contamination (and therefore more proactive containment of potential disease outbreaks). Related to these potential health benefits, the proposed AWQS would potentially result in some reduction in state-supported medical costs.

E. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking:

General:

As permittees would be subject to more efficient sampling requirements under the proposed AWQS, the need for employment related to sampling and sample analysis would potentially decrease somewhat. In this EIS, this effect is simulated through the RIMS II modeling system described, as applied to this analysis (see next subsection below entitled "Regional Input-Output Modeling System (RIMS) Model Explanation"). Summarized results of the modeling process are tabulated below. Unless noted otherwise, results represent the low end of estimates where a range of potential annualized costs has been given in subsection D, above, to avoid potential confusion and overstatement related to this impact measure. The model translates expected annualized costs to employment and earnings based on relationships of those elements within the industry category that most closely matches that of the permittees (and is documented within the RIMS II system – NAICS code 2213: Water, sewage, and other systems).

In the summary of the model as tabulated below for the contaminant of Microbiological Contaminants, direct employment and earnings resulting from permittees' investment in equipment are shown separately from the total multiplier (direct plus secondary) job-generating effects of this investment.

RIMS II modeling outputs and key input factors	
Annualized Costs (with financing etc.)/Increased "Output"	($881,923)
Jobs Per Million Dollars in Output	1.80
Earnings Per Dollar of Output	$0.17
New Wastewater Treatment Direct Jobs Created	(1.59)
New Annual Earnings for Direct Jobs Created	($148,229)
Total New Jobs (Direct + Secondary)	(4.87)
Effective Income Tax Rate	2.1%
Estimated Total Annual State Income Taxes (Direct and Secondary)	($6,732)

Source: RIMS II model for Arizona; ADEQ & consultant.

Regional Input-Output Modeling System (RIMS) Model Explanation:

This subsection discusses the Regional Input-Output Modeling System (RIMS II - As provided by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce) modeling analysis supporting the jobs-related economic impact of the proposed wastewater treatment investments / expansions in the State of Arizona. All impacts estimated through this analysis are provided for the statewide level of geography and are not intended to estimate impacts for sub-state geographic areas (e.g., metropolitan statistical area [MSA], county, etc.). Results of these analyses are shown in Parts E (employment) and G (state taxes) of the document.

The analysis assumes the investments to upgrade the wastewater facilities will include installing new wastewater-specific equipment (which may also include expanding the size of the facility, although that is not addressed in this analysis), which will increase the productive capacity of these wastewater facilities. For the purposes of this analysis, the "productive capacity" is assumed to be the annualized equivalent of capital investments (and additional operating costs would also be part of this, and such costs are included in the analysis where available). Cost (and benefit) figures shown in this document are annualized, having been calculated as such by the original data providers, generally from EPA and the Matrix Report.

The annualizations generally were based on assumptions of the payback of proposed investments having a 20-year lifespan (and an installation period was sometimes included) and an annual interest rate of 7.0%. ADEQ and its consultant further assumed that wastewater treatment plants' revenues (such as user fee increases) would increase by commensurate amounts to cover the annualized costs of the proposed improvements. This increase in revenue ("Output") allows ADEQ and its consultant to apply final-demand multipliers to estimate the number of new jobs and earnings (associated with these jobs) in the state that would result from the proposed investments. The RIMS II model generates economic multipliers for jobs, earnings, and output, based on the industry NAICS code 2213: Water, sewage, and other systems, for direct, indirect, and household (induced) effects. Along with the increases in employment and earnings

generated by the proposed investments, the new earnings would also generate state income tax revenue for the State. Based on data from the BEA and the Arizona Department of Revenue (ADOR), ADEQ and its consultant derived an estimated effective state income rate of 2.1% (The State flat income tax rate, at the time this EIS was prepared, is 2.5%. The net income tax rate of 2.1% reflects deductions for the average wage and salary worker and other adjustments).

F. A statement on the probable impact of the rules on small business:

Economic costs to comply with AWQSs that are borne by small businesses may be considerable. Small businesses tend to be disadvantaged because treatment costs generally decline as the scale (processing capacity) of a processing facility increases. Besides the potential need for additional personnel or additional training, permittees may need to hire technical expertise on a consulting basis to determine the most appropriate and cost-effective treatment technologies that apply to any one permittee's particular conditions.

1. An identification of the small businesses subject to the rules:

Small businesses constitute a distinct category for which the impacts of rulemaking need to be considered. For this EIS and those addressing the other contaminants, impacted small businesses will be wastewater facility permittees meeting the following criteria:

- According to A.R.S. 41-1001 and as applied in this EIS, "'Small business' means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than $4 million in its last fiscal year."
- ADEQ and its consultant used a database of permittees, which had partial flow data, to screen permittees for this measure. Lacking further operational-level data for permittees, ADEQ and its consultant also screened permittees to identify "businesses" as opposed to governmental entities, and small businesses, constituting those that did not appear to be associated with a larger entity.

Based on the screening processes described above, in which the number of permittees that are also small businesses is estimated with limited precision, ADEQ and its consultant estimated that small businesses make up just over 30% of permittees, or 135 entities in total. As noted previously in this EIS, not all of these facilities will necessarily need to incur costs to meet the proposed AWQS.

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

Permittees small and large have systems already in place for the basic administrative and other managerial duties related to compliance to existing AWQSs. To the extent that is the case, any additional duties would constitute an expansion of existing processes rather than new systems. Also, there is a possibility that permittees would need to hire a consultant for technical expertise to select and integrate new technology into existing treatment processes.

3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:

A.R.S. § 41-1035 Methods	ADEQ Decision to use or not use and reason
1. Establishing less stringent compliance or reporting requirements in the rule for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243). ADEQ does allow permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS (*see* Chapter 9 NFRM).
2. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243). ADEQ does allow permittees a reasonable amount of time to conduct Baseline Monitoring and to apply for permit amendment to come into compliance with new or adjusted AWQS (*see* Chapter 9 NFRM).
3. Consolidating or simplifying the rule's compliance or reporting requirements for small businesses	Not used. In administering the APP program, compliance and reporting requirements are delineated in rule and statute in order to properly protect human health and the environment. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243).
4. Establishing performance standards for small businesses to replace design or operational standards in the rule	Not used. In administering the APP program, performance, design and operational standards are all built into a review of a facility's employment of the best available demonstrated control technologies, processes, operating methods or other alternatives. ADEQ believes these requirements are no more stringent than necessary (*see* A.R.S. §§ 49-223, 224, 241, 243).

A.R.S. § 41-1035 Methods	ADEQ Decision to use or not use and reason
5. Exempting small businesses from any or all requirements of the law	Not used. In administering the APP program, all persons discharging a pollutant into the environment must obtain an APP permit under A.R.S. § 49-241, unless exempted through A.R.S. § 49-250. Eliminating small business from the scope of the APP program is not supported by statute and would undermine the purpose of the program, to protect the state's aquifers to a drinking water standard (*see* A.R.S. §§ 49-223, 224, 241, 243).

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

Potential savings could accrue to community water systems due to reduced Microbiological Contaminants in the groundwater under the proposed AWQS, and such savings could be substantial and would presumably be passed on to customers. As many as 1.8 million Arizonans could potentially be affected.

G. A statement of the probable effect on state revenues:

To the extent that costs to upgrade treatment facilities result in higher user fees, additional fees could be taxable within the state's transaction privilege tax system. ADEQ and its consultant have not attempted to quantify any such effect. Investments in treatment technology and processes by permittees could result in additional hires to operate equipment, which in turn would generate additional employment through indirect and induced (secondary) economic activity, and subsequent tax revenues. Employment effects are addressed in subsection D, above. As noted therein, estimated state taxes for direct and secondary employment generated by investments in Microbiological Contaminants technology (using the low end of costs where ranges are given) are approximately $6,700.

H. A description of any less intrusive or less costly methods of achieving the purpose of the rulemaking:

The controlling statute at A.R.S. § 49-223 does not allow ADEQ to conduct any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking. It simply requires ADEQ to open a rule making docket pursuant to A.R.S. § 41-1021 for adoption of a new or adjusted MCL as an AWQS within one year of the MCL's establishment or adjustment.

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

Reference material used in this EIS comes mainly from the *MCL Assumptions Report – Microbiological Contaminants Aquifer Water Quality Standards Technical Support* prepared by Matrix New World Engineering, Land Surveying and Landscape Architecture, PC (Matrix Report) for ADEQ in 2023 (*see* Heading No. 8 above for citation). Other reference material was used to a lesser extent (*see* Heading No. 8 above). ADEQ and its consultant also made selective use of EPA documents addressing specific contaminants referenced extensively by the Matrix Report. EPA documentation is the typical standard for assumed legitimacy with respect to actions assessed and implemented by ADEQ. ADEQ and its consultant reviewed the Matrix Report and engaged with Matrix principals in direct consultation regarding aspects of their documentation in the preparation of this EIS. EPA documentation was generally available online.

AWP NFRM Public Comments - 18 AAC 11 - Microbiological Contaminants

Comment 1: Utility
Concerning the proposed alternative AWQS for Microbiological Contaminants, our current APP monitoring table utilizes the unit Most Probable Number (MPN) with a limit of (< 2.2) for *E. coli* monitoring. Will the units stay the same with this change in standard? Will Presence / Absence (P/A) be installed instead?
ADEQ Response 1:
ADEQ appreciates the comment. No, P/A will not be used for the *E. coli* indicator parameter utilized in the proposed AWQS for microbiological contaminants. Rather, detection or non-detection of either Fecal Coliform or *E. coli* is used. This means, for *E. coli*, "detect / non-detect" is likely to appear in the applicable APP monitoring tables along with a footnote stating that "non-detect" means a result of < 2.2 MPN or < 1 CFU, depending on the unit used in the permit.
Comment 2: Utility
If there is significant opposition to any of the parameters does ADEQ then not proceed with that particular parameter?
ADEQ Response 2:
ADEQ appreciates the comment. The answer to that question is – not necessarily. "Substantial Opposition" is a term defined in A.R.S. § 49-223(A) as, "... information submitted to the director that explains with reasonable specificity why the [MCL] is not appropriate as an [AWQS]." Upon receipt of "substantial opposition", the Department must conduct a statutorily delineated procedure that leads to a determination of whether the MCL is "appropriate" as an AWQS. More information on that process can be found here: https://www.azdeq.gov/rulemaking/awqs-update/resources . ADEQ has received substantial opposition from stakeholders on the proposal to adopt the Microbiological Contaminants MCL as an AWQS (*see* heading No. 7, subsection "Substantial Opposition" for more information).
Comment 3: Concerned Citizen
If there are any lab people on the call, can they answer if there are sampling methods associated with the proposed Microbiological Contaminants AWQS that will provide a presence/absence (P/A) result for fecal coliforms? I know P/A exists for Total Coliforms and *E. coli*. I found this statement in a Google search, "*[t]he P/A tests for the presence/absence of indicator organisms in a water sample. This is usually observed in the form of a color change after an incubation period. Two common P/A tests are: H2S-producing bacteria P/A test Total Coliform and E. coli P/A Test.*" I am not sure P/A exists for fecal coliform.
ADEQ Response 3:
ADEQ appreciates the comment. Due to this comment and others submitted on the proposed Microbiological Contaminants AWQS, ADEQ has revised the rule language, essentially swapping the "absence / presence" binary with "detection / non-detection". Under the new language, any *E. coli* detection result from routine sampling would need to be followed by a repeat *E. coli* sample within 5 days of becoming aware of the result. A repeat sample that results in a detection of *E. coli* would constitute a violation of the Microbiological Contaminants AWQS. Additionally, ADEQ conducted some research which shows that Eurofins Scientific laboratory testing services offers a Fecal Coliform testing method (SM 9222D) separately from the EPA Total Coliform method (EPA 1604). Both methods have an 8-hour holding time. Source:
https://www.eurofinsus.com/media/447768/appendix-d-section-5-attachment-holdtime-container-list_2016-july.pdf.
Also, Standard Method 9222D is a membrane filtration test for fecal coliforms and is offered by local labs in Arizona. This method can detect fecal coliforms from 20 - 60 CFU/100 mL. Source:
https://www.nemi.gov/methods/method_summary/5587/. Also, please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.
Comment 4: Utility
We support the proposed alternate AWQS for microbiological contaminants with the following minor edits to the language:

1. If a routine sample ~~of Fecal Coliform~~ is positive for Fecal Coliform, a 100-milliter repeat sample ~~of either Fecal Coliform or *E. coli*~~ shall be taken within five days of becoming aware of the exceedance for analysis of Fecal Coliform or *E. coli*.
2. If a routine sample ~~of *E. coli*~~ is positive for *E. coli*, a 100-milliter repeat sample ~~of *E. coli*~~ shall be taken within five days of becoming aware of the exceedance for analysis of *E. coli*…

ADEQ Response 4:
ADEQ appreciates the comment. Due to this comment and others submitted on the proposed Microbiological Contaminants AWQS, ADEQ has revised the rule language, essentially swapping the "absence / presence" binary with "detection / non-detection". Under the new language, any Fecal Coliform detection result from routine sampling would need to be followed by a repeat Fecal Coliform or *E. coli* sample within 5 days of becoming aware of the detection result. A repeat sample that results in a detection of either parameter would constitute a violation of the Microbiological Contaminants AWQS. The Fecal Coliform indicator parameter is understood by ADEQ to encompass many species of fecal-derived, potentially harmful species therein; whereas, the *E. coli* parameter is a single, potentially harmful species. *E. coli* is used in this setting as an indicator; meaning that if it is detected in a sample, other potentially harmful species are likely to be present as well. Because the Fecal Coliform parameter encompasses within its scope *E. coli* and a number

of other fecal-derived species, ADEQ believes an *E. coli* repeat sample is appropriate if either Fecal Coliform or *E. coli* were sampled routinely. Please note that for the *E. coli* indicator parameter, "detect / non-detect" is likely to appear in the applicable APP monitoring tables along with a footnote stating that "non-detect" means a result of <2.2 MPN or <1 CFU, depending on the unit used in the permit. Additionally, ADEQ conducted some research which shows that Eurofins Scientific laboratory testing services offers a Fecal Coliform testing method (SM 9222D) separately from the EPA Total Coliform method (EPA 1604). Both methods have an 8-hour holding time. Source: https://www.eurofinsus.com/media/447768/appendix-d-section-5-attachment-holdtime-container-list_2016-july.pdf. Also, Standard Method 9222D is a membrane filtration test for fecal coliforms and is offered by local labs in Arizona. This method can detect fecal coliforms from 20 - 60 CFU/100 mL. Source: https://www.nemi.gov/methods/method_summary/5587/. Also, please find a table in Heading No. 7, subheading "Sampling and Analytical Methodologies" explaining the preliminarily appropriate analytical methods for each new or adjusted AWQS.

Comment 5: Interest Group

We are deeply concerned about the proposed deviations from U.S. Environmental Protection Agency (EPA) standards for uranium, *E. coli*, and other pollutants. Arizona's aquifers are invaluable resources that sustain drinking water supplies, ecological systems, and cultural heritage. Protecting these resources with robust, science-based standards is essential to ensure public health and environmental sustainability. We urge ADEQ to adopt the most protective standards possible by aligning AWQS with EPA's maximum contaminant levels (MCLs) and guidelines for all pollutants under consideration, including arsenic, uranium, and *E. coli*. Prolonged delays in adopting federal standards leave Arizona communities vulnerable to contamination and illness.

ADEQ Response 5:

ADEQ appreciates the comment. There are seven (7) MCLs proposed for adoption as AWQSs within the scope of the collective "AWQS Update" rulemaking. All MCLs except for Microbiological Contaminants are being adopted as AWQSs verbatim. This includes uranium cited by the commenter.

For the alternative Microbiological Contaminants AWQS, ADEQ believes the proposed AWQS is equally effective as the corresponding MCL, but deviates from the MCL's employment of "Total Coliform" as an indicator parameter, utilizing the more precise "Fecal Coliform" and "*E. coli*" indicator parameters instead. Pursuant to A.R.S. § 49-223, ADEQ received "substantial opposition" to adoption of the Microbiological Contaminants MCL, mostly concerning the high numbers of "false positive" samples of Total Coliform that would have tested negative had Fecal Coliform or *E. coli* been the indicator parameter used in the standard instead. Details of the hardships encountered by the regulated community include hundreds of hours of labor in verification or repeat sampling. This, along with shipping and laboratory testing costs, amount to tens of thousands of dollars in unnecessary spending.

Given the substantial opposition received on the Microbiological Contaminants MCL, ADEQ was prompted to follow the procedure in A.R.S. § 49-223(A) for determining whether the Microbiological Contaminants MCL is appropriate as an Arizona state AWQS. ADEQ used its newly developed "standard work" as explained in Heading No. 7 above. ADEQ developed this "standard work" procedure for conducting an "appropriateness" determination pursuant to A.R.S. § 49-223(A). The "standard work" can be reviewed on ADEQ's website at https://www.azdeq.gov/rulemaking/awqs-update/resources. Concerning the Microbiological Contaminants MCL, ADEQ's review of EPA's assumptions on technology, costs, sampling and analytical methodologies and public health risk reduction resulted in significant concern for the costs, analytical methods and public health risk reduction assumptions in particular. ADEQ found that the MCL at 40 C.F.R. 141.63(c) is simply inappropriate as-is for verbatim adoption as an AWQS and applicability upon the facilities regulated by Arizona's APP program, such as Wastewater Treatment Plants, Mines and Industrial facilities. One of the main reasons is that the MCL is designed for Public Water Systems, not APP type facilities. Specifically, this is because the Microbiological Contaminants MCL requires routine sampling of both Total Coliform and *E. coli* parameters. Thereafter, upon a positive result of either Total Coliform or *E. coli*, a repeat sample is required for both parameters. Violation occurs when a positive result is obtained from an *E. coli* repeat sample that occurs after a total coliform-positive routine sample. Violation also occurs when a positive result is obtained from a Total Coliform repeat sample that occurs after an *E. coli*-positive routine sample. ADEQ found that the Total Coliform parameter is a very general indicator of coliforms in a sampling well, many of which occur naturally and are not indicative of a threat to human health. In particular, Total Coliform is too broad of an indicator parameter to signal fecal coliform health concerns in an APP regulatory program setting. On the contrary, ADEQ has found that Fecal Coliform and *E. coli* are more exacting indicators or surrogates of fecal coliforms, which are dangerous to human health. Additionally, when a permittee samples for Total Coliform and receives a positive result, more often than not, the result is what is known as a "false positive", signaling non-health threatening coliforms in a sample. ADEQ notes that false positives have led to a number of permittees having to perform accelerated or more frequent monitoring intervals pursuant to the permits unnecessarily, which have associated costs.

After determining that the MCL for Microbiological Contaminants was inappropriate as an AWQS, ADEQ followed the "standard work" procedure for alternative AWQS development and establishment. ADEQ is proposing with this final rule an appropriate alternative Microbiological Contaminants AWQS based upon the detection or non-detection of either Fecal Coliform or *E. coli* in a 100-milliliter sample (depending on the requirement of the permit). Upon a detection result for a routine Fecal Coliform sample, a repeat sample of either Fecal Coliform or *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Upon a detection result for a routine *E.*

coli sample, a repeat sample for *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Through research and consultation, ADEQ determined that *E. coli* is a better indicator of fecal contamination than total or fecal coliforms and that Total Coliform positive samples are known to result in a "false positive". A "false positive" in a Total Coliform sampling context is when a sample result is positive, but the cause of the positive result indicates a type of total coliform that does not originate in fecal contamination, is not dangerous to human health and occurs naturally. A common "false positive" is when a positive Total Coliform sample is actually indicating rust in a well. Additionally, ADEQ considered the language of 40 C.F.R. 141.63(c), the state of existing Individual APP and Reclaimed Water permits, the Department's mission to protect human health and the environment, as well as costs to permittees, analytical methodologies and public health risk reduction. Ultimately, ADEQ determined that shifting away from Total Coliform as an indicator parameter for an alternative Microbiological Contaminants AWQS and moving towards Fecal Coliform and *E. coli is appropriate*. Specifically, Fecal Coliform and *E. coli* are more exacting at indicating a threat to human health. The decision to configure the AWQS proposal to allow permittees to utilize Fecal Coliform or *E. coli* was due to the fact that protecting human health is not diminished under any of the possible orientations and existing permittees are sampling for both parameters already in some cases. Allowing permittees to keep those sampling traditions and optimize a sampling orientation from a cost effective perspective are all factors that led to ADEQ's proposal.

Comment 6: Interest Group

E. coli and Fecal Coliform Standards. *E. coli* and fecal coliform serve as critical indicators of fecal contamination and pathogen presence in groundwater. EPA's guidelines for these indicators are based on decades of rigorous research and are designed to minimize risks of gastrointestinal illness and waterborne disease outbreaks. We strongly oppose ADEQ's proposal to adopt alternative standards for *E. coli* and fecal coliform that deviate from EPA guidelines. Such deviations are highly problematic for the following reasons:

1. Inadequate Public Health Protection: ADEQ's proposed alternative standards would allow higher concentrations of *E. coli* and fecal coliform in groundwater than EPA's established limits for recreational and potable water. This could significantly increase the risk of pathogen exposure, particularly for communities relying on groundwater for drinking and recreation.
2. Contradiction of Established Science: EPA's standards are grounded in decades of epidemiological studies that demonstrate the link between elevated *E. coli* levels and disease outbreaks. Any deviation undermines the credibility and effectiveness of Arizona's water quality protections.
3. Environmental and Ecological Risks: Groundwater contamination often affects interconnected surface water systems. Weakening *E. coli* standards could exacerbate contamination in rivers, streams, and reservoirs, threatening aquatic ecosystems and biodiversity. As Arizona's aquifers often discharge into surface waters, contaminants like fecal coliform can migrate from groundwater to surface water, compounding the public health risks and damaging ecosystems. This connectivity between groundwater and surface water underscores the importance of robust water quality standards that address all potential pathways for contamination.
4. Economic and Social Costs: Relaxed standards could result in increased public health expenses, decreased trust in water quality management, and greater costs associated with contamination events.

We strongly urge ADEQ to align *E. coli* and fecal coliform standards with EPA's protective guidelines. Ensuring consistency with federal standards will bolster public confidence in Arizona's water quality management and safeguard both human and ecological health.

ADEQ Response 6:

ADEQ appreciates the comment. Generally, please reference the response to Comment No. 5 above. It is important to understand that ADEQ's adoption of an alternative AWQS from the Microbiological Contaminants MCL deviates only slightly from the MCL and remains equally as protective. The MCL requires routine sampling of both Total Coliform and *E. coli* parameters. Thereafter, upon a positive result of either Total Coliform or *E. coli*, a repeat sample is required for both parameters. Violation occurs when a positive result is obtained from an *E. coli* repeat sample that occurs after a total coliform-positive routine sample. Violation also occurs when a positive result is obtained from a Total Coliform repeat sample that occurs after an *E. coli*-positive routine sample. ADEQ found that the Total Coliform parameter is a very general indicator of coliforms in a sampling well, many of which occur naturally and are not indicative of a threat to human health. In particular, Total Coliform is too broad of an indicator parameter to signal Fecal Coliform health concerns in the APP regulatory program setting. On the contrary, ADEQ has found that Fecal Coliform and *E. coli* are more exacting indicators or surrogates of fecal coliforms, which are dangerous to human health. Additionally, when a permittee samples for Total Coliform and receives a positive result, more often than not, the result is what is known as a "false positive", signaling non-health threatening coliforms in a sample. ADEQ notes that false positives have led to a number of permittees having to perform accelerated or more frequent monitoring intervals pursuant to the permits unnecessarily, which have associated costs.

With this final rule, ADEQ is establishing an appropriate alternative Microbiological Contaminants AWQS based upon the detection or non-detection of either Fecal Coliform or *E. coli* in a 100-milliliter sample (depending on the requirement of the permit). Upon a detection result for a routine Fecal Coliform sample, a repeat sample of either Fecal Coliform or *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants. Upon a detection result for a routine *E. coli* sample, a repeat sample for *E. coli* with a "detect" result constitutes a violation of the aquifer water quality standard for microbiological contaminants.

1. ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective of public health and is oriented more appropriately for the AWQS setting. Again, the MCL utilized indicator parameters Total Coliform and *E. coli* to be routinely sampled; then, upon a positive result, both repeat sampled. Upon a repeat positive, the MCL has been formally violated. Compare with the alternative AWQS, which utilizes indicator parameters Fecal Coliform and *E. coli* to be routinely sampled; then, upon a detect result, a repeat sample of one or the other parameter is required, depending on the permit. Upon a repeat "detect" result, the AWQS has been formally violated. ADEQ notes that the Fecal Coliform parameter is *more* exacting than Total Coliform when it comes to identifying a risk to public health.
2. ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective of public health and is oriented more appropriately for the AWQS setting as is demonstrated in the previous paragraph. Additionally, ADEQ engaged experts composed of epidemiologists and toxicologists, among other professionals to assist in the process of reviewing EPA's MCL development assumptions. Following statutory mandate and careful consideration of the totality of the appropriate considerations, ADEQ determined that a slight deviation from the MCL was appropriate given the statutory mandate. In making this determination, ADEQ considered the language of the MCL at 40 C.F.R. 141.63(c), the state of existing Individual APP and Reclaimed Water permits, the Department's mission to protect human health and the environment, as well as costs to permittees, analytical methodologies and public health risk reduction. Ultimately, ADEQ determined that shifting away from Total Coliform as an indicator parameter for an alternative Microbiological Contaminants AWQS and moving towards Fecal Coliform and *E. coli* is appropriate, pursuant to A.R.S. § 49-223. Specifically, indicator parameters Fecal Coliform and *E. coli* are more exacting at indicating a threat to human health. The decision to configure the AWQS proposal to allow permittees to utilize Fecal Coliform or *E. coli* was due to the fact that protecting human health is not diminished under any of the possible orientations and existing permittees are sampling for both parameters already in some cases. Allowing permittees to keep those sampling traditions and optimize a sampling orientation from a cost effective perspective are all factors that led to ADEQ's proposal.
3. As is stated and explained above, ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective as the corresponding MCL and is oriented more appropriately for the AWQS setting.
4. As is stated and explained above, ADEQ has determined the alternative Microbiological Contaminants AWQS is equally protective as the corresponding MCL and is oriented more appropriately for the AWQS setting.

In summary, ADEQ's alternative Microbiological Contaminants AWQS is oriented in a similar and equally protective manner as the corresponding MCL. Also, the alternative Microbiological Contaminants AWQS is oriented more appropriately for the AWQS setting. ADEQ believes the alternative Microbiological Contaminants AWQS is appropriately protective of public health and the environment and conforms to the mandate at A.R.S. § 49-223.

Comment 8: Utility

Overall, we commend and agree with ADEQ's approach, and anticipate efficiencies with the microbiological contaminants AWQS replacing indicator parameter Total Coliform with *E. coli*.

ADEQ Response 8:

ADEQ appreciates the comment.

Comment 9: Utility

A non-detection of *E. coli* should be specified as < 2.2 Most Probable Number (MPN)/100 ml sample. This threshold is specified on all permits.

ADEQ Response 9:

ADEQ appreciates the comment. For *E. coli*, "detect / non-detect" will appear in the applicable APP monitoring tables along with a footnote stating that "non-detect" means a result of < 2.2 MPN or < 1 CFU, depending on the unit used in the permit.

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ADMINISTRATIVE RULES DIVISION

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of
July 1, 2023 through September 30, 2023

Questions about these rules? Contact:

Department: Arizona Department of Environmental Quality
Address: 1110 W. Washington St.
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The release of this Chapter in Supp. 23-3 replaces Supp. 22-4, 1-99 pages.
Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

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HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Authority: A.R.S. §§49-202(A), 49-203(A)(1)

Supp. 23-3

CHAPTER TABLE OF CONTENTS

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

Tables in Article 1, Appendix A have been updated and now include historical notes (Supp. 16-4).

Article 1, consisting of Appendices A through C, repealed April 24, 1996 (Supp. 96-2).

Article 1, consisting of Section R18-11-103, reserved effective April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-105 and R18-11-106, and Appendices A and B, adopted April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-101 and R18-11-102, R18-11-104, R18-11-107 through R18-11-109, R18-11-111 through R18-11-113, R18-11-115, R18-11-117 and R18-11-118, R18-11-120 and R18-11-121, amended effective April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-101 through R18-11-121 and Appendices A through C, adopted effective February 18, 1992 (Supp. 92-1).

Article 1, consisting of Section R18-11-101, repealed effective February 18, 1992 (Supp. 92-1).

Article 1 consisting of Section R9-21-101 renumbered as Article 1, Section R18-11-101 (Supp. 87-3).

ARTICLE 2. WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS

Article 2, consisting of Sections R18-11-201 through R18-11-205, adopted effective February 18, 1992 (Supp. 92-1).

Article 2, consisting of Sections R18-11-201 through R18-11-214 and Appendices A and B, repealed effective February 18, 1992 (Supp. 92-1).

Article 2 consisting of Sections R9-21-201 through R9-21-214 and Appendices A and B renumbered as Article 2, Sections R18-11-201 through R18-11-214 and Appendices A and B (Supp. 87-3).

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

Article 3, consisting of Sections R18-11-301 through R18-11-309 and Table A, adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

Article 3 heading repealed effective April 24, 1996 (Supp. 96-2).

Article 3, consisting of Sections R18-11-301 through R18-11-304 repealed effective February 18, 1992 (Supp. 92-1).

Article 3 consisting of Sections R9-21-301 through R9-21-304 renumbered as Article 3, Sections R18-11-301 through R18-11-304 (Supp. 87-3).

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION

New Article 5 consisting of Sections R18-11-501 through R18-11-504 and Section R18-11-506 adopted effective October 22, 1987.

ARTICLE 6. IMPAIRED WATER IDENTIFICATION

Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

R18-11-101. Definitions

The following terms apply to this Article:

1. "Acute toxicity" means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. "Agricultural irrigation (AgI)" means the use of a surface water for crop irrigation.
3. "Agricultural livestock watering (AgL)" means the use of a surface water as a water supply for consumption by livestock.
4. "Annual mean" is the arithmetic mean of monthly values determined over a consecutive 12-month period, provided that monthly values are determined for at least three months. A monthly value is the arithmetic mean of all values determined in a calendar month.
5. "Aquatic and wildlife (cold water) (A&Wc)" means the use of a surface water by animals, plants, or other cold-water organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
6. "Aquatic and wildlife (effluent-dependent water) (A&Wedw)" means the use of an effluent-dependent water by animals, plants, or other organisms for habitation, growth, or propagation.
7. "Aquatic and wildlife (ephemeral) (A&We)" means the use of an ephemeral water by animals, plants, or other organisms, excluding fish, for habitation, growth, or propagation.
8. "Aquatic and wildlife (warm water) (A&Ww)" means the use of a surface water by animals, plants, or other warm-water organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
9. "Arizona Pollutant Discharge Elimination System (AZPDES)" means the point source discharge permitting program established under 18 A.A.C. 9, Article 9.
10. "Assimilative capacity" means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
11. "Clean Water Act" means the Federal Water Pollution Control Act [33 U.S.C. 1251 to 1387].
12. "Complete Mixing" means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.
13. "Criteria" means elements of water quality standards that are expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
14. "Critical flow conditions of the discharge" means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone's receiving water as follows:
    a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
    b. For chronic aquatic water quality standard criteria, the discharge flow critical flow condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
    c. For human health based water quality standard criteria, the discharge flow critical condition is the long-term arithmetic mean flow, averaged over several years so as to simulate long-term exposure.
15. "Critical flow conditions of the receiving water" means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
    a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day aver-age flow event expected to occur once every ten years, on average (1Q10).
    b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
    c. For human health based water quality standard criteria, in order to simulate long-term exposure, the receiving water critical flow condition is the harmonic mean flow.
16. "Deep lake" means a lake or reservoir with an average depth of more than 6 meters.
17. "Designated use" means a use specified in Appendix B of this Article for a surface water.
18. "Domestic water source (DWS)" means the use of a surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
19. "Effluent-dependent water (EDW)" means a surface water or portion of a surface water, that consists of a point source discharge without which the surface water would be ephemeral. An effluent-dependent water may be perennial or intermittent depending on the volume and frequency of the point source discharge of treated wastewater.
20. "Ephemeral water" means a surface water or portion of surface water that flows or pools only in direct response to precipitation.
21. "Existing use" means a use attained in the waterbody on or after November 28, 1975, whether or not it is included in the water quality standards.
22. "Fish consumption (FC)" means the use of a surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
23. "Full-body contact (FBC)" means the use of a surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
24. "Geometric mean" means the nth root of the product of n items or values. The geometric mean is calculated using the following formula:

$$GM_Y = \sqrt[n]{(Y_1)(Y_2)(Y_3)\ldots(Y_n)}$$

25. "Hardness" means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO3) in milligrams per liter.
26. "Igneous lake" means a lake located in volcanic, basaltic, or granite geology and soils.

27. "Intermittent water" means a surface water or portion of surface water that flows continuously during certain times of the year and more than in direct response to precipitation, such as when it receives water from a spring, elevated groundwater table or another surface source, such as melting snowpack.
28. "Mixing zone" means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
29. "Oil" means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
30. "Outstanding Arizona water (OAW)" means a surface water that is classified as an outstanding state resource water by the Director under R18-11-112.
31. "Partial-body contact (PBC)" means the recreational use of a surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
32. "Perennial water" means a surface water or portion of surface water that flows continuously throughout the year.
33. "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance. A.R.S § 49-201(29)
34. "Pollutant Minimization Program" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.
35. "Practical quantitation limit" means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
36. "Reference condition" means a set of abiotic physical stream habitat, water quality, and site selection criteria established by the Director that describe the typical characteristics of stream sites in a region that are least disturbed by environmental stressors. Reference biological assemblages of macroinvertebrates and algae are collected from these reference condition streams for calculating the Arizona Indexes of Biological Integrity thresholds.
37. "Regional Administrator" means the Regional Administrator of Region IX of the U.S. Environmental Protection Agency.
38. "Regulated discharge" means a point-source discharge regulated under an AZPDES permit, a discharge regulated by a § 404 permit, and any discharge authorized by a federal permit or license that is subject to state water quality certification under § 401 of the Clean Water Act.
39. "Riffle habitat" means a stream segment where moderate water velocity and substrate roughness produce moderately turbulent conditions that break the surface tension of the water and may produce breaking wavelets that turn the surface water into white water.
40. "Run habitat" means a stream segment where there is moderate water velocity that does not break the surface tension of the water and does not produce breaking wavelets that turn the surface water into white water.
41. "Sedimentary lake" means a lake or reservoir in sedimentary or karst geology and soils.
42. "Shallow lake" means a lake or reservoir, excluding an urban lake, with a smaller, flatter morphology and an average depth of less than 3 meters and a maximum depth of less than 4 meters.
43. "Significant degradation" means:
    a. The consumption of 20 percent or more of the available assimilative capacity for a pollutant of concern at critical flow conditions, or
    b. Any consumption of assimilative capacity beyond the cumulative cap of 50 percent of assimilative capacity.
44. "Surface water" means "WOTUS" as defined in A.R.S. § 49-201(53).
45. "Total nitrogen" means the sum of the concentrations of ammonia (NH3), ammonium ion (NH4+), nitrite (NO2), and nitrate (NO3), and dissolved and particulate organic nitrogen expressed as elemental nitrogen.
46. "Total phosphorus" means all of the phosphorus present in a sample, regardless of form, as measured by a persulfate digestion procedure.
47. "Toxic" means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.
48. "Urban lake" means a manmade lake within an urban landscape.
49. "Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of a designated use including physical, chemical, biological, and economic factors.
50. "Variance" means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the variance.
51. "Wadable" means a surface water can be safely crossed on foot and sampled without a boat.
52. "Wastewater" does not mean:
    a. Stormwater,
    b. Discharges authorized under the De Minimus General Permit,
    c. Other allowable non-stormwater discharges permitted under the Construction General Permit or the Multi-sector General Permit, or
    d. Stormwater discharges from a municipal storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
53. "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.

54. "Zone of initial dilution" means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

Historical Note

Former Section R9-21-101 repealed, new Section R9-21-101 adopted effective January 29, 1980 (Supp. 80-1). Amended effective April 17, 1984 (Supp. 84-2). Amended effective January 7, 1985 (Supp. 85-1). Amended by adding subsection (C) effective August 12, 1986 (Supp. 86-4). Former Section R9-21-101 renumbered without change as Section R18-11-101 (Supp. 87-3). Former Section R18-11-101 repealed, new Section R18-11-101 adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Deleted first definition to R18-11-101(32) "Navigable Water", previously printed in error (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Amended by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-102. Applicability

A. The water quality standards prescribed in this Article apply to surface waters.

B. The water quality standards prescribed in this Article do not apply to the following:

1. A waste treatment system, including an impoundment, pond, lagoon, or constructed wetland that is a part of the waste treatment system;
2. A man-made surface impoundment and any associated ditch and conveyance used in the extraction, beneficiation, or processing of metallic ores that is not a surface water or is located in an area that once was a surface water but is no longer a surface water because it has been and remains legally converted, including:
   a. A pit,
   b. Pregnant leach solution pond,
   c. Raffinate pond,
   d. Tailing impoundment,
   e. Decant pond,
   f. Pond or a sump in a mine pit associated with dewatering activity,
   g. Pond holding water that has come into contact with a process or product and that is being held for recycling,
   h. Spill or upset catchment pond, or
   i. A pond used for onsite remediation;
3. A man-made cooling pond that is neither created in a surface water nor results from the impoundment of a surface water; or
4. A surface water located on tribal lands.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-103. Repealed

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Repealed effective April 24, 1996 (Supp. 96-2).

R18-11-104. Designated Uses

A. The Director shall adopt or remove a designated use or subcategory of a designated use by rule.

B. Designated uses of a surface water may include full-body contact, partial-body contact, domestic water source, fish consumption, aquatic and wildlife (cold water), aquatic and wildlife (warm water), aquatic and wildlife (ephemeral), aquatic and wildlife (effluent-dependent water), agricultural irrigation, and agricultural livestock watering. The designated uses for specific surface waters are listed in Appendix B of this Article.

C. Numeric water quality criteria to maintain and protect water quality for the designated uses are prescribed in Appendix A, R18-11-109, R18-11-110, and R18-11-112. Narrative water quality standards to protect all surface waters are prescribed in R18-11-108.

D. If a surface water has more than one designated use listed in Appendix B, the most stringent water quality criterion applies.

E. The Director shall revise the designated uses of a surface water if water quality improvements result in a level of water quality that permits a use that is not currently listed as a designated use in Appendix B.

F. In designating uses of a surface water and in establishing water quality criteria to protect the designated uses, the Director shall take into consideration the applicable water quality standards for downstream surface waters and shall ensure that the water quality standards that are established for an upstream surface water also provide for the attainment and maintenance of the water quality standards of downstream surface waters.

G. A use attainability analysis shall be conducted prior to removal of a designated use or adoption of a subcategory of a designated use that requires less stringent water quality criteria.

H. The Director may remove a designated use or adopt a subcategory of a designated use that requires less stringent water quality criteria, provided the designated use is not an existing use and it is demonstrated through a use attainability analysis that attaining the designated use is not feasible for any of the following reasons:

1. A naturally-occurring pollutant concentration prevents the attainment of the use;
2. A natural, ephemeral, intermittent, or low-flow condition or water level prevents the attainment of the use;
3. A human-caused condition or source of pollution prevents the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
4. A dam, diversion, or other type of hydrologic modification precludes the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate the modification in a way that would result in attainment of the use;
5. A physical condition related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, precludes attainment of an aquatic life designated use; or
6. Controls more stringent than those required by § 301 (b) and § 306 of the Clean Water Act [33 U.S.C. § 1311 and § 1316] are necessary to attain the use and implementation

of the controls would result in substantial and widespread economic and social impact.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

R18-11-105. Tributaries; Designated Uses

The following water quality standards apply to a surface water that is not listed in Appendix B but that is a tributary to a listed surface water.

1. The aquatic and wildlife (ephemeral) and partial-body contact standards apply to an unlisted tributary that is an ephemeral water.
2. The aquatic and wildlife (cold water), full-body contact, and fish consumption standards apply to an unlisted tributary that is a perennial or intermittent surface water and is above 5000 feet in elevation.
3. The aquatic and wildlife (warm water), full-body contact, and fish consumption standards apply to an unlisted tributary that is a perennial or intermittent surface water and is below 5000 feet in elevation.

Historical Note

Adopted effective April 24, 1996 (Supp. 96-2). Section heading amended per instructions of the Department of Environmental Quality, August 9, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

R18-11-106. Net Ecological Benefit

A. The Director may, by rule, modify a water quality standard on the ground that there is a net ecological benefit associated with the discharge of effluent to support or create a riparian and aquatic habitat in an area where water resources are limited. The Director may modify a water quality standard for a pollutant if it is demonstrated that:

1. The discharge of effluent creates or supports an ecologically valuable aquatic, wetland, or riparian ecosystem in an area where these resources are limited;
2. The ecological benefits associated with the discharge of effluent under a modified water quality standard exceed the environmental costs associated with the elimination of the discharge of effluent;
3. The cost of treatment to achieve compliance with a water quality standard is so high that it is more cost effective to eliminate the discharge of effluent to the surface water. The discharger shall demonstrate that it is feasible to eliminate the discharge of effluent that creates or supports the ecologically valuable aquatic, wetland, or riparian ecosystem;
4. The discharge of effluent to the surface water will not cause or contribute to a violation of a water quality standard that has been established for a downstream surface water;
5. All practicable point source discharge control programs, including local pretreatment, waste minimization, and source reduction programs are implemented; and
6. The discharge of effluent does not produce or contribute to the concentration of a pollutant in the tissues of aquatic organisms or wildlife that is likely to be harmful to humans or wildlife through food chain concentration.

B. The Director shall not modify a water quality criterion for a pollutant to be less stringent than a technology-based effluent limitation that applies to the discharge of that effluent. The discharge of effluent shall, at a minimum, comply with applicable technology-based effluent limitations.

Historical Note

Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

R18-11-107. Antidegradation

A. The Director shall, using R18-11-107.01 and this Section, determine whether there is degradation of water quality in a surface water on a pollutant-by-pollutant basis.

B. Tier 1: The level of water quality necessary to support an existing use shall be maintained and protected. No degradation of existing water quality is permitted in a surface water where the existing water quality does not meet the applicable water quality standards.

C. Tier 2: Where existing water quality in a surface water is better than the applicable water quality standard the existing water quality shall be maintained and protected. The Director may allow degradation of existing water quality in the surface water, if the Director makes all of the following findings:

1. The water quality necessary for existing uses is fully protected and water quality is not lowered to a level that does not comply with applicable water quality standards,
2. The highest statutory and regulatory requirements for new and existing point sources are achieved,
3. All cost-effective and reasonable best management practices for nonpoint source pollution control are implemented, and
4. Allowing lower water quality is necessary to accommodate important economic or social development in the area where the surface water is located.

D. Tier 3: Existing water quality shall be maintained and protected in a surface water that is classified as an OAW under R18-11-112. Degradation of an OAW under subsection (C) is prohibited.

E. The Director shall implement this Section in a manner consistent with § 316 of the Clean Water Act [33 U.S.C. 1326] if a potential water quality impairment associated with a thermal discharge is involved.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-107.01. Antidegradation Criteria

A. Tier 1 antidegradation protection.

1. Tier 1 antidegradation protection applies to the following surface waters:
   a. A surface water listed on the 303(d) list for the pollutant that resulted in the listing,
   b. An effluent dependent water,
   c. An ephemeral water,
   d. An intermittent water, and
   e. A canal listed in Appendix B.
2. A regulated discharge shall not cause a violation of a surface water quality standard or a wasteload allocation in a total maximum daily load approved by EPA.

3. Except as provided in subsections (E) and (F), Tier 1 antidegradation review requirements are satisfied for a point-source discharge regulated under an individual AZPDES permit to an ephemeral water, effluent dependent water, intermittent water, or a canal listed in Appendix B, if water quality-based effluent limitations designed to achieve compliance with applicable surface water quality standards are established in the permit and technology-based requirements of the Clean Water Act for the point source discharge are met.

B. Tier 2 antidegradation protection.

1. Tier 2 antidegradation protection applies to a perennial water with existing water quality that is better than applicable water quality standards. A perennial water that is not listed in subsection (A)(1) nor classified as an OAW under A.A.C. R18-9-112(G) has Tier 2 antidegradation protection for all pollutants of concern.
2. A regulated discharge that meets the following criteria, at critical flow conditions, does not cause significant degradation:
   a. The regulated discharge consumes less than 20 percent of the available assimilative capacity for each pollutant of concern, and
   b. At least 50 percent of the assimilative capacity for each pollutant of concern remains available in the surface water for each pollutant of concern.
3. Antidegradation review. Any person proposing a new or expanded regulated discharge under an individual AZPDES permit that may cause significant degradation shall provide ADEQ with the following information:
   a. Baseline characterization. A person seeking authorization to discharge under an individual AZPDES permit to a perennial water shall provide baseline water quality data on pollutants of concern where no data exists or there are insufficient data to characterize baseline water quality and to determine available assimilative capacity. A discharger shall characterize baseline water quality at a location upstream of the proposed discharge location;
   b. Alternative analysis.
      i. The person seeking authorization for the discharge shall prepare and submit a written analysis of alternatives to the discharge. The analysis shall provide information on all reasonable, cost-effective, less-degrading or nondegrading discharge alternatives. Alternatives may include wastewater treatment process changes or upgrades, pollution prevention measures, source reduction, water reclamation, alternative discharge locations, groundwater recharge, land application or treatment, local pretreatment programs, improved operation and maintenance of existing systems, seasonal or controlled discharge to avoid critical flow conditions, and zero discharge;
      ii. The alternatives analysis shall include cost information on base pollution control measures associated with the regulated discharge and cost information for each alternative;
      iii. The person shall implement the alternative that is cost-effective and reasonable, results in the least degradation, and is approved by the Director. An alternative is cost-effective and reasonable if treatment costs associated with the alternative are less than a 10 percent increase above the cost of base pollution control measures;
      iv. For purposes of this subsection, "base pollution control measures" are water pollution control measures required to meet technology-based requirements of the Clean Water Act and water quality-based effluent limits designed to achieve compliance with applicable water quality standards; and
   c. Social and economic justification. The person shall demonstrate to the Director that significant degradation is necessary to accommodate important economic or social development in the local area. The person seeking authorization for the discharge shall prepare a written social and economic justification that includes a description of the following:
      i. The geographic area where significant degradation of existing water quality will occur;
      ii. The current baseline social and economic conditions in the local area;
      iii. The net positive social and economic effects of development associated with the regulated discharge and allowing significant degradation;
      iv. The negative social, environmental, and economic effects of allowing significant degradation of existing water quality; and
      v. Alternatives to the regulated discharge that do not significantly degrade water quality yet may yield comparable social and economic benefits.
4. For purposes of this Section, the term "pollutant of concern" means a pollutant with either a numeric or narrative water quality standard.
5. Public participation. The Director shall provide public notice and an opportunity to comment on an antidegradation review under subsection (B)(3) and shall provide an opportunity for a public hearing under A.A.C. R18-9-A908(B).

C. Tier 3 antidegradation protection.

1. Tier 3 antidegradation protection applies only to an OAW listed in R18-11-112(G).
2. A new or expanded point-source discharge directly to an OAW is prohibited.
3. A person seeking authorization for a regulated discharge to a tributary to, or upstream of, an OAW shall demonstrate in a permit application or in other documentation submitted to ADEQ that the regulated discharge will not degrade existing water quality in the downstream OAW.
4. A discharge regulated under a § 404 permit that may affect existing water quality of an OAW requires a determination by the Director to ensure that existing water quality is maintained and protected and any water quality impacts are temporary. Temporary water quality impacts are those impacts that occur for a period of six months or less and are not regularly occurring. The form of such a determination shall be as follows:
   a. For Corps-issued § 404 permits, an individual § 401 water quality certification.
   b. For Director-issued § 404 permits, a § 404 permit action, wherein the Director shall conduct a water quality evaluation as a part of the state's requirements for issuing § 404 permits and in accordance with this Section.

D. Antidegradation review of a § 404 permit shall be conducted as follows:

1. For a Corps-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a nationwide or regional § 404 permit as part of the § 401 water quality certification prior to issuance of the nationwide or regional permit. The Director shall conduct the antidegradation review of an individual § 404 permit if the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters. For regulated discharges that may degrade water quality in an OAW or a water that is on the 303(d) List of impaired waters, the Director shall conduct the antidegradation review as part of the § 401 water quality certification process.
2. For a Director-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a general § 404 permit as a part of its determination whether to issue a general permit in accordance with state requirements for issuing a § 404 general permit and with this Section. The Director shall conduct the antidegradation review of an individual § 404 permit as part of the § 404 permit action in accordance with state requirements for issuing a § 404 permit and in accordance with this Section.

E. Antidegradation review of an AZPDES stormwater permit. An individual stormwater permit for a municipal separate storm sewer system (MS4) meets antidegradation requirements if the permittee complies with the permit, including developing a stormwater management plan containing controls that reduce the level of pollutants in stormwater discharges to the maximum extent practicable.

F. Antidegradation review of a general permit. The Director shall conduct the antidegradation review of a regulated discharge authorized by a general permit at the time the general permit is issued or renewed. A person seeking authorization to discharge under a general permit is not required to undergo an individual antidegradation review at the time the Notice of Intent is submitted unless the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-108. Narrative Water Quality Standards

A. A surface water shall not contain pollutants in amounts or combinations that:

1. Settle to form bottom deposits that inhibit or prohibit the habitation, growth, or propagation of aquatic life;
2. Cause objectionable odor in the area in which the surface water is located;
3. Cause off-taste or odor in drinking water;
4. Cause off-flavor in aquatic organisms;
5. Are toxic to humans, animals, plants, or other organisms;
6. Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth, or propagation of other aquatic life or that impair recreational uses;
7. Cause or contribute to a violation of an aquifer water quality standard prescribed in R18-11-405 or R18-11-406; or
8. Change the color of the surface water from natural background levels of color.

B. A surface water shall not contain oil, grease, or any other pollutant that floats as debris, foam, or scum; or that causes a film or iridescent appearance on the surface of the water; or that causes a deposit on a shoreline, bank, or aquatic vegetation. The discharge of lubricating oil or gasoline associated with the normal operation of a recreational watercraft is not a violation of this narrative standard.

C. A surface water shall not contain a discharge of suspended solids in quantities or concentrations that interfere with the treatment processes at the nearest downstream potable water treatment plant or substantially increase the cost of handling solids produced at the nearest downstream potable water treatment plant.

D. A surface water shall not contain solid waste such as refuse, rubbish, demolition or construction debris, trash, garbage, motor vehicles, appliances, or tires.

E. A wadeable, perennial stream shall support and maintain a community of organisms having a taxa richness, species composition, tolerance, and functional organization comparable to that of a stream with reference conditions in Arizona.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-108.01. Narrative Biological Criteria for Wadeable, Perennial Streams

A. The narrative biological criteria in this Section apply to a wadeable, perennial stream with either an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use.

B. The biological standard in R18-11-108(E) is met when a bioassessment result, as measured by the Arizona Index of Biological Integrity (IBI), for cold or warm water is:

1. Greater than or equal to the 25th percentile of reference condition, or
2. Greater than the 10th percentile of reference condition and less than the 25th percentile of reference condition and a verification bioassessment result is greater than or equal to the 25th percentile of reference condition.

C. Arizona Index of Biological Integrity (IBI) scores:

Bioassessment Result	Index of Biological Integrity Scores	
	A&Wc	A&Ww
Greater than or equal to the 25th percentile of reference condition	≥52	≥50
Greater than the 10th and less than the 25th percentile of reference condition	46 - 51	40 - 49

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-108.02. Narrative Bottom Deposit Criteria for Wadeable, Perennial Streams

A. The narrative bottom deposit criteria in this Section apply to wadeable, perennial streams with an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use.

B. The narrative water quality standard for bottom deposits at R18-11-108(A)(1) is met when:
1. The percentage of fine sediments in the riffle habitats of a wadeable, perennial stream with an A&Wc designated use, as determined by a riffle pebble count, is less than or equal to 30 percent.
2. The percentage of fine sediments in all stream habitats of a wadeable, perennial stream with an A&Ww designated use, as determined by a reach level pebble count, is equal to or less than 50 percent.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-108.03. Narrative Nutrient Criteria for Lakes and Reservoirs

A. The narrative nutrient criteria in this Section apply to those lakes and reservoirs categorized in Appendix B.

B. The narrative water quality standard for nutrients at R18-11-108(A)(6) is met when, based on a minimum of two lake sample events conducted during the peak season based on lake productivity, the results show an average chlorophyll-*a* value below the applicable threshold for designated use and lake and reservoir category in subsection (D).
1. The mean chlorophyll-*a* concentration is less than the lower value in the target range chlorophyll-*a* for the lake and reservoir category, or
2. The mean chlorophyll-*a* concentration is within the target range for the lake and reservoir category and:
   a. The mean blue green algae count is at or below 20,000 per milliliter, and
   b. The blue green algae count is less than 50 percent of the total algae count, and
   c. There is no evidence of nutrient-related impairments such as:
      i. An exceedance of dissolved oxygen or pH standards;
      ii. A fish kill coincident with a dissolved oxygen or pH exceedance;
      iii. A fish kill or other aquatic organism mortality coincident with algal toxicity;
      iv. Secchi depth is less than the lower value prescribed for the lake and reservoir category;
      v. A nuisance algal bloom is present in the limnetic portion of the lake or reservoir; or
      vi. The concentration of total phosphorous, total nitrogen, or total Kjehldal nitrogen (TKN) is greater than the upper value in the range prescribed for the lake and reservoir category; or
3. For a shallow lake. In addition to meeting the mean chlorophyll-*a* concentrations in subsections (B)(1) or (2), submerged aquatic vegetation covers 50 percent or less of the lake bottom and there is less than a 5 mg/L swing in diel-dissolved oxygen concentration measured within the photic zone.

C. The following threshold ranges apply during the peak season for lake productivity:
1. Warm water lakes peak season, April – October;
2. Cold water lakes peak season, May – September.

D. The following table lists the numeric targets for lakes and reservoirs.

NUMERIC TARGETS FOR LAKES AND RESERVOIRS

Designated Use	Lake Category	Chl-*a* (µg/L)	Secchi Depth (m)	Total Phosphorus (µg/L)	Total Nitrogen (mg/L)	Total Kjehldal Nitrogen (TKN) (mg/L)	Blue-Green Algae (per ml)	Blue-Green Algae (% of total count)	Dissolved Oxygen (mg/L)	pH (SU)
FBC and PBC	Deep	10-15	1.5-2.5	70-90	1.2-1.4	1.0-1.1	20,000			6.5-9.0
	Shallow	10-15	1.5-2.0	70-90	1.2-1.4	1.0-1.1				
	Igneous	20-30	0.5-1.0	100-125	1.5-1.7	1.2-1.4				
	Sedimentary	20-30	1.5-2.0	100-125	1.5-1.7	1.2-1.4				
	Urban	20-30	0.5-1.0	100-125	1.5-1.7	1.2-1.4				
A&Wc	All	5-15	1.5-2.0	50-90	1.0-1.4	0.7-1.1		<50	7 (top m)	6.5-9.0
A&Ww	All (except urban lakes)	25-40	0.8-1.0	115-140	1.6-1.8	1.3-1.6			6 (top m)	
	Urban	30-50	0.7-1.0	125-160	1.7-1.9	1.4-1.7				
A&Wedw	All	30-50	0.7-1.0	125-160	1.7-1.9	1.4-1.7				6.5-9.0
DWS	All	10-20	0.5-1.5	70-100	1.2-1.5	1.0-1.2	20,000			5.0-9.0

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-109. Numeric Water Quality Standards

A. *E. coli* bacteria. The following water quality standards for *Escherichia coli* (*E. coli*) are expressed in colony forming units per 100 milliliters of water (cfu / 100 ml) or as a Most Probable Number (MPN):

E. coli	**FBC**	**PBC**
Geometric mean (minimum of four samples in 30 days)	126	126
Statistical threshold value	410	576

B. pH. The following water quality standards for pH are expressed in standard units:

pH	**DWS**	**FBC, PBC, A&W [1]**	**AgI**	**AgL**
Maximum	9.0	9.0	9.0	9.0
Minimum	5.0	6.5	4.5	6.5

Footnotes:
1. "1" Includes A&Wc, A&Ww, A&Wedw, and A&We.

C. The maximum allowable increase in ambient water temperature, due to a thermal discharge is as follows:

A&Ww	**A&Wedw**	**A&Wc**

3.0° C	3.0° C	1.0° C

D. Suspended sediment concentration.

1. The following water quality standards for suspended sediment concentration, expressed in milligrams per liter (mg/L), are expressed as a median value determined from a minimum of four samples collected at least seven days apart:

A&Wc	A&Ww
25	80

2. The Director shall not use the results of a suspended sediment concentration sample collected during or within 48 hours after a local storm event to determine the median value.

E. Dissolved oxygen. A surface water meets the water quality standard for dissolved oxygen when either:

1. The percent saturation of dissolved oxygen is equal to or greater than 90 percent, or
2. The single sample minimum concentration for the designated use, as expressed in milligrams per liter (mg/L) is as follows:

Designated Use	Single sample minimum concentration in mg/L
A&Ww	6.0
A&Wc	7.0
A&W edw for a sample taken from three hours after sunrise to sunset	3.0
A&W edw for a sample taken from sunset to three hours after sunrise	1.0

The single sample minimum concentration is the same for the designated use in a lake, but the sample must be taken from a depth no greater than one meter.

F. Nutrient criteria. The following are water quality standards for total phosphorus and total nitrogen (expressed in milligrams per liter (mg/L)) that apply to the surface waters listed below. A minimum of 10 samples, each taken at least 10 days apart in a consecutive 12-month period, are required to determine a 90th percentile. Not more than 10 percent of the samples may exceed the 90th percentile value listed below. The Director will apply these water quality standards for total phosphorus and total nitrogen to the surface waters listed below, and to their perennial tributaries, if listed. The Director may also apply these total phosphorus and total nitrogen standards to any source discharging to any tributary (ephemeral, intermittent, effluent dependent water, or perennial) of the surface waters listed below, if necessary to protect nutrient water quality in the listed surface water, based on the volume, frequency, magnitude and duration of the discharge, and distance to the downstream surface water listed below:

1. Verde River and its perennial tributaries from the Verde headwaters to Bartlett Lake:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.10	0.30	1.00
Total nitrogen	1.00	1.50	3.00

2. Black River, Tonto Creek and their perennial tributaries for any segments that are not located on tribal lands:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.10	0.20	0.80
Total nitrogen	0.50	1.00	2.00

3. Salt River and its perennial tributaries above Roosevelt Lake for any segments that are not located on tribal lands:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.12	0.30	1.00
Total nitrogen	0.60	1.20	2.00

4. Salt River below Stewart Mountain Dam to its confluence with the Verde River:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.05	–	0.20
Total nitrogen	0.60	–	3.00

5. Little Colorado River and its perennial tributaries upstream from:
   a. The headwaters to River Reservoir,
   b. South Fork of Little Colorado River at 34°00’49”/109°24’18” to above South Fork Campground at 34°04’49”/109°24’18”, and
   c. The headwaters of Water Canyon Creek to the Apache-Sitgreaves National Forest boundary:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.08	0.10	0.75
Total nitrogen	0.60	0.75	1.10

6. From the Little Colorado River and State Route 260 at 34°06’39”/109°18’55” to Lyman Lake:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.20	0.30	0.75
Total nitrogen	0.70	1.20	1.50

7. Colorado River at the Northern International Boundary near Morelos Dam:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	–	0.33	–
Total nitrogen	–	2.50	–

8. Oak Creek from its headwaters at 35°01'30"/111°44'12" to its confluence with the Verde River and the West Fork of Oak Creek from its headwaters at 35°02'44"/111°54'48" to its confluence with Oak Creek.

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.1	0.25	0.30
Total nitrogen	1.00	1.50	2.50

9. No discharge of wastewater to Show Low Creek or its perennial tributaries upstream of and including Fools Hollow Lake shall exceed 0.16 mg/L total phosphates as P.
10. No discharge of wastewater to the San Francisco River or its perennial tributaries upstream of Luna Lake Dam shall exceed 1.0 mg/L total phosphates as P.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final

rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-110. Salinity Standards for the Colorado River

A. The flow-weighted average annual salinity in the lower main stem of the Colorado River shall not exceed the following criteria:

Location	Total Dissolved Solids
Below Hoover Dam	723 mg/L
Below Parker Dam	747 mg/L
At Imperial Dam	879 mg/L

B. The plan of implementation contained in the "2014 Review, Water Quality Standards for Salinity, Colorado River System," approved October 2014, is incorporated by reference to preserve the basin-wide approach to salinity control developed by the Colorado River Basin Salinity Control Forum and to ensure compliance with the numeric criteria for salinity in subsection (A). This material does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the Colorado River Basin Salinity Control Forum, 106 West 500 South, Suite 101, Bountiful, Utah 84010-6232 or at http://www.coloradoriversalinity.org/.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

R18-11-111. Analytical Methods

A. A person conducting an analysis of a sample taken to determine compliance with a water quality standard shall use an analytical method prescribed in A.A.C. R9-14-610, 40 CFR 136.3, or an alternative analytical method approved under A.A.C. R9-14-610(C).

B. A test result from a sample taken to determine compliance with a water quality standard is valid only if the sample is analyzed by a laboratory that is licensed by the Arizona Department of Health Services, an out-of-state laboratory licensed under A.R.S. § 36-495.14, or a laboratory exempted under A.R.S. § 36-495.02, for the analysis performed.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-112. Outstanding Arizona Waters

A. The Director shall classify a surface water as an outstanding Arizona water (OAW) by rule.

B. The Director may adopt, under R18-11-115, a site-specific standard to maintain and protect existing water quality in an OAW.

C. Any person may nominate a surface water for classification as an OAW by filing a nomination with the Director. The nomination shall include:

1. A map and a description of the surface water;
2. A written statement in support of the nomination, including specific reference to the applicable criteria for an OAW classification prescribed in subsection (D);
3. Supporting evidence demonstrating that the criteria prescribed in subsection (D) are met; and
4. Available water quality data relevant to establishing the baseline water quality of the proposed OAW.

D. The Director may classify a surface water as an OAW based upon the following criteria:

1. The surface water is a perennial or intermittent water;
2. The surface water is in a free-flowing condition. For purposes of this subsection, "in a free-flowing condition" means that a surface water does not have an impoundment, diversion, channelization, rip-rapping or other bank armor, or another hydrological modification within the reach nominated for an OAW classification;
3. The surface water has good water quality. For purposes of this subsection, "good water quality" means that the surface water has water quality that meets or is better than applicable surface water quality standards. A surface water that is listed as impaired under R18-11-604(E) is ineligible for OAW classification; and
4. The surface water meets one or both of the following conditions:
   a. The surface water is of exceptional recreational or ecological significance because of its unique attributes, such as the geology, flora and fauna, water quality, aesthetic value, or the wilderness characteristic of the surface water;
   b. An endangered or threatened species is associated with the surface water and the existing water quality is essential to the species' maintenance and propagation or the surface water provides critical habitat for the threatened or endangered species. An endangered or threatened species is identified in "Endangered and Threatened Wildlife," 50 CFR 17.11 (revised 2005), and "Endangered and Threatened Plants," 50 CFR 17.12 (revised 2005). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the National Archives and Records Administration at http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1.

E. The Director shall hold at least one public meeting in the local area of a surface water that is nominated for classification as an OAW to solicit public comment on the nomination.

F. The Director shall consider the following factors when deciding whether to classify a surface water as an OAW:

1. Whether there is the ability to manage the surface water and its watershed to maintain and protect existing water quality;
2. The social and economic impact of Tier 3 antidegradation protection;
3. The public comments in support of, or in opposition to, an OAW classification;
4. The timing of the nomination relative to the triennial review of surface water quality standards;
5. The consistency of an OAW classification with applicable water quality management plans; and

6. Whether the nominated surface water is located within a national or state park, national monument, national recreation area, wilderness area, riparian conservation area, area of critical environmental concern, or it has another special use designation (for example, Wild and Scenic River).

G. The following surface waters are classified as OAWs:

1. The West Fork of the Little Colorado River, from its headwaters to Government Springs (approximately 9.1 river miles);
2. Oak Creek, from its headwaters to its confluence with the Verde River (approximately 50.3 river miles);
3. West Fork of Oak Creek, from its headwaters to its confluence with Oak Creek (approximately 15.8 river miles);
4. Peeples Canyon Creek, from its headwaters to its confluence with the Santa Maria River (approximately 8.1 river miles);
5. Burro Creek, from its headwaters to its confluence with Boulder Creek (approximately 29.5 miles);
6. Francis Creek, from its headwaters to its confluence with Burro Creek (approximately 22.9 river miles);
7. Bonita Creek, from its boundary of the San Carlos Indian Reservation to its confluence with the Gila River (approximately 14.7 river miles);
8. Cienega Creek, from its confluence with Gardner Canyon to the USGS gaging station (#09484600) (approximately 28.3 river miles);
9. Aravaipa Creek, from its confluence with Stowe Gulch to the downstream boundary of the Aravaipa Canyon Wilderness Area (approximately 15.5 river miles);
10. Cave Creek, from its headwaters to the Coronado National Forest boundary (approximately 10.4 river miles);
11. South Fork of Cave Creek, from its headwaters to its confluence with Cave Creek (approximately 8.6 river miles);
12. Buehman Canyon Creek, from its headwaters to its confluence with unnamed tributary at 32°24'31"/110°32'08" (approximately 9.8 river miles);
13. Lee Valley Creek, from its headwaters to Lee Valley Reservoir (approximately 1.6 river miles);
14. Bear Wallow Creek, from its headwaters to the boundary of the San Carlos Indian Reservation (approximately 4.25 river miles);
15. North Fork of Bear Wallow Creek, from its headwaters to its confluence with Bear Wallow Creek (approximately 3.8 river miles);
16. South Fork of Bear Wallow Creek, from its headwaters to its confluence with Bear Wallow Creek (approximately 3.8 river miles);
17. Snake Creek, from its headwaters to its confluence with the Black River (approximately 6.2 river miles);
18. Hay Creek, from its headwaters to its confluence with the West Fork of the Black River (approximately 5.5 river miles);
19. Stinky Creek, from the White Mountain Apache Indian Reservation boundary to its confluence with the West Fork of the Black River (approximately 3.0 river miles);
20. KP Creek, from its headwaters to its confluence with the Blue River (approximately 12.7 river miles);
21. Davidson Canyon, from the unnamed spring at 31°59'00"/110°38'49" to its confluence with Cienega Creek; and
22. Fossil Creek, from its headwaters at the confluence of Sandrock and Calf Pen Canyons above Fossil Springs to its confluence with the Verde River (approximately 17.2 river miles).

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Added "water quality standards" to R18-11-112, previously omitted in error (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

R18-11-113. Effluent-Dependent Waters

A. The Director shall classify a surface water as an effluent-dependent water by rule.

B. The Director may adopt, under R18-11-115, a site-specific water quality standard for an effluent-dependent water.

C. Any person may submit a petition for rule adoption requesting that the Director classify a surface water as an effluent-dependent water. The petition shall include:

1. A map and a description of the surface water;
2. Information that demonstrates that the surface water consists of a point source discharge of wastewater; and
3. Information that demonstrates that, without a point source discharge of a wastewater, the receiving water is an ephemeral water.

D. The Director shall use the water quality standards that apply to an effluent-dependent water to derive water quality-based effluent limits for a point source discharge of wastewater to an ephemeral water.

E. The Director may use aquatic and wildlife (edw) acute standards only to derive water quality based effluent limits for a sporadic, infrequent, or emergency point source discharge to an ephemeral water or to an effluent-dependent water. The Director shall consider the following factors when deciding whether to apply A&Wedw (acute) standards:

1. The amount, frequency, and duration of the discharge;
2. The length of time water may be present in the receiving water;
3. The distance to a downstream water with aquatic and wildlife chronic standards; and
4. The likelihood of chronic exposure to pollutants.

F. The Director may establish alternative water quality-based effluent limits in an AZPDES permit based on seasonal differences in the discharge.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective December 18, 1992 (Supp. 92-4). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-114. Mixing Zones

A. The Director may establish a mixing zone for a point source discharge to a surface water as a condition of an individual AZPDES permit on a pollutant-by-pollutant basis. A mixing zone is prohibited in an ephemeral water or where there is no water for dilution, or as prohibited pursuant to subsection (H).

B. The owner or operator of a point source seeking the establishment of a mixing zone shall submit a request to the Director

for a mixing zone as part of an application for an AZPDES permit. The request shall include:

1. An identification of the pollutant for which the mixing zone is requested;
2. A proposed outfall design;
3. A definition of the boundary of the proposed mixing zone. For purposes of this subsection, the boundary of a mixing zone is where complete mixing occurs; and
4. A complete and detailed description of the existing physical, biological, and chemical conditions of the receiving water and the predicted impact of the proposed mixing zone on those conditions. The description shall also address the factors listed in subsection (D) that the Director must consider when deciding to grant or deny a request and shall address the mixing zone requirements in subsection (H).

C. The Director shall consider the following factors when deciding whether to grant or deny a request for a mixing zone:

1. The assimilative capacity of the receiving water;
2. The likelihood of adverse human health effects;
3. The location of drinking water plant intakes and public swimming areas;
4. The predicted exposure of biota and the likelihood that resident biota will be adversely affected;
5. Bioaccumulation;
6. Whether there will be acute toxicity in the mixing zone, and, if so, the size of the zone of initial dilution;
7. The known or predicted safe exposure levels for the pollutant for which the mixing zone is requested;
8. The size of the mixing zone;
9. The location of the mixing zone relative to biologically sensitive areas in the surface water;
10. The concentration gradient of the pollutant within the mixing zone;
11. Sediment deposition;
12. The potential for attracting aquatic life to the mixing zone; and
13. The cumulative impacts of other mixing zones and other discharges to the surface water.

D. Director determination.

1. The Director shall deny a request to establish a mixing zone if a water quality standard will be violated outside the boundaries of the proposed mixing zone.
2. If the Director approves the request to establish a mixing zone, the Director shall establish the mixing zone as a condition of an AZPDES permit. The Director shall include any mixing zone condition in the AZPDES permit that is necessary to protect human health and the designated uses of the surface water.

E. Any person who is adversely affected by the Director's decision to grant or deny a request for a mixing zone may appeal the decision under A.R.S. § 49-321 et seq. and A.R.S. § 41-1092 et seq.

F. The Director shall reevaluate a mixing zone upon issuance, reissuance, or modification of the AZPDES permit for the point source or a modification of the outfall structure.

G. Mixing zone requirements.

1. A mixing zone shall be as small as practicable in that it shall not extend beyond the point in the waterbody at which complete mixing occurs under the critical flow conditions of the discharge and of the receiving water.
2. The total horizontal area allocated to all mixing zones on a lake shall not exceed 10 percent of the surface area of the lake.
3. Adjacent mixing zones in a lake shall not overlap or be located closer together than the greatest horizontal dimension of the largest mixing zone.
4. The design of any discharge outfall shall maximize initial dilution of the wastewater in a surface water.
5. The size of the zone of initial dilution in a mixing zone shall prevent lethality to organisms passing through the zone of initial dilution. The mixing zone shall prevent acute toxicity and lethality to organisms passing through the mixing zone.

H. The Director shall not establish a mixing zone in an AZPDES permit for the following persistent, bioaccumulative pollutants:

1. Chlordane,
2. DDT and its metabolites (DDD and DDE),
3. Dieldrin,
4. Dioxin,
5. Endrin,
6. Endrin aldehyde,
7. Heptachlor,
8. Heptachlor epoxide,
9. Lindane,
10. Mercury,
11. Polychlorinated biphenyls (PCBs), and
12. Toxaphene.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-115. Site-Specific Standards

A. The Director shall adopt a site-specific standard by rule.

B. The Director may adopt a site-specific standard based upon a request or upon the Director's initiative for any of the following reasons:

1. Local physical, chemical, or hydrological conditions of a surface water such as pH, hardness, fate and transport, or temperature alters the biological availability or toxicity of a pollutant;
2. The sensitivity of resident aquatic organisms that occur in a surface water to a pollutant differs from the sensitivity of the species used to derive the numeric water quality standards to protect aquatic life in Appendix A;
3. Resident aquatic organisms that occur in a surface water represent a narrower mix of species than those in the dataset used by ADEQ to derive numeric water quality standards to protect aquatic life in Appendix A;
4. The natural background concentration of a pollutant is greater than the numeric water quality standard to protect aquatic life prescribed in Appendix A. "Natural background" means the concentration of a pollutant in a surface water due only to non-anthropogenic sources; or
5. Other factors or combination of factors that upon review by the Director warrant changing a numeric water quality standard for a surface water.

C. Site-specific standard by request. To request that the Director adopt a site-specific standard, a person must conduct a study to support the development of a site-specific standard using a scientifically-defensible procedure.

1. Before conducting the study, a person shall submit a study outline to the Director for approval that contains the following elements:
   a. Identifies the pollutant;
   b. Describes the reach's boundaries;
   c. Uses one of the following procedures, as defined by the most recent EPA guidance documents:
      i. The recalculation procedure,
      ii. The water effects ratio for metals,
      iii. The streamlined water effects ratio, or
      iv. The Biotic ligand model.
   d. Demonstrates that all designated uses are protected.
2. Alternatively, a study outline submitted for the Director's approval must contain the following elements:
   a. Identifies the pollutant;
   b. Describes the reach's boundaries;
   c. Describes the hydrologic regime of the waterbody;
   d. Describes the scientifically-defensible procedure, which can include relevant aquatic life studies, ecological studies, laboratory tests, biological translators, fate and transport models, and risk analyses;
   e. Describes and compares the taxonomic composition, distribution and density of the aquatic biota within the reach to a reference reach and describes the basis of any major taxonomic differences;
   f. Describes the pollutant's effect on the affected species or appropriate surrogate species and on the other designated uses listed for the reach;
   g. Demonstrates that all designated uses are protected; and
   h. A person seeking to develop a site-specific standard based on natural background may use statistical or modeling approaches to determine natural background concentration. Modeling approaches include Better Assessment Science Integrating Source and Nonpoint Sources (Basins), Hydrologic Simulation Program-Fortran (HSPF), and Hydrologic Engineering Center (HEC) programs developed by the U.S. Army Corps of Engineers.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Section repealed by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-116. Resource Management Agencies

Nothing in this Article prohibits fisheries management activities by the Arizona Game and Fish Department or the U.S. Fish and Wildlife Service. This Article does not exempt fish hatcheries from AZPDES permit requirements.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-117. Canals and Urban Park Lakes

A. Nothing in this Article prevents the routine physical or mechanical maintenance of canals, drains, and the urban lakes identified in Appendix B. Physical or mechanical maintenance includes dewatering, lining, dredging, and the physical, biological, or chemical control of weeds and algae. Increases in turbidity that result from physical or mechanical maintenance activities are permitted in canals, drains, and the urban lakes identified in Appendix B.

B. The discharge of lubricating oil associated with the start-up of well pumps that discharge to canals is not a violation of R18-11-108(B).

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-118. Dams and Flood Control Structures

Increases in turbidity that result from the routine physical or mechanical maintenance of a dam or flood control structure are not violations of this Article. Nothing in this Article requires the release of water from a dam or a flood control structure.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-119. Natural background

Where the concentration of a pollutant exceeds a water quality standard and the exceedance is not caused by human activity but is due solely to naturally-occurring conditions, the exceedance shall not be considered a violation of the water quality standard.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1).

R18-11-120. Enforcement of Non-permitted Discharges

A. The Department may establish a numeric water quality standard at a concentration that is below the practical quantitation limit. Therefore, in enforcement actions pursuant to subsection (B), the water quality standard is enforceable at the practical quantitation limit.

B. Except for chronic aquatic and wildlife criteria, for non-permitted discharge violations, the Department shall determine compliance with numeric water quality standard criteria from the analytical result of a single sample, unless additional samples are required under this article. For chronic aquatic and wildlife criteria, compliance for non-permitted discharge violations shall be determined from the geometric mean of the analytical results of the last four samples taken at least 24 hours apart. For the purposes of this Section, a "non-permitted discharge violation" does not include a discharge regulated under an AZPDES permit.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-121. Schedules of Compliance

A compliance schedule in an AZPDES permit shall require the permittee to comply with a discharge limitation based upon a new or revised water quality standard as soon as possible to achieve com-

pliance. The permittee shall demonstrate that all requirements under § 301(b) and § 306 of the Clean Water Act [33 U.S.C. 1311(b) and 1316] are achieved and that the point source cannot comply with a discharge limitation based upon the new or revised water quality standard through the application of existing water pollution control technology, operational changes, or source reduction. In establishing a compliance schedule, the Director shall consider:

1. How much time the permittee has already had to meet any effluent limitations under a prior permit;
2. The extent to which the permittee has made good faith efforts to comply with the effluent limitations and other requirements in a prior permit;
3. Whether treatment facilities, operations, or measures must be modified to meet the effluent limitations;
4. How long any necessary modifications would take to implement; and
5. Whether the permittee would be expected to use the same treatment facilities, operations or other measures to meet the effluent limitations as it would have used to meet the effluent limitations in a prior permit.

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

R18-11-122. Variances

A. Upon request, the Director may establish, by rule, a discharger-specific or water segment(s)-specific variance from a water quality standard if requirements pursuant to this Section are met.

B. A person who requests a variance must demonstrate all of the following information:

1. Identification of the specific pollutant and water quality standard for which a variance is sought.
2. Identification of the receiving surface water segment or segments to which the variance would apply.
3. A detailed discussion of the need for the variance, including the reasons why compliance with the water quality standard cannot be achieved over the term of the proposed variance, and any other useful information or analysis to evaluate attainability.
4. A detailed discussion of the discharge control technologies that are available for achieving compliance with the water quality standard for which a variance is sought.
5. Documentation that more advanced treatment technology than applicable technology-based effluent limitations is necessary to achieve compliance with the water quality standard for which a variance is sought.
6. A detailed description of proposed interim discharge limitations and pollutant control activities that represent the highest level of treatment achievable by a point source discharger or dischargers during the term of the variance.
7. Documentation that the proposed term is only as long as necessary to achieve the highest attainable condition.
8. Documentation that is appropriate to the type of use to which the variance would apply as follows:
   a. For a water quality standard variance to a use specified in Clean Water Act § 101(a)(2), documentation must include demonstration of at least one of the following factors that preclude attainment of the use during the term of the variance:
      i. Naturally occurring pollutant concentrations prevent attainment of the use;
      ii. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met;
      iii. That human-caused conditions or sources of pollution prevent the attainment of the water quality standard for which the variance is sought and either (1) it is not possible to remedy the conditions or sources of pollution or (2) remedying the human-caused conditions would cause more environmental damage to correct than to leave in place;
      iv. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification n a way that would result in the attainment of the use;
      v. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;
      vi. That installation and operation of each of the available discharge technologies more advanced than those required to comply with technology-based effluent limitations to achieve compliance with the water quality standard would result in substantial and widespread economic and social impact; or
      vii. Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.
   b. For a water quality standard variance to a use other than those uses specified in Clean Water Act § 101(a)(2), documentation must justify how consideration and value of the water subject to the use appropriately supports the variance and term. A demonstration consistent with (B)(8)(a) of this Section may be used to satisfy this requirement.
9. For a waterbody segment(s)-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
   a. Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and water body or waterbody segment(s) specified in the variance that could be implemented to make progress towards attaining the underlying designated use and criterion; and
   b. If any variance pursuant to subsection (B)(9)(a) previously applied to the water body or waterbody seg-

ment(s), documentation must also demonstrate whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the water quality variance and the water quality progress achieved.

10. For a discharger-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
    a. Identification of the permittee subject to the variance;
    b. For an existing point source discharge, a detailed description of the existing discharge control technologies that are used to achieve compliance with applicable water quality standards. For a new point source discharge, a detailed description of the proposed discharge control technologies that will be used to achieve compliance with applicable water quality standards; and
    c. Documentation that the existing or proposed discharge control technologies will comply with applicable technology-based effluent limitations.

C. The Director shall consider the following factors when deciding whether to grant or deny a variance request:
1. Bioaccumulation,
2. The predicted exposure of biota and the likelihood that resident biota will be adversely affected,
3. The known or predicted safe exposure levels for the pollutant for which the variance is requested, and
4. The likelihood of adverse human health effects.

D. The variance shall represent the highest attainable condition of the water body or water body segment applicable throughout the term of the variance.

E. A variance shall not result in any lowering of the currently attained ambient water quality, unless the variance is necessary for restoration activities, consistent with subsection (B)(8)(a)(vii). The Director must specify the highest attainable condition of the water body or waterbody segment as a quantifiable expression of one of the following:
1. The highest attainable interim criterion,
2. The interim effluent condition that reflects the greatest pollutant reduction achievable; or
3. If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time of the issuance of the variance, and the adoption and implementation of a Pollutant Minimization Program.

F. A variance shall not modify the underlying designated use and criterion. A variance is only a time limited exception to the underlying standard. For discharge-specific variances, other point source dischargers to the surface water that are not granted a variance shall still meet all applicable water quality standards.

G. Point source discharges shall meet all other applicable water quality standards for which a variance is not granted.

H. The Director may not grant a variance for a point source discharge to an OAW listed in R18-11-112(G).

I. Each variance established by the Director is subject to review and approval by the Regional Administrator.

J. The term of the water quality variance may only be as long as necessary to achieve the highest attainable condition and must be consistent with the supporting documentation in subsection (E). The variance term runs from the approval of the variance by the Regional Administrator.

K. The Director shall reevaluate, in its triennial review, whether each variance continues to represent the highest attainable condition. Comment on the variance shall be considered regarding whether the variance continues to represent the highest attainable condition. If the Director determines that the requirements of the variance do not represent the highest attainable condition, then the Director shall modify or repeal the variance in its triennial review rulemaking.

L. If the variance is modified by rulemaking, the requirements of the variance shall represent the highest attainable condition at the time of initial adoption of the variance, or the highest attainable condition identified during the current reevaluation, whichever is more stringent.

M. Upon expiration of a variance, point source dischargers shall comply with the water quality standard.

N. The following are discharger-specific variances adopted by the Director:

O. The following are water body and waterbody segment-specific variances adopted by the Director:

Historical Note

Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

R18-11-123. Discharge Prohibitions

A. The discharge of wastewater to the following surface waters is prohibited:
1. Sabino Canyon Creek;
2. Vekol Wash, upstream of the Ak-Chin Indian Reservation; and
3. Smith Wash, upstream of the Ak-Chin Indian Reservation.

B. The discharge to Lake Powell of human body wastes and the wastes from toilets and other receptacles intended to receive or retain wastes from a vessel is prohibited.

Historical Note

Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

Appendix A. Numeric Water Quality Standards

Table 1. Water Quality Criteria By Designated Use (see f) Footnotes

Parameter	CAS NUMBER	DWS (µg/L)	FC (µg/L)	FBC (µg/L)	PBC (µg/L)	A&Wc Acute (µg/L)	A&Wc Chronic (µg/L)	A&Ww Acute (µg/L)	A&Ww Chronic (µg/L)	A&Wedw Acute| (µg/L)	A&Wedw Chronic (µg/L)	A&We Acute (µg/L)	Agl (µg/L)	AgL (µg/L)
Acenaphthene	83329	420	198	56,000	56,000	850	550	850	550	850	550			
Acrolein	107028	3.5	1.9	467	467	3	3	3	3	3	3			
Acrylonitrile	107131	0.06	0.2	3	37,333	3,800	250	3,800	250	3,800	250			
Alachlor	15972608	2		9,333	9,333	2,500	170	2,500	170	2,500	170			
Aldrin	309002	0.002	0.00005	0.08	28	3		3		3		4.5	0.003	See (b)
Alpha Particles (Gross) Radioactivity		15 pCi/L See (h)												
Ammonia	7664417					See (e) & Tables 11 (present) & 14 (absent)	See (e) & Tables 13 (present) & 17 (absent)	See (e) & Tables 12 (present) & 15 (absent)	See (e) & Tables 13 (present) & 16 (absent)	See (e) & Table 15 (absent)	See (e) & Table 16 (absent)			
Anthracene	120127	2,100	74	280,000	280,000									
Antimony	7440360	6 T	640 T	747 T	747 T	88 D	30 D	88 D	30 D	1,000 D	600 D			
Arsenic	7440382	10 T	80 T	30 T	280 T	340 D	150 D	340 D	150 D	340 D	150 D	440 D	2,000 T	200 T
Asbestos	1332214	See (a)												
Atrazine	1912249	3		32,667	32,667									
Barium	7440393	2,000 T		98,000 T	98,000 T									
Benz(a)anthracene	56553	0.005	0.02	0.2	0.2									
Benzene	71432	5	140	93	3,733	2,700	180	2,700	180	8,800	560			
Benzo[b]fluoranthene	205992	0.005	0.02	1.9	1.9									
Benzidine	92875	0.0002	0.0002	0.01	2,800	1,300	89	1,300	89	1,300	89	10,000	0.01	0.01
Benzo(a)pyrene	50328	0.2	0.02	0.2	0.2									
Benzo(k)fluoranthene	207089	0.005	0.02	1.9	1.9									
Beryllium	7440417	4 T	84 T	1,867 T	1,867 T	65 D	5.3 D	65 D	5.3 D	65 D	5.3 D			
Beta particles and photon emitters		4 millirems / year See (i)												
Bis(2-chloroethyl) ether	111444	0.03	0.5	1	1	120,000	6,700	120,000	6,700	120,000	6,700			
Bis(2-chloroisopropyl) ether	108601	280	3,441	37,333	37,333									
Boron	7440428	1,400 T		186,667 T	186,667 T								1,000 T	
Bromodichloromethane	75274	TTHM See (g)	17	TTHM	18,667									
4-Bromophenyl phenyl ether	101553					180	14	180	14	180	14			
Bromoform	75252	TTHM See (g)	133	180	18,667	15,000	10,000	15,000	10,000	15,000	10,000			
Bromomethane	74839	9.8	299	1,307	1,307	5,500	360	5,500	360	5,500	360			
Butyl benzyl phthalate	85687	1,400	386	186,667	186,667	1,700	130	1,700	130	1,700	130			
Cadmium	7440439	5 T	84 T	700 T	700 T	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	50	50
Carbaryl	63252					2.1	2.1	2.1	2.1	2.1	2.1	2.1		
Carbofuran	1563662	40		4,667	4,667	650	50	650	50	650	50			
Carbon tetrachloride	56235	5	2	11	980	18,000	1,100	18,000	1,100	18,000	1,100			
Chlordane	57749	2	0.0008	4	467	2.4	0.004	2.4	0.2	2.4	0.2	3.2		
Chlorine (total residual)	7782505	4,000		4,000	4,000	19	11	19	11	19	11			
Chlorobenzene	108907	100	1,553	18,667	18,667	3,800	260	3,800	260	3,800	260			
2-Chloroethyl vinyl ether	110758					180,000	9,800	180,000	9,800	180,000	9,800			
Chloroform	67663	TTHM See (g)	470	230	9,333	14,000	900	14,000	900	14,000	900			
p-Chloro-m-cresol	59507					15	4.7	15	4.7	15	4.7	48,000		
Chloromethane	74873					270,000	15,000	270,000	15,000	270,000	15,000			
beta-Chloronaphthalene	91587	560	1267 317	74,667	74,667									
2-Chlorophenol	95578	35	30	4,667	4,667	2,200	150	2,200	150	2,200	150			
Chloropyrifos	2921882	21		2,800	2,800	0.08	0.04	0.08	0.04	0.08	0.04			
Chromium III	16065831		75,000 T	1,400,000 T	1,400,000 T	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4		
Chromium VI	18540299	21 T	150 T	2,800 T	2,800 T	16 D	11 D	16 D	11 D	16 D	11 D	34 D		
Chromium (Total)	7440473	100 T											1,000	1,000
Chrysene	218019	0.005	0.02	19	19									
Copper	7440508	1,300 T		1,300 T	1,300 T	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	5,000 T	500 T
Cyanide (as free cyanide)	57125	200 T	16,000 T	18,667 T	18,667 T	22 T	5.2 T	41 T	9.7 T	41 T	9.7 T	84 T		200 T
Dalapon	75990	200	8,000	28,000	28,000									
DDT and its breakdown products	50293	0.1	0.0002	4	467	1.1	0.001	1.1	0.001	1.1	0.001	1.1	0.001	0.001
Demeton	8065483						0.1		0.1		0.1			
Diazinon	333415					0.17	0.17	0.17	0.17	0.17	0.17	0.17		
Dibenz (ah) anthracene	53703	0.005	0.02	1.9	1.9									
Dibromochloromethane	124481	TTHM See (g)	13	TTHM	18,667									
1,2-Dibromo-3-chloropropane	96128	0.2		2,800	2,800									
1,2-Dibromoethane	106934	0.05		8,400	8,400									
Dibutyl phthalate	84742	700	899	93,333	93,333	470	35	470	35	470	35	1,100		
1,2-Dichlorobenzene	95501	600	205	84,000	84,000	790	300	1,200	470	1,200	470	5,900		
1,3-Dichlorobenzene	541731					2,500	970	2,500	970	2,500	970			
1,4-Dichlorobenzene	106467	75	5755	373,333	373,333	560	210	2,000	780	2,000	780	6,500		
3,3'-Dichlorobenzidine	91941	0.08	0.03	3	3									
1,2-Dichloroethane	107062	5	37	15	186,667	59,000	41,000	59,000	41,000	59,000	41,000			

1,1-Dichloroethylene	75354	7	7,143	46,667	46,667	15,000	950	15,000	950	15,000	950			
1,2-cis-Dichloroethylene	156592	70		70	70									
1,2-trans-Dichloroethylene	156605	100	10,127	18,667	18,667	68,000	3,900	68,000	3,900	68,000	3,900			
Dichloromethane	75092	5	593	190	56,000	97,000	5,500	97,000	5,500	97,000	5,500			
2,4-Dichlorophenol	120832	21	59	2,800	2,800	1,000	88	1,000	88	1,000	88			
2,4-Dichlorophenoxyacetic acid (2,4-D)	94757	70		9,333	9,333									
1,2-Dichloropropane	78875	5	17,518	84,000	84,000	26,000	9,200	26,000	9,200	26,000	9,200			
1,3-Dichloropropene	542756	0.7	42	420	28,000	3,000	1,100	3,000	1,100	3,000	1,100			
Dieldrin	60571	0.002	0.00005	0.09	47	0.2	0.06	0.2	0.06	0.2	0.06	4	0.003	See (b)
Diethyl phthalate	84662	5,600	8,767	746,667	746,667	26,000	1,600	26,000	1,600	26,000	1,600			
Di (2-ethylhexyl) adipate	103231	400		560,000	560,000									
Di (2-ethylhexyl) phthalate	117817	6	3	100	18,667	400	360	400	360	400	360	3,100		
2,4-Dimethylphenol	105679	140	171	18,667	18,667	1,000	310	1,000	310	1,000	310	150,000		
Dimethyl phthalate	131113					17,000	1,000	17,000	1,000	17,000	1,000			
4,6-Dinitro-o-cresol	534521	28	582	3,733	3,733	310	24	310	24	310	24			
2,4-Dinitrophenol	51285	14	1,067	1,867	1,867	110	9.2	110	9.2	110	9.2			
2,4-Dinitrotoluene	121142	14	421	1,867	1,867	14,000	860	14,000	860	14,000	860			
2,6-Dinitrotoluene	606202	0.05		2	3,733									
Di-n-octyl phthalate	117840	2,800		373,333	373,333									
Dinoseb	88857	7		933	933									
1,2-Diphenylhydrazine	122667	0.04	0.2	1.8	1.8	130	11	130	11	130	11			
Diquat	85007	20		2,053	2,053									
Endosulfan sulfate	1031078	42	18	5,600	5,600	0.2	0.06	0.2	0.06	0.2	0.06	3		
Endosulfan (Total)	115297	42	18	5,600	5,600	0.2	0.06	0.2	0.06	0.2	0.06	3		
Endothall	145733	100		18,667	18,667									
Endrin	72208	2	0.06	280	280	0.09	0.04	0.09	0.04	0.09	0.04	0.7	0.004	0.004
Endrin aldehyde	7421934					0.09	0.04	0.09	0.04	0.09	0.04	0.7		
Ethylbenzene	100414	700	2,133	93,333	93,333	23,000	1,400	23,000	1,400	23,000	1,400			
Fluoranthene	206440	280	28	37,333	37,333	2,000	1,600	2,000	1,600	2,000	1,600			
Fluorene	86737	280	1,067	37,333	37,333									
Fluoride	7782414	4,000		140,000	140,000									
Glyphosate	1071836	700	266,667	93,333	93,333									
Guthion	86500						0.01		0.01		0.01			
Heptachlor	76448	0.4	0.00008	0.4	467	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Heptachlor epoxide	1024573	0.2	0.00004	0.2	12	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Hexachlorobenzene	118741	1	0.0003	1	747	6	3.7	6	3.7	6	3.7			
Hexachlorobutadiene	87683	0.4	18	18	187	45	8.2	45	8.2	45	8.2			
Hexachlorocyclohexane alpha	319846	0.006	0.005	0.22	7,467	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane beta	319857	0.02	0.02	0.78	560	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane delta	319868					1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane gamma (lindane)	58899	0.2	1.8	280	280	1	0.08	1	0.28	1	0.61	11		
Hexachlorocyclopentadiene	77474	50	580	9,800	9,800	3.5	0.3	3.5	0.3	3.5	0.3			
Hexachloroethane	67721	2.5	3.3	100	933	490	350	490	350	490	350	850		
Hydrogen sulfide	7783064						2 See (c)		2 See (c)		2 See (c)			
Indeno (1,2,3-cd) pyrene	193395	0.05	0.49	1.9	1.9									
Iron	7439896						1,000 D		1,000 D		1,000 D			
Isophorone	78591	37	961	1,500	186,667	59,000	43,000	59,000	43,000	59,000	43,000			
Lead	7439921	15 T		15 T	15 T	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	10,000 T	100 T
Malathion	121755	140		18,667	18,667		0.1		0.1		0.1			
Manganese	7439965	980		130,667	130,667								10,000	
Mercury	7439976	2 T		280 T	280 T	2.4 D	0.01 D	2.4 D	0.01 D	2.4 D	0.01 D	5 D		10 T
Methoxychlor	72435	40		4,667	4,667		0.03		0.03		0.03			
Methylmercury	22967926		0.3 mg/ kg											
Mirex	2385855	1		187	187		0.001		0.001		0.001			
Naphthalene	91203	140	1,524	18,667	18,667	1,100	210	3,200	580	3,200	580			
Nickel	7440020	140 T	4,600 T	28,000 T	28,000 T	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7		
Nitrate	14797558	10,000		3,733,333	3,733,333									
Nitrite	14797650	1,000		233,333	233,333									
Nitrate + Nitrite		10,000												
Nitrobenzene	98953	3.5	138	467	467	1,300	850	1,300	850	1,300	850			
p-Nitrophenol	100027					4,100	3,000	4,100	3,000	4,100	3,000			
N-nitrosodimethylamine	62759	0.001	3	0.03	0.03									
N-Nitrosodiphenylamine	86306	7.1	6	290	290	2,900	200	2,900	200	2,900	200			
N-nitrosodi-n-propylamine	621647	0.005	0.5	0.2	88,667									
Nonylphenol	104405					28	6.6	28	6.6	28	6.6	28		
Oxamyl	23135220	200		23,333	23,333									
Parathion	56382					0.07	0.01	0.07	0.01	0.07	0.01			
Paraquat	1910425	32		4,200	4,200	100	54	100	54	100	54			
Pentachlorophenol	87865	1	1,000	12	28,000	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10		
Permethrin	52645531	350		46,667	46,667	0.3	0.2	0.3	0.2	0.3	0.2			
Phenanthrene	85018					30	6.3	30	6.3	30	6.3			
Phenol	108952	2,100	37	280,000	280,000	5,100	730	7,000	1,000	7,000	1,000	180,000		
Picloram	1918021	500	2,710	65,333	65,333									

Polychlorinatedbiphenyls (PCBs)	1336363	0.5	0.00006	19	19	2	0.01	2	0.02	2	0.02	11	0.001	0.001
Pyrene	129000	210	800	28,000	28,000									
Radium 226 + Radium 228		5 pCi/L												
Selenium	7782492	50 T	667 T	4,667 T	4,667 T		2 T		2 T		2 T	33 T	20 T	50 T
Silver	7440224	35 T	8,000 T	4,667 T	4,667 T	See (d) & Table 8		See (d) & Table 8		See (d) & Table 8		See (d) & Table 8		
Simazine	112349	4		4,667	4,667									
Strontium	7440246	8 pCi/L												
Styrene	100425	100		186,667	186,667	5,600	370	5,600	370	5,600	370			
Sulfides												100		
2,3,7,8-Tetrachlorod- ibenzo-p-dioxin (2,3,7,8-TCDD)	1746016	0.00003	5x10-9	0.00003	0.0009	0.01	0.005	0.01	0.005	0.01	0.005	0.1		
1,1,2,2-Tetrachloroethane	79345	0.2	4	7	56,000	4,700	3,200	4,700	3,200	4,700	3,200			
Tetrachloroethylene	127184	5	261	9,333	9,333	2,600	280	6,500	680	6,500	680	15,000		
Thallium	7440280	2 T	7.2 T	75 T	75 T	700 D	150 D	700 D	150 D	700 D	150 D			
Toluene	108883	1,000	201,000	280,000	280,000	8,700	180	8,700	180	8,700	180			
Toxaphene	8001352	3	0.0003	1.3	933	0.7	0.0002	0.7	0.0002	0.7	0.0002	11	0.005	0.005
Tributyltin						0.5	0.07	0.5	0.07	0.5	0.07			
1,2,4-Trichlorobenzene	120821	70	70	9,333	9,333	750	130	1,700	300	1,700	300			
1,1,1-Trichloroethane	71556	200	428,571	1,866,667	1,866,667	2,600	1,600	2,600	1,600	2,600	1,600		1,000	
1,1,2-Trichloroethane	79005	5	16	25	3,733	18,000	12,000	18,000	12,000	18,000	12,000			
Trichloroethylene	79016	5	29	280,000	280	20,000	1,300	20,000	1,300	20,000	1,300			
2,4,6-Trichlorophenol	88062	3.2	2	130	130	160	25	160	25	160	25	3,000		
2,4,5-Trichlorophenoxy pro-prionic acid (2,4,5-TP)	93721	50		7,467	7,467									
Trihalomethanes (T)		80												
Tritium	10028178	20,000 pCi/L												
Uranium	7440611	30 D		2,800	2,800									
Vinyl chloride	75014	2	5	2	2,800									
Xylenes (T)	1330207	10,000		186,667	186,667									
Zinc	7440666	2,100 T	5,106 T	280,000 T	280,000 T	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	10,000 T	25,000 T

Footnotes

a. The asbestos standard is 7 million fibers (longer than 10 micrometers) per liter.
b. The aldrin/dieldrin standard is exceeded when the sum of the two compounds exceeds 0.003 µg/L.
c. In lakes, the acute criteria for hydrogen sulfide apply only to water samples taken from the epilimnion, or the upper layer of a lake or reservoir.
d. Hardness, expressed as mg/L $CaCO_3$, is determined according to the following criteria:
   i. If the receiving water body has an A&Wc or A&Ww designated use, then hardness is based on the hardness of the receiving water body from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L $CaCO_3$.
   ii. If the receiving water has an A&Wedw or A&We designated use, then the hardness is based on the hardness of the effluent from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L $CaCO_3$.
   iii. The mathematical equations for the hardness-dependent parameter represent the water quality standards. Examples of criteria for the hardness-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
e. pH is determined according to the following criteria:
   i. If the receiving water has an A&Wc or A&Ww designated use, then pH is based on the pH of the receiving water body from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
   ii. If the receiving water body has an A&Wedw or A&We designated use, then the pH is based on the pH of the effluent from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
   iii. The mathematical equations for ammonia represent the water quality standards. Examples of criteria for ammonia have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
f. Table 1 abbreviations.
   i. µg/L = micrograms per liter,
   ii. mg/kg = milligrams per kilogram,
   iii. pCi/L = picocuries per liter,
   iv. D = dissolved,
   v. T = total recoverable,
   vi. TTHM indicates that the chemical is a trihalomethane.
g. The total trihalomethane (TTHM) standard is exceeded when the sum of these four compounds exceeds 80 µg/L, as a rolling annual average.
h. The concentration of gross alpha particle activity includes radium-226, but excludes radon and uranium.
i. The average annual concentration of beta particle activity and photon emitters from manmade radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirems per year.
j. The mathematical equations for the pH-dependent parameters represent the water quality standards. Examples of criteria for the pH-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
k. Abbreviations for the mathematical equations are as follows:
   e = the base of the natural logarithm and is a mathematical constant equal to 2.71828
   LN = is the natural logarithm
   CMC = Criterion Maximum Concentration (acute)
   CCC= Criterion Continuous Concentration (chronic)

Historical Note

Appendix A repealed; new Appendix A, Table 1 adopted effective April 24, 1996 (Supp. 96-2). Appendix A, Table 1 amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 1 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 1 repealed; new Appendix A, Table 1 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 1 amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Amended by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 2. Acute Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife coldwater		Aquatic and Wildlife warm water, and edw		Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L.**
20	0.40	20	2.1	20	4.9
100	1.8	100	9.4	100	22
400	6.5	400	34	400	80
$_{e}$(0.9789*LN(Hardness)-3.866)*(1.136672-LN(Hardness)*0.041838)		$_{e}$(0.9789*LN(Hardness)-2.208)*(1.136672-LN(Hardness)*0.041838)		$_{e}$(0.9789*LN(Hardness)-1.363)(1.136672-LN(Hardness)*0.041838)	

Historical Note

Appendix A repealed; new Appendix A, Table 2 adopted effective April 24, 1996 (Supp. 96-2). Appendix A, Table 2 amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 2 amended to correct references to footnotes (Supp. 02-4). Appendix A, Table 2 footnotes amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 2 repealed; new Appendix A, Table 2 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 2 repealed; new Table 2 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 3. Chronic Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife coldwater, warmwater, and edw	
Hard. mg/L	**Std. µg/L**
20	0.21
100	0.72
400	2.0
$_{e}$(0.7977*LN(Hardness)-3.909)*(1.101672-LN(Hardness)*0.041838)	

Historical Note

Appendix A, Table 3 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 3 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 3 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 3 repealed; new Table 3 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 4. Water Quality Standards for Dissolved Chromium III

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	152	20	19.8	20	512
100	570	100	74.1	100	1,912
400	1,773	400	231	400	5,950
$_{e}$(0.819*LN(Hardness)+3.7256)*(0.316)		$_{e}$(0.819*LN(Hardness)+0.6848)*(0.86)		$_{e}$(0.819*LN(Hardness)+4.9361) * (0.316)	

Historical Note

Appendix A, Table 4 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 4 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 4 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 4 repealed; new Table 4 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 5. Water Quality Standards for Dissolved Copper

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	2.9	20	2.3	20	5.1
100	13	100	9.0	100	23
400	50	400	29	400	86
$_{e}$(0.9422*LN(Hardness)-1.702)*(0.96)		$_{e}$(0.8545*LN(Hardness)-1.702)*(0.96)		$_{e}$(0.9422*LN(Hardness)-1.1514)*(0.96)	

Historical Note

Appendix A, Table 5 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 5 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 5 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 5 repealed; new Table 5 made by final

rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 6. Water Quality Standards for Dissolved Lead

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	10.8	20	0.42	20	22.8
100	64.6	100	2.5	100	136.3
400	281	400	10.9	400	592.7
$_{e}$(1.273*LN(Hardness)-1.46)*(1.46203-(LN(Hardness))*(0.145712))		$_{e}$(1.273*LN(Hardness)-4.705) *(1.46203-(LN(Hardness))*(0.145712))		$_{e}$(1.273*(LN(Hardness))-0.7131) *(1.46203-(LN(Hardness))*(0.145712))	

Historical Note

Appendix A, Table 6 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 6 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 6 renumbered to Table 9; new Table 6 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 6 repealed; new Table 6 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 7. Water Quality Standards for Dissolved Nickel

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	120.0	20	13.3	20	1066
100	468	100	52.0	100	4158
400	1513	400	168	400	13436
$_{e}$(0.846*LN(Hardness)+2.255)*(0.998)		$_{e}$(0.846*LN(Hardness)+0.0584)*(0.997)		$_{e}$(0.846*LN(Hardness)+4.4389)*(0.998)	

Historical Note

Appendix A, Table 7 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 7 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 7 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 7 repealed; new Table 7 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 8. Water Quality Standards for Dissolved Silver

Acute Aquatic and Wildlife coldwater, warmwater, edw, and ephemeral	
Hard. mg/L	**Std. µg/L**
20	0.20
100	3.2
400	34.9
$_{e}$(1.72*LN(Hardness)-6.59)*(0.85)	

Historical Note

Appendix A, Table 8 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 8 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 8 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 8 repealed; new Table 8 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 9. Water Quality Standards for Dissolved Zinc

Acute and Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	30.0	20	284
100	117	100	1112
400	379	400	3599
$_{e}$(0.8473*LN(Hardness)+0.884)*(0.978)		$_{e}$(0.8473*LN(Hardness)+3.1342)*(0.978)	

Historical Note

Appendix A, Table 9 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 9 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 9 renumbered to Table 11; new Table 9 renumbered from Table 6 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 9 repealed; new Table 9 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 10. Water Quality Standards for Pentachlorophenol

Acute Aquatic and Wildlife coldwater, warmwater and edw			Chronic Aquatic and Wildlife coldwater, warmwater and edw			Acute Aquatic and Wildlife ephemeral	
pH	**µg/L**		**pH**	**µg/L**		**pH**	**µg/L**
3	0.16		3	0.1		3	0.66
6	3.3		6	2.1		6	13.5
9	67.7		9	42.7		9	274
$_{e}$(1.005*(pH)-4.83)			$_{e}$(1.005*(pH)-5.29)			$_{e}$(1.005*(pH)-3.4306)	

Historical Note

Appendix A, Table 10 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 10 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 10 renumbered to Table 12; new Table 10 renumbered from Table 11 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 10 repealed; new Table 10 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 11. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater, Unionid Mussels Present

For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	33	33	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	31	31	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	30	30	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	28	28	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	26	26	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	24	24	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	8	7.3
7.1	22	22	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	20	20	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	18	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	15	15	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	11	11	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	9.6	9.6	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	3
7.8	8.1	8.1	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	6.8	6.8	6.6	6	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	5.6	5.6	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	4.6	4.6	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	3.8	3.8	3.7	3.5	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	3.1	3.1	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	2.6	2.6	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	2.1	2.1	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	1.8	1.8	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.59	0.54
8.7	1.5	1.5	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.2	1.2	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1	1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9	0.88	0.88	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

$$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(23.12\times 10^{0.036\times(20-T)}\right)\right)\right)$$

Historical Note

Appendix A, Table 11 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 11 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 11 renumbered to Table

10; new Table 11 renumbered from Table 9 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 11 repealed; new Table 11 renumbered from Table 25 and amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 11 repealed; new Appendix A, Table 11 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 12. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater, Unionid Mussels Present

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																				
pH	**0-10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9	7.3
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	3	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	8.8	8.2	7.6	7	6.4	5.9	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	6	5.6	5.2	4.8	4.4	4	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

$$0.7249 \times \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}}\right) \times MIN(51.93, 23.12 \times 10^{0.036\times(20-T)})$$

Historical Note

Appendix A, Table 12 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 12 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 12 renumbered to Table 18; new Table 12 renumbered from Table 10 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 12 repealed; new Table 12 renumbered from Table 26 and amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 11 repealed; new Appendix A, Table 11 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Appendix A, Table 12 repealed; new Appendix A, Table 12 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 13. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater and warmwater, Unionid Mussels Present

For the aquatic and wildlife cold and warm water uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																							
pH	**0-7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.5	1.4	1.3	1.2	1.1
6.6	4.8	4.5	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1
6.7	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1
6.8	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1
6.9	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1
7	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99
7.1	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95
7.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9
7.3	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85
7.4	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79
7.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73
7.6	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.4	1.4	1.3	1.2	1.1	1.1	0.98	0.92	0.86	0.81	0.76	0.71	0.67
7.7	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6
7.8	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53
7.9	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47
8	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6	0.56	0.53	0.5	0.44	0.44	0.41
8.1	1.5	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81	0.76	0.71	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35
8.2	1.3	1.2	1.2	1.1	1	0.96	0.9	0.84	0.79	0.74	0.7	0.65	0.61	0.57	0.54	0.5	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3
8.3	1.1	1.1	0.99	0.93	0.87	0.82	0.76	0.72	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26
8.4	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47	0.44	0.41	0.39	0.36	0.34	0.32	0.3	0.28	0.26	0.25	0.23	0.22
8.5	0.8	0.75	0.71	0.67	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31	0.29	0.27	0.25	0.24	0.22	0.21	0.2	0.18
8.6	0.68	0.64	0.6	0.56	0.53	0.49	0.46	0.43	0.41	0.38	0.36	0.33	0.31	0.29	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.16	0.15
8.7	0.57	0.54	0.51	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13
8.8	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26	0.24	0.23	0.21	0.2	0.19	0.17	0.16	0.15	0.14	0.13	0.13	0.12	0.11
8.9	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.12	0.11	0.1	0.09
9	0.36	0.34	0.32	0.3	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.11	0.1	0.09	0.09	0.08

$$0.8876 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(2.126 \times 10^{0.028 \times (20-MAX(T,7))}\right)$$

Historical Note

Appendix A, Table 13 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 13 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 13 renumbered to Table 15; new Table 13 renumbered from Table 14 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 13 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 13 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 14. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater, Unionid Mussels Absent

For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	33	33	33	33	33	33	33	33	33	33	33	33	33	33	31	29	27
6.6	31	31	31	31	31	31	31	31	31	31	31	31	31	31	30	28	26
6.7	30	30	30	30	30	30	30	30	30	30	30	30	30	30	29	26	24
6.8	28	28	28	28	28	28	28	28	28	28	28	28	28	28	27	25	23
6.9	26	26	26	26	26	26	26	26	26	26	26	26	26	26	25	23	21
7	24	24	24	24	24	24	24	24	24	24	24	24	24	24	23	21	20
7.1	22	22	22	22	22	22	22	22	22	22	22	22	22	22	21	19	18
7.2	20	20	20	20	20	20	20	20	20	20	20	20	20	20	19	17	16
7.3	18	18	18	18	18	18	18	18	18	18	18	18	18	18	17	16	14
7.4	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	14	13
7.5	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	12	11
7.6	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	10	9.3
7.7	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.3	8.6	7.9
7.8	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	7.8	7.2	6.6
7.9	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.5	6	5.5
8	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.6
8.1	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.5	4.1	3.8
8.2	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.7	3.4	3.1
8.3	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3	2.8	2.6
8.4	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.5	2.3	2.1
8.5	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	1.9	1.8
8.6	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.6	1.4
8.7	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.4	1.3	1.2
8.8	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1
8.9	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0.92	0.85
9	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.85	0.78	0.72

$$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(62.15\times 10^{0.036\times(20-T)}\right)\right)\right.$$

Historical Note

Appendix A, Table 14 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 14 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 14 renumbered to Table 13; new Table 14 renumbered from Table 15 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 14 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 14 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 15. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	51	51	51	51	51	51	51	51	48	44	40	37	34	31	29	27
6.6	49	49	49	49	49	49	49	49	49	46	42	39	36	33	30	28	26
6.7	46	46	46	46	46	46	46	46	46	43	40	37	34	31	29	26	24
6.8	44	44	44	44	44	44	44	44	44	41	38	35	32	29	27	25	23
6.9	41	41	41	41	41	41	41	41	41	38	35	32	30	27	25	23	21
7	38	38	38	38	38	38	38	38	38	35	32	30	27	25	23	21	20
7.1	34	34	34	34	34	34	34	34	34	32	29	27	25	23	21	19	18
7.2	31	31	31	31	31	31	31	31	31	29	26	24	22	21	19	17	16
7.3	27	27	27	27	27	27	27	27	27	26	23	22	20	18	17	16	14
7.4	24	24	24	24	24	24	24	24	24	22	21	19	17	16	15	14	13
7.5	21	21	21	21	21	21	21	21	21	19	18	16	15	14	13	12	11
7.6	18	18	18	18	18	18	18	18	18	17	15	14	13	12	11	10	9.3
7.7	15	15	15	15	15	15	15	15	15	14	13	12	11	10	9.3	8.6	7.9
7.8	13	13	13	13	13	13	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6
7.9	11	11	11	11	11	11	11	11	11	9.9	9.1	8.4	7.7	7.1	6.5	6	5.5
8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.2	7.5	6.9	6.4	5.9	5.4	5	4.6
8.1	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	6.8	6.2	5.7	5.3	4.9	4.5	4.1	3.8
8.2	6	6	6	6	6	6	6	6	6	5.6	5.1	4.7	4.4	4	3.7	3.4	3.1
8.3	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6
8.4	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	3.8	3.4	3.2	3	2.7	2.5	2.3	2.1
8.5	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.1	2.9	2.6	2.4	2.2	2.1	1.9	1.8
8.6	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4
8.7	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2	1.8	1.7	1.5	1.4	1.3	1.2
8.8	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1
8.9	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.4	1.3	1.2	1.1	1	0.92	0.85
9	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1	0.93	0.85	0.78	0.72

$$0.7249 \times \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}}\right) \times MIN\left(51.93, \left(62.15 \times 10^{0.036\times(20-T)}\right)\right)$$

Historical Note

Appendix A, Table 15 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 15 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 15 renumbered to Table 14; new Table 15 renumbered from Table 13 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 15 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 14 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 16. Chronic Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

	Temperature (°C)																							
pH	0-7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	19	17	16	15	14	13	13	12	11	10	9.7	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	18	17	16	15	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
6.7	18	17	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
6.8	17	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
6.9	17	16	15	14	13	12	12	11	10	9.5	8.9	8.4	7.8	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
7	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.9	5.5	5.1	4.8	4.5	4.2	4	3.7
7.1	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	15	14	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
7.3	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	12	11	11	10	9.4	8.8	8.2	7.7	7.2	6.8	6.4	6	5.6	5.2	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	11	10	10	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	9.9	9.3	8.7	8.1	7.7	7.2	6.8	6.3	5.9	5.6	5.2	4.9	4.6	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	8.8	8.3	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	6.8	6.3	6	5.6	5.2	4.9	4.6	4.3	4	3.8	3.6	3.3	3.1	2.9	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3
8.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3	2.8	2.6	2.5	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81
8.5	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	2.6	2.4	2.2	2.1	2	1.9	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.93	0.88	0.82	0.77	0.72	0.68	0.63	0.6	0.56	0.52	0.49
8.8	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79	0.74	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49	0.46	0.43	0.4	0.38	0.36
9	1.4	1.3	1.2	1.1	1	0.98	0.92	0.86	0.81	0.76	0.71	0.66	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(7.547 \times 10^{0.028 \times (20 - MAX(T,7))}\right)$$

Historical Note

Appendix A, Table 16 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 16 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 16 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 16 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 16 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 17. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, Unionid Mussels Absent

For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
6.7	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
6.8	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.6	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
6.9	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
7	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7
7.1	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
7.3	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3
8.2	2	2	2	2	2	2	2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.1	0.99	0.93	0.87	0.81
8.5	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	1	1	1	1	1	1	1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49
8.8	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.6	0.56	0.52	0.49	0.46	0.43	0.41	0.38	0.36
9	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times MIN\left(6.920, \left(7.547 \times 10^{0.028\times(20-T)}\right)\right)$$

Historical Note

Appendix A, Table 17 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 17 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 17 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 17 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 16 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

Table 18. Repealed

Historical Note

Appendix A, Table 18 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 18 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 18 repealed; new Table 18 renumbered from Table 12 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 18 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 19. Repealed

Historical Note

Appendix A, Table 19 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

Appendix A, Table 19 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 19 renumbered to Table 21; new Table 19 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 19 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 20. Repealed

Historical Note

Appendix A, Table 20 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 20 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 20 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 20 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 21. Repealed

Historical Note

Appendix A, Table 21 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 21 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 21 renumbered to Table 22; new Table 21 renumbered from Table 19 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 21 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 22. Repealed

Historical Note

Appendix A, Table 22 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 22 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 22 renumbered to Table 23; new Table 22 renumbered from Table 21 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 22 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 23. Repealed

Historical Note

Appendix A, Table 23 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 23 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 23 renumbered to Table 24; new Table 23 renumbered from Table 22 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 23 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 24. Repealed

Historical Note

Appendix A, Table 24 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 24 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 24 renumbered to Table 25; new Table 24 renumbered from Table 23 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 24 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 25. Renumbered

Historical Note

Appendix A, Table 25 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 25 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 25 renumbered to Table 26; new Table 25 renumbered from Table 24 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 25 renumbered to Table 11 by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Table 26. Renumbered

Historical Note

Appendix A, Table 26 renumbered from Table 25 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 26 renumbered to Table 12 by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

Appendix B. Surface Waters and Designated Uses

(Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the Appendix B table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.)

Watersheds:

BW = Bill Williams
CG = Colorado – Grand Canyon
CL = Colorado – Lower Gila
LC = Little Colorado
MG = Middle Gila
SC = Santa Cruz – Rio Magdelena – Rio Sonoyta
SP = San Pedro – Willcox Playa – Rio Yaqui
SR = Salt River
UG = Upper Gila
VR = Verde River

Other Abbreviations:

WWTP = Wastewater Treatment Plant
Km = kilometers

		Segment Description and Location (Latitude and	Lake	Aquatic and Wildlife				Human Health				Agricultural	
Watershed	Surface Waters	Longitudes are in NAD 83)	Category	A&Wc	A&Ww	A&We	A&Wedw	FBC	PBC	DWS	FC	AgI	AgL
BW	Alamo Lake	34°14'06"/113°35'00"	Deep		A&Ww			FBC			FC		AgL
BW	Big Sandy River	Headwaters to Alamo Lake			A&Ww			FBC			FC		AgL
BW	Bill Williams River	Alamo Lake to confluence with Colorado River			A&Ww			FBC			FC		AgL
BW	Blue Tank	34°40'14"/112°58'17"			A&Ww			FBC			FC		AgL
BW	Boulder Creek	Headwaters to confluence with unnamed tributary at 34°41'13"/ 113°03'37"		A&Wc				FBC			FC		AgL
BW	Boulder Creek	Below confluence with unnamed tributary to confluence with Burro Creek			A&Ww			FBC			FC		AgL
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek			A&Ww			FBC			FC		AgL
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River			A&Ww			FBC			FC		AgL
BW	Carter Tank	34°52'27"/112°57'31"			A&Ww			FBC			FC		AgL
BW	Conger Creek	Headwaters to confluence with unnamed tributary at 34°45'15"/ 113°05'46"		A&Wc				FBC			FC		AgL
BW	Conger Creek	Below confluence with unnamed tributary to confluence with Burro Creek			A&Ww			FBC			FC		AgL
BW	Copper Basin Wash	Headwaters to confluence with unnamed tributary at 34°28'12"/ 112°35'33"		A&Wc				FBC			FC		AgL
BW	Copper Basin Wash	Below confluence with unnamed tributary to confluence with Skull Valley Wash				A&We			PBC				AgL
BW	Cottonwood Canyon	Headwaters to Bear Trap Spring		A&Wc				FBC			FC		AgL
BW	Cottonwood Canyon	Below Bear Trap Spring to confluence at Sycamore Creek			A&Ww			FBC			FC		AgL
BW	Date Creek	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC		AgL
BW	Francis Creek (OAW)	Headwaters to confluence with Burro Creek			A&Ww			FBC		DWS	FC	AgI	AgL
BW	Kirkland Creek	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC	AgI	AgL
BW	Knight Creek	Headwaters to confluence with Big Sandy River			A&Ww			FBC			FC		AgL
BW	Peeples Canyon (OAW)	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC		AgL
BW	Red Lake	35°12'18"/113°03'57"	Sedimentary		A&Ww			FBC			FC		AgL
BW	Santa Maria River	Headwaters to Alamo Lake			A&Ww			FBC			FC	AgI	AgL
BW	Trout Creek	Headwaters to confluence with unnamed tributary at 35°06'47"/ 113°13'01"		A&Wc				FBC			FC		AgL
BW	Trout Creek	Below confluence with unnamed tributary to confluence with Knight Creek			A&Ww			FBC			FC		AgL
CG	Agate Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Beaver Dam Wash	Headwaters to confluence with the Virgin River			A&Ww			FBC			FC		AgL
CG	Big Springs Tank	36°36'08"/112°21'01"		A&Wc				FBC			FC		AgL
CG	Boucher Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Bright Angel Creek	Headwaters to confluence with Roaring Springs Creek		A&Wc				FBC			FC		
CG	Bright Angel Creek	Below Roaring Spring Springs Creek to confluence with Colorado River			A&Ww			FBC			FC		
CG	Bright Angel Wash	Headwaters to Grand Canyon National Park South Rim WWTP outfall at 36°02'59"/112°09'02"				A&We			PBC				
CG	Bright Angel Wash (EDW)	Grand Canyon National Park South Rim WWTP outfall to Coconino Wash					A&Wedw		PBC				AgL
CG	Bulrush Canyon Wash	Headwaters to confluence with Kanab Creek				A&We			PBC				
CG	Cataract Creek	Headwaters to Santa Fe Reservoir		A&Wc				FBC		DWS	FC	AgI	AgL
CG	Cataract Creek	Santa Fe Reservoir to City of Williams WWTP outfall at 35°14'40"/ 112°11'18"		A&Wc				FBC			FC	AgI	AgL
CG	Cataract Creek (EDW)	City of Williams WWTP outfall to 1 km downstream					A&Wedw		PBC				
CG	Cataract Creek	Red Lake Wash to Havasupai Indian Reservation boundary				A&We			PBC				AgL
CG	Cataract Lake	35°15'04"/112°12'58"	Igneous	A&Wc				FBC		DWS	FC		AgL
CG	Chuar Creek	Headwaters to confluence with unnamed tributary at 36°11'35"/ 111°52'20"		A&Wc				FBC			FC		
CG	Chuar Creek	Below unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		

CG	City Reservoir	35°13'57"/112°11'25"	Igneous	A&Wc				FBC		DWS	FC		
CG	Clear Creek	Headwaters to confluence with unnamed tributary at 36°07'33"/ 112°00'03"		A&Wc				FBC			FC		
CG	Clear Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Coconino Wash (EDW)	South Grand Canyon Sanitary District Tusayan WRF outfall at 35°58'39"/112°08'25" to 1 km downstream					A&Wedw		PBC				
CG	Colorado River	Lake Powell to Lake Mead		A&Wc				FBC		DWS	FC	AgI	AgL
CG	Crystal Creek	Headwaters to confluence with unnamed tributary at 36°13'41"/ 112°11'49"		A&Wc				FBC			FC		
CG	Crystal Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Deer Creek	Headwaters to confluence with unnamed tributary at 36°26'15"/ 112°28'20"		A&Wc				FBC			FC		
CG	Deer Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Detrital Wash	Headwaters to Lake Mead				A&We			PBC				
CG	Dogtown Reservoir	35°12'40"/112°07'54"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Dragon Creek	Headwaters to confluence with Milk Creek		A&Wc				FBC			FC		
CG	Dragon Creek	Below confluence with Milk Creek to confluence with Crystal Creek			A&Ww			FBC			FC		
CG	Garden Creek	Headwaters to confluence with Pipe Creek			A&Ww			FBC			FC		
CG	Gonzalez Lake	35°15'26"/112°12'09"	Shallow		A&Ww			FBC			FC	AgI	AgL
CG	Grand Wash	Headwaters to Colorado River				A&We			PBC				
CG	Grapevine Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Grapevine Wash	Headwaters to Colorado River				A&We			PBC				
CG	Hakatai Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Hance Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Havasu Creek	From the Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Hermit Creek	Headwaters to Hermit Pack Trail crossing at 36°03'38"/112°14'00"		A&Wc				FBC			FC		
CG	Hermit Creek	Below Hermit Pack Trail crossing to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Horn Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Hualapai Wash	Headwaters to Lake Mead				A&We			PBC				
CG	Jacob Lake	36°42'27"/112°13'50"	Sedimentary	A&Wc				FBC			FC		
CG	Kaibab Lake	35°17'04"/112°09'32"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Kanab Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC		DWS	FC		AgL
CG	Kwagunt Creek	Headwaters to confluence with unnamed tributary at 36°13'37"/ 111°54'50"		A&Wc				FBC			FC		
CG	Kwagunt Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Lake Mead	36°06'18"/114°26'33"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Lake Powell	36°59'53"/111°08'17"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Lonetree Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Matkatamiba Creek	Below Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Monument Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Nankoweap Creek	Headwaters to confluence with unnamed tributary at 36°15'29"/ 111°57'26"		A&Wc				FBC			FC		
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	National Canyon Creek	Headwaters to Hualapai Indian Reservation boundary at 36°15'15"/ 112°52'34"			A&Ww			FBC			FC		
CG	North Canyon Creek	Headwaters to confluence with unnamed tributary at 36°33'58"/ 111°55'41"		A&Wc				FBC			FC		
CG	North Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Olo Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Parashant Canyon	Headwaters to confluence with unnamed tributary at 36°21'02"/ 113°27'56"		A&Wc				FBC			FC		
CG	Parashant Canyon	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Paria River	Utah border to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Phantom Creek	Headwaters to confluence with unnamed tributary at 36°09'29"/ 112°08'13"		A&Wc				FBC			FC		
CG	Phantom Creek	Below confluence with unnamed tributary to confluence with Bright Angel Creek			A&Ww			FBC			FC		
CG	Pipe Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Red Canyon Creek	Headwaters to confluence with the Colorado River '			A&Ww			FBC			FC		
CG	Roaring Springs	36°11'45"/112°02'06"		A&Wc				FBC		DWS	FC		
CG	Roaring Springs Creek	Headwaters to confluence with Bright Angel Creek		A&Wc				FBC			FC		
CG	Royal Arch Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Ruby Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Russell Tank	35°52'21"/111°52'45"		A&Wc				FBC			FC		AgL
CG	Saddle Canyon Creek	Headwaters to confluence with unnamed tributary at 36°21'36"/ 112°22'43"		A&Wc				FBC			FC		
CG	Saddle Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Santa Fe Reservoir	35°14'31"/112°11'10"	Igneous	A&Wc				FBC		DWS	FC		
CG	Sapphire Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Serpentine Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Shinumo Creek	Headwaters to confluence with unnamed tributary at 36°18'18"/ 112°18'07"		A&Wc				FBC			FC		

CG	Shinumo Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Short Creek	Headwaters to confluence with Fort Pearce Wash				A&We			PBC				
CG	Slate Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Spring Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Stone Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Tapeats Creek	Headwaters to confluence with the Colorado River		A&Wc				FBC			FC		
CG	Thunder River	Headwaters to confluence with Tapeats Creek		A&Wc				FBC			FC		
CG	Trail Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Transept Canyon	Headwaters to Grand Canyon National Park North Rim WWTP outfall at 36°12'20"/112°03'35"				A&We			PBC				
CG	Transept Canyon (EDW)	Grand Canyon National Park North Rim WWTP outfall to 1 km downstream					A&Wedw		PBC				
CG	Transept Canyon	From 1 km downstream of the Grand Canyon National Park North Rim WWTP outfall to confluence with Bright Angel Creek				A&We			PBC				
CG	Travertine Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Turquoise Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Unkar Creek	Below confluence with unnamed tributary at 36°07'54"/111°54'06" to confluence with Colorado River			A&Ww			FBC			FC		
CG	Unnamed Wash (EDW)	Grand Canyon National Park Desert View WWTP outfall at 36°02'06"/ 111°49'13" to confluence with Cedar Canyon					A&Wedw		PBC				
CG	Unnamed Wash (EDW)	Valle Airpark WRF outfall at 35°38'34"/112°09'22" to confluence with Spring Valley Wash					A&Wedw		PBC				
CG	Vasey's Paradise	A spring at 36°29'52"/111°51'26"		A&Wc				FBC			FC		
CG	Virgin River	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC	AgI	AgL
CG	Vishnu Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Warm Springs Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	West Cataract Creek	Headwaters to confluence with Cataract Creek		A&Wc				FBC			FC		AgL
CG	White Creek	Headwaters to confluence with unnamed tributary at 36°18'45"/ 112°21'03"		A&Wc				FBC			FC		
CG	White Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CL	A10 Backwater	33°31'45"/114°33'19"	Shallow		A&Ww			FBC			FC		
CL	A7 Backwater	33°34'27"/114°32'04"	Shallow		A&Ww			FBC			FC		
CL	Adobe Lake	33°02'36"/114°39'26"	Shallow		A&Ww			FBC			FC		
CL	Cibola Lake	33°14'01"/114°40'31"	Shallow		A&Ww			FBC			FC		
CL	Clear Lake	33°01'59"/114°31'19"	Shallow		A&Ww			FBC			FC		
CL	Columbus Wash	Headwaters to confluence with the Gila River				A&We			PBC				
CL	Colorado River	Lake Mead to Topock Marsh		A&Wc				FBC		DWS	FC	AgI	AgL
CL	Colorado River	Topock Marsh to Morelos Dam			A&Ww			FBC		DWS	FC	AgI	AgL
CL	Gila River	Painted Rock Dam to confluence with the Colorado River			A&Ww			FBC			FC	AgI	AgL
CL	Holy Moses Wash	Headwaters to City of Kingman Downtown WWTP outfall at 35°10'33"/114°03'46"				A&We			PBC				
CL	Holy Moses Wash (EDW)	City of Kingman Downtown WWTP outfall to 3 km downstream					A&Wedw		PBC				
CL	Holy Moses Wash	From 3 km downstream of City of Kingman Downtown WWTP outfall to confluence with Sawmill Wash				A&We			PBC				
CL	Hunter's Hole Backwater	32°31'13"/114°48'07"	Shallow		A&Ww			FBC			FC		AgL
CL	Imperial Reservoir	32°53'02"/114°27'54"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Island Lake	33°01'44"/114°36'42"	Shallow		A&Ww			FBC			FC		
CL	Laguna Reservoir	32°51'35"/114°28'29"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Lake Havasu	34°35'18"/114°25'47"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Lake Mohave	35°26'58"/114°38'30"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CL	Martinez Lake	32°58'49"/114°28'09"	Shallow		A&Ww			FBC			FC	AgI	AgL
CL	Mittry Lake	32°49'17"/114°27'54"	Shallow		A&Ww			FBC			FC		
CL	Mohave Wash	Headwaters to Lower Colorado River				A&We			PBC				
CL	Nortons Lake	33°02'30"/114°37'59"	Shallow		A&Ww			FBC			FC		
CL	Painted Rock (Borrow Pit) Lake	33°04'55"/113°01'17"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
CL	Pretty Water Lake	33°19'51"/114°42'19"	Shallow		A&Ww			FBC			FC		
CL	Quigley Pond	32°43'40"/113°57'44"	Shallow		A&Ww			FBC			FC		
CL	Redondo Lake	32°44'32"/114°29'03"	Shallow		A&Ww			FBC			FC		
CL	Sacramento Wash	Headwaters to Topock Marsh				A&We			PBC				
CL	Sawmill Canyon	Headwaters to abandoned gaging station at 35°09'45"/113°57'56"			A&Ww			FBC			FC		AgL
CL	Sawmill Canyon	Below abandoned gaging station to confluence with Holy Moses Wash				A&We			PBC				AgL
CL	Topock Marsh	34°43'27"/114°28'59"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Tyson Wash (EDW)	Town of Quartzsite WWTP outfall at 33°42'39"/ 114°13'10" to 1 km downstream					A&Wedw		PBC				
CL	Wellton Canal	Wellton-Mohawk Irrigation District								DWS		AgI	AgL
CL	Yuma Area Canals	Above municipal water treatment plant intakes								DWS		AgI	AgL
CL	Yuma Area Canals	Below municipal water treatment plant intakes and all drains										AgI	AgL
LC	Als Lake	35°02'10"/111°25'17"	Igneous		A&Ww			FBC			FC		AgL
LC	Ashurst Lake	35°01'06"/111°24'18"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Atcheson Reservoir	33°59'59"/109°20'43"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Auger Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Barbershop Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC			FC		AgL
LC	Bear Canyon Creek	Headwaters to confluence with General Springs Canyon		A&Wc				FBC			FC		AgL
LC	Bear Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc				FBC			FC		AgL
LC	Bear Canyon Lake	34°24'00"/111°00'06"	Sedimentary	A&Wc				FBC			FC	AgI	AgL

LC	Becker Lake	34°09'11"/109°18'23"	Shallow	A&Wc				FBC			FC		AgL
LC	Billy Creek	Headwaters to confluence with Show Low Creek		A&Wc				FBC			FC		AgL
LC	Black Canyon	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC	AgI	AgL
LC	Black Canyon Lake	34°20'32"/110°40'13"	Sedimentary	A&Wc				FBC		DWS	FC	AgI	AgL
LC	Bow and Arrow Wash	Headwaters to confluence with Rio de Flag				A&We			PBC				
LC	Buck Springs Canyon Creek	Headwaters to confluence with Leonard Canyon Creek		A&Wc				FBC			FC		AgL
LC	Bunch Reservoir	34°02'20"/109°26'48"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Carnero Lake	34°06'57"/109°31'42"	Shallow	A&Wc				FBC			FC		AgL
LC	Chevelon Canyon Lake	34°29'18"/110°49'30"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Chevelon Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Chevelon Creek, West Fork	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Chilson Tank	34°51'43"/111°22'54"	Igneous		A&Ww			FBC			FC		AgL
LC	Clear Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC		DWS	FC		AgL
LC	Clear Creek Reservoir	34°57'09"/110°39'14"	Shallow	A&Wc				FBC		DWS	FC	AgI	AgL
LC	Coconino Reservoir	35°00'05"/111°24'10"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Colter Reservoir	33°56'39"/109°28'53"	Shallow	A&Wc				FBC			FC		AgL
LC	Concho Creek	Headwaters to confluence with Carrizo Wash		A&Wc				FBC			FC		AgL
LC	Concho Lake	34°26'37"/109°37'40"	Shallow	A&Wc				FBC			FC	AgI	AgL
LC	Cow Lake	34°53'14"/111°18'51"	Igneous		A&Ww			FBC			FC		AgL
LC	Coyote Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Cragin Reservoir (formerly Blue Ridge Reservoir)	34°32'40"/111°11'33"	Deep	A&Wc				FBC			FC	AgI	AgL
LC	Crisis Lake (Snake Tank #2)	34°47'51"/111°17'32"			A&Ww			FBC			FC		AgL
LC	Dane Canyon Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc				FBC			FC		AgL
LC	Daves Tank	34°44'22"/111°17'15"			A&Ww			FBC			FC		AgL
LC	Deep Lake	35°03'34"/111°25'00"	Igneous		A&Ww			FBC			FC		AgL
LC	Ducksnest Lake	34°59'14"/111°23'57"			A&Ww			FBC			FC		AgL
LC	East Clear Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC	AgI	AgL
LC	Ellis Wiltbank Reservoir	34°05'25"/109°28'25"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Estates at Pine Canyon lakes (EDW)	35°09'32"/111°38'26"	EDW				A&Wedw		PBC				
LC	Fish Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Fool's Hollow Lake	34°16'30"/110°03'43"	Igneous	A&Wc				FBC			FC		AgL
LC	General Springs Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC			FC		AgL
LC	Geneva Reservoir	34°01'45"/109°31'46"	Igneous		A&Ww			FBC			FC		AgL
LC	Hall Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Hart Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc				FBC			FC		AgL
LC	Hay Lake	34°00'11"/109°25'57"	Igneous	A&Wc				FBC			FC		AgL
LC	Hog Wallow Lake	33°58'57"/109°25'39"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Horse Lake	35°03'55"/111°27'50"			A&Ww			FBC			FC		AgL
LC	Hulsey Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Hulsey Lake	33°55'58"/109°09'40"	Sedimentary	A&Wc				FBC			FC		AgL
LC	Indian Lake	35°00'39"/111°22'41"			A&Ww			FBC			FC		AgL
LC	Jacks Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Jarvis Lake	33°58'59"/109°12'36"	Sedimentary		A&Ww			FBC			FC		AgL
LC	Kinnikinick Lake	34°53'53"/111°18'18"	Igneous	A&Wc				FBC			FC		AgL
LC	Knoll Lake	34°25'38"/111°05'13"	Sedimentary	A&Wc				FBC			FC		AgL
LC	Lake Humphreys (EDW)	35°11'51"/111°35'19"	EDW				A&Wedw		PBC				
LC	Lake Mary, Lower	35°06'21"/111°34'38"	Igneous	A&Wc				FBC		DWS	FC		AgL
LC	Lake Mary, Upper	35°03'23"/111°28'34"	Igneous	A&Wc				FBC		DWS	FC		AgL
LC	Lake of the Woods	34°09'40"/109°58'47"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Lee Valley Creek (OAW)	Headwaters to Lee Valley Reservoir		A&Wc				FBC			FC		
LC	Lee Valley Creek	From Lee Valley Reservoir to confluence with the East Fork of the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Lee Valley Reservoir	33°56'29"/109°30'04"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Leonard Canyon Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, East Fork	Headwaters to confluence with Leonard Canyon Creek		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, Middle Fork	Headwaters to confluence with Leonard Canyon, West Fork		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, West Fork	Headwaters to confluence with Leonard Canyon, East Fork		A&Wc				FBC			FC		AgL
LC	Lily Creek	Headwaters to confluence with Coyote Creek		A&Wc				FBC			FC		AgL
LC	Little Colorado River	Headwaters to Lyman Reservoir		A&Wc				FBC			FC	AgI	AgL
LC	Little Colorado River	Below Lyman Reservoir to confluence with the Puerco River		A&Wc				FBC		DWS	FC	AgI	AgL
LC	Little Colorado River	Below Puerco River confluence to the Colorado River, excluding segments on Native American Lands			A&Ww			FBC		DWS	FC	AgI	AgL
LC	Little Colorado River, East Fork	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little Colorado River, South Fork	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little Colorado River, West Fork (OAW)	Headwaters to Government Springs		A&Wc				FBC			FC		

LC	Little Colorado River, West Fork	Below Government Springs to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little George Reservoir	34°00'37"/109°19'15"	Igneous		A&Ww			FBC			FC	AgI	
LC	Little Mormon Lake	34°17'00"/109°58'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Long Lake, Lower	34°47'16"/111°12'40"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Long Lake, Upper	35°00'08"/111°21'23"	Igneous	A&Wc				FBC			FC		AgL
LC	Long Tom Tank	34°20'35"/110°49'22"		A&Wc				FBC			FC		AgL
LC	Lower Walnut Canyon Lake (EDW)	35°12'04"/111°34'07"	EDW				A&Wedw		PBC				
LC	Lyman Reservoir	34°21'21"/109°21'35"	Deep	A&Wc				FBC			FC	AgI	AgL
LC	Mamie Creek	Headwaters to confluence with Coyote Creek		A&Wc				FBC			FC		AgL
LC	Marshall Lake	35°07'18"/111°32'07"	Igneous	A&Wc				FBC			FC		AgL
LC	McKay Reservoir	34°01'27"/109°13'48"		A&Wc				FBC			FC	AgI	AgL
LC	Merritt Draw Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc				FBC			FC		AgL
LC	Mexican Hay Lake	34°01'58"/109°21'25"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Milk Creek	Headwaters to confluence with Hulsey Creek		A&Wc				FBC			FC		AgL
LC	Miller Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC			FC		AgL
LC	Miller Canyon Creek, East Fork	Headwaters to confluence with Miller Canyon Creek		A&Wc				FBC			FC		AgL
LC	Morton Lake	34°53'37"/111°17'41"	Igneous	A&Wc				FBC			FC		AgL
LC	Mud Lake	34°55'19"/111°21'29"	Shallow		A&Ww			FBC			FC		AgL
LC	Ned Lake (EDW)	34°17'17"/110°03'22"	EDW				A&Wedw		PBC				
LC	Nelson Reservoir	34°02'52"/109°11'19"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Norton Reservoir	34°03'57"/109°31'27"	Igneous		A&Ww			FBC			FC		AgL
LC	Nutrioso Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Paddy Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Pierce Seep	34°23'39"/110°31'17"		A&Wc					PBC				
LC	Pine Tank	34°46'49"/111°17'21"	Igneous		A&Ww			FBC			FC		AgL
LC	Pintail Lake (EDW)	34°18'05"/110°01'21"	EDW				A&Wedw		PBC				
LC	Porter Creek	Headwaters to confluence with Show Low Creek		A&Wc				FBC			FC		AgL
LC	Puerco River	Headwaters to confluence with the Little Colorado River			A&Ww			FBC		DWS	FC	AgI	AgL
LC	Puerco River (EDW)	Sanders Unified School District WWTP outfall at 35°12'52"/ 109°19'40" to 0.5 km downstream					A&Wedw		PBC				
LC	Rainbow Lake	34°09'00"/109°59'09"	Shallow Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Reagan Reservoir	34°02'09"/109°08'41"	Igneous		A&Ww			FBC			FC		AgL
LC	Rio de Flag	Headwaters to City of Flagstaff WWTP outfall at 35°12'21"/111°39'17"				A&We			PBC				
LC	Rio de Flag (EDW)	From City of Flagstaff WWTP outfall to the confluence with San Francisco Wash					A&Wedw		PBC				
LC	River Reservoir	34°02'01"/109°26'07"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Rogers Reservoir	33°56'30"/109°16'20"	Igneous		A&Ww			FBC			FC		AgL
LC	Rudd Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Russel Reservoir	33°59'29"/109°20'01"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	San Salvador Reservoir	33°58'51"/109°19'55"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Scott Reservoir	34°10'31"/109°57'31"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Show Low Creek	Headwaters to confluence with Silver Creek		A&Wc				FBC			FC	AgI	AgL
LC	Show Low Lake	34°11'36"/110°00'12"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Silver Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Slade Reservoir	33°59'41"/109°20'26"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Soldiers Annex Lake	34°47'15"/111°13'51"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Soldiers Lake	34°47'47"/111°14'04"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Spaulding Tank	34°30'17"/111°02'06"			A&Ww			FBC			FC		AgL
LC	St Johns Reservoir (Little Reservoir)	34°29'10"/109°22'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Telephone Lake (EDW)	34°17'35"/110°02'42"	EDW				A&Wedw		PBC				
LC	Tremaine Lake	34°46'02"/111°13'51"	Igneous	A&Wc				FBC			FC		AgL
LC	Tunnel Reservoir	34°01'53"/109°26'34"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Turkey Draw (EDW)	High Country Pines II WWTP outfall at 33°25'35"/ 110°38'13" to confluence with Black Canyon Creek					A&Wedw		PBC				
LC	Unnamed Wash (EDW)	Bison Ranch WWTP outfall at 34°23'31"/110°31'29" to Pierce Seep					A&Wedw		PBC				
LC	Walnut Creek	Headwaters to confluence with Billy Creek		A&Wc				FBC			FC		AgL
LC	Water Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Whale Lake (EDW)	35°11'13"/111°35'21"	EDW				A&Wedw		PBC				
LC	Whipple Lake	'34°16'49"/109°58'29"	Igneous		A&Ww			FBC			FC		AgL
LC	White Mountain Lake	34°21'57"/109°59'21"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	White Mountain Reservoir	34°00'12"/109°30'39"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Willow Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC		AgL
LC	Willow Springs Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Willow Springs Lake	34°18'13"/110°52'16"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Woodland Reservoir	34°07'35"/109°57'01"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Woods Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Woods Canyon Lake	34°20'09"/110°56'45"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Zuni River	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
MG	Agua Fria River	Headwaters to confluence with unnamed tributary at 34°35'14"/ 112°16'18"				A&We			PBC				AgL
MG	Agua Fria River (EDW)	Below confluence with unnamed tributary to State Route 169					A&Wedw		PBC				AgL
MG	Agua Fria River	From State Route 169 to Lake Pleasant			A&Ww			FBC		DWS	FC	AgI	AgL

MG	Agua Fria River	Below Lake Pleasant to the City of El Mirage WWTP at ' 33°34'20"/ 112°18'32"				A&We			PBC				AgL
MG	Agua Fria River (EDW)	From City of El Mirage WWTP outfall to 2 km downstream					A&Wedw		PBC				
MG	Agua Fria River	Below 2 km downstream of the City of El Mirage WWTP to City of Avondale WWTP outfall at 33°23'55"/112°21'16"				A&We			PBC				
MG	Agua Fria River	From City of Avondale WWTP outfall to confluence with Gila River					A&Wedw		PBC				
MG	Andorra Wash	Headwaters to confluence with Cave Creek Wash				A&We			PBC				
MG	Antelope Creek	Headwaters to confluence with Martinez Creek			A&Ww			FBC			FC		AgL
MG	Arlington Canal	From Gila River at 33°20'54"/112°35'39" to Gila River at 33°13'44"/ 112°46'15"											AgL
MG	Ash Creek	Headwaters to confluence with Tex Canyon		A&Wc				FBC			FC	AgI	AgL
MG	Ash Creek	Below confluence with Tex Canyon to confluence with Agua Fria River			A&Ww			FBC			FC	AgI	AgL
MG	Beehive Tank	32°52'37"/111°02'20"			A&Ww			FBC			FC		AgL
MG	Big Bug Creek	Headwaters to confluence with Eugene Gulch		A&Wc				FBC			FC	AgI	AgL
MG	Big Bug Creek	Below confluence with Eugene Gulch to confluence with Agua Fria River			A&Ww			FBC			FC	AgI	AgL
MG	Black Canyon Creek	Headwaters to confluence with the Agua Fria River			A&Ww			FBC			FC		AgL
MG	Blind Indian Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC		AgL
MG	Cave Creek	Headwaters to the Cave Creek Dam			A&Ww			FBC			FC		AgL
MG	Cave Creek	Cave Creek Dam to the Arizona Canal				A&We			PBC				
MG	Centennial Wash	Headwaters to confluence with the Gila River at 33°16'32"/112°48'08"				A&We			PBC				AgL
MG	Centennial Wash Ponds	33°54'52"/113°23'47"			A&Ww			FBC			FC		AgL
MG	Chaparral Park Lake	Hayden Road & Chaparral Road, Scottsdale at 33°30'40"/111°54'27"	Urban		A&Ww				PBC		FC	AgI	
MG	Devils Canyon	Headwaters to confluence with Mineral Creek			A&Ww				FBC		FC		AgL
MG	East Maricopa Floodway	From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary			A&We				PBS				AgL
MG	Eldorado Park Lake	Miller Road & Oak Street, Tempe at 33°28'25"/ 111°54'53"	Urban		A&Ww				PBC		FC		
MG	Fain Lake	Town of Prescott Valley Park Lake 34°34'29"/ 112°21'06"	Urban		A&Ww				PBC		FC		
MG	French Gulch	Headwaters to confluence with Hassayampa River			A&Ww				PBC				AgL
MG	Galena Gulch	Headwaters to confluence with the Agua Fria River				A&We			PBC				AgL
MG	Galloway Wash (EDW)	Town of Cave Creek WWTP outfall at 33°50'15"/ 111°57'35" to confluence with Cave Creek					A&Wedw		PBC				
MG	Gila River	San Carlos Indian Reservation boundary to the Ashurst-Hayden Dam			A&Ww			FBC			FC	AgI	AgL
MG	Gila River	Ashurst-Hayden Dam to the Town of Florence WWTP outfall at 33°02'20"/111°24'19"				A&We			PBC				AgL
MG	Gila River (EDW)	Town of Florence WWTP outfall to Felix Road					A&Wedw		PBC				
MG	Gila River	Felix Road to the Gila River Indian Reservation boundary				A&We			PBC				AgL
MG	Gila River (EDW)	From the confluence with the Salt River to Gillespie Dam					A&Wedw		PBC		FC	AgI	AgL
MG	Gila River	Gillespie Dam to confluence with Painted Rock Dam			A&Ww			FBC			FC	AgI	AgL
MG	Groom Creek	Headwaters to confluence with the Hassayampa River		A&Wc				FBC		DWS	FC		AgL
MG	Hassayampa Lake	34°25'45"/112°25'33"	Igneous	A&Wc				FBC		DWS	FC		
MG	Hassayampa River	Headwaters to confluence with unnamed tributary at 34°26'09"/ 112°30'32"		A&Wc				FBC			FC	AgI	AgL
MG	Hassayampa River	Below confluence with unnamed tributary to confluence with unnamed tributary at 33°51"52"/112°39'56"			A&Ww			FBC			FC	AgI	AgL
MG	Hassayampa River	Below unnamed tributary to the Buckeye Irrigation Company Canal				A&We			PBC				AgL
MG	Hassayampa River	Below Buckeye Irrigation Company canal to the Gila River			A&Ww			FBC			FC		AgL
MG	Horsethief Lake	34°09'42"/112°17'57"	Igneous	A&Wc				FBC		DWS	FC		AgL
MG	Indian Bend Wash	Headwaters to confluence with the Salt River				A&We			PBC				
MG	Indian Bend Wash Lakes	Scottsdale at 33°30'32"/111°54'24"	Urban		A&Ww				PBC		FC		
MG	Indian School Park Lake	Indian School Road & Hayden Road, Scottsdale at 33°29'39"/ 111°54'37"	Urban		A&Ww				PBC		FC		
MG	Kiwanis Park Lake	6000 South Mill Avenue, Tempe at 33°22'27"/ 111°56'22"	Urban		A&Ww				PBC		FC	AgI	
MG	Lake Pleasant	33°53'46"/112°16'29"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
MG	Lake Pleasant, Lower	33°50'32"/112°16'03"			A&Ww			FBC			FC	AgI	AgL
MG	Lion Canyon	Headwaters to confluence with Weaver Creek			A&Ww			FBC			FC		AgL
MG	Little Ash Creek	Headwaters to confluence with Ash Creek at			A&Ww			FBC			FC		AgL
MG	Lynx Creek	Headwaters to confluence with unnamed tributary at 34°34'29"/ 112°21'07"		A&Wc				FBC			FC		AgL
MG	Lynx Creek	Below confluence with unnamed tributary at 34°34'29"/112°21'07" to confluence with Agua Fria River			A&Ww			FBC			FC		AgL
MG	Lynx Lake	34°31'07"/112°23'07"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
MG	Martinez Canyon	Headwaters to confluence with Box Canyon			A&Ww			FBC			FC		AgL
MG	Martinez Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC	AgI	AgL
MG	McKellips Park Lake	Miller Road & McKellips Road, Scottsdale at 33°27'14"/111°54'49"	Urban		A&Ww				PBC		FC	AgI	
MG	McMicken Wash (EDW)	City of Peoria Jomax WWTP outfall at 33°43'31"/ 112°20'15" to confluence with Agua Fria River					A&Wedw		PBC				
MG	Mineral Creek	Headwaters to 33°12'34"/110°59'58"			A&Ww			FBC			FC		AgL
MG	Mineral Creek (diversion tunnel and lined channel)	33°12'24"/110°59'58" to 33°07'56"/110°58'34"						PBC					
MG	Mineral Creek	End of diversion channel to confluence with Gila River			A&Ww			FBC			FC		AgL
MG	Minnehaha Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC		AgL
MG	New River	Headwaters to Interstate 17 at 33°54'19.5"/112°08'46"			A&Ww			FBC			FC	AgI	AgL
MG	New River	Below Interstate 17 to confluence with Agua Fria River				A&We			PBC				AgL
MG	Painted Rock Reservoir	33°04'23"/113°00'38"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
MG	Papago Park Ponds	Galvin Parkway, Phoenix at 33°27'15"/111°56'45"	Urban		A&Ww				PBC		FC		
MG	Papago Park South Pond	Curry Road, Tempe 33°26'22"/111°55'55"	Urban		A&Ww				PBC		FC		
MG	Perry Mesa Tank	34°11'03"/112°02'01"			A&Ww			FBC			FC		AgL

MG	Phoenix Area Canals	Granite Reef Dam to all municipal WTP intakes								DWS		AgI	AgL
MG	Phoenix Area Canals	Below municipal WTP intakes and all other locations										AgI	AgL
MG	Picacho Reservoir	32°51'10"/111°28'25"	Shallow		A&Ww			FBC			FC	AgI	AgL
MG	Poland Creek	Headwaters to confluence with Lorena Gulch		A&Wc				FBC			FC		AgL
MG	Poland Creek	Below confluence with Lorena Gulch to confluence with Black Canyon Creek			A&Ww			FBC			FC		AgL
MG	Queen Creek	Headwaters to the Town of Superior WWTP outfall at 33°16'33"/ 111°07'44"			A&Ww				PBC		FC		AgL
MG	Queen Creek (EDW)	Below Town of Superior WWTP outfall to confluence with Potts Canyon					A&Wedw		PBC				
MG	Queen Creek	Below Potts Canyon to Whitlow Dam			A&Ww			FBC			FC		AgL
MG	Queen Creek	Below Whitlow Dam to confluence with Gila River				A&We			PBC				
MG	Salt River	Verde River to 2 km below Granite Reef Dam			A&Ww			FBC		DWS	FC	AgI	AgL
MG	Salt River	2 km below Granite Reef Dam to City of Mesa NW WRF outfall at 33°26'22"/111°53'14"				A&We			PBC				
MG	Salt River (EDW)	City of Mesa NW WRF outfall to Tempe Town Lake					A&Wedw		PBC				
MG	Salt River	Below Tempe Town Lake to Interstate 10 bridge				A&We			PBC				
MG	Salt River	Below Interstate 10 bridge to the City of Phoenix 23rd Avenue WWTP outfall at 33°24'44"/ 112°07'59"			A&Ww				PBC		FC		
MG	Salt River (EDW)	From City of Phoenix 23rd Avenue WWTP outfall to confluence with Gila River					A&Wedw		PBC		FC	AgI	AgL
MG	Siphon Draw (EDW)	Superstition Mountains CFD WWTP outfall at 33°21'40"/111°33'30" to 6 km downstream					A&Wedw		PBC				
MG	Sycamore Creek	Headwaters to confluence with Tank Canyon		A&Wc				FBC			FC		AgL
MG	Sycamore Creek	Below confluence with Tank Canyon to confluence with Agua Fria River			A&Ww			FBC			FC		AgL
MG	Tempe Town Lake	At Mill Avenue Bridge at 33°26'00"/111°56'26"	Urban		A&Ww			FBC			FC		
MG	The Lake Tank	32°54'14"/111°04'15"			A&Ww			FBC			FC		AgL
MG	Tule Creek	Headwaters to confluence with the Agua Fria River			A&Ww			FBC			FC		AgL
MG	Turkey Creek	Headwaters to confluence with unnamed tributary at 34°19'28"/ 112°21'33"		A&Wc				FBC			FC	AgI	AgL
MG	Turkey Creek	Below confluence with unnamed tributary to confluence with Poland Creek			A&Ww			FBC			FC	AgI	AgL
MG	Unnamed Wash (EDW)	Gila Bend WWTP outfall to confluence with the Gila River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Luke Air Force Base WWTP outfall at 33°32'21"/112°19'15" to confluence with the Agua Fria River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	North Florence WWTP outfall at 33°03'50"/ 111°23'13" to confluence with Gila River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Town of Prescott Valley WWTP outfall at34°35'16"/ 112°16'18" to confluence with the Agua Fria River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Town of Cave Creek WRF outfall at 33°48'02"/ 111°59'22" to confluence with Cave Creek					A&Wedw		PBC				
MG	Wagner Wash (EDW)	City of Buckeye Festival Ranch WRF outfall at 33°39'14"/112°40'18" to 2 km downstream					A&Wedw		PBC				
MG	Walnut Canyon Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
MG	Weaver Creek	Headwaters to confluence with Antelope Creek, tributary to Martinez Creek			A&Ww			FBC			FC		AgL
MG	White Canyon Creek	Headwaters to confluence with Walnut Canyon Creek			A&Ww			FBC			FC		AgL
MG	Yavapai Lake (EDW)	Town of Prescott Valley WWTP outfall 002 at 34°36'07"/112°18'48" to Navajo Wash	EDW				A&Wedw		PBC				
SC	Agua Caliente Lake	12325 East Roger Road, Tucson 32°16'51"/ 110°43'52"	Urban		A&Ww				PBC		FC		
SC	Agua Caliente Wash	Headwaters to confluence with Soldier Trail			A&Ww			FBC			FC		AgL
SC	Agua Caliente Wash	Below Soldier Trail to confluence with Tanque Verde Creek				A&We			PBC				AgL
SC	Aguirre Wash	From the Tohono O'odham Indian Reservation boundary to 32°28'38"/111°46'51"				A&We			PBC				
SC	Alambre Wash	Headwaters to confluence with Brawley Wash				A&We			PBC				
SC	Alamo Wash	Headwaters to confluence with Rillito Creek				A&We			PBC				
SC	Altar Wash	Headwaters to confluence with Brawley Wash				A&We			PBC				
SC	Alum Gulch	Headwaters to 31°28'20"/110°43'51"				A&We			PBC				AgL
SC	Alum Gulch	From 31°28'20"/110°43'51" to 31°29'17"/110°44'25"			A&Ww			FBC			FC		AgL
SC	Alum Gulch	Below 31°29'17"/110°44'25" to confluence with Sonoita Creek				A&We			PBC				AgL
SC	Arivaca Creek	Headwaters to confluence with Altar Wash			A&Ww			FBC			FC		AgL
SC	Arivaca Lake	31°31'52"/111°15'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
SC	Atterbury Wash	Headwaters to confluence with Pantano Wash				A&We			PBC				AgL
SC	Bear Grass Tank	31°33'01"/111°11'03"			A&Ww			FBC			FC		AgL
SC	Big Wash	Headwaters to confluence with Cañada del Oro				A&We			PBC				
SC	Black Wash (EDW)	Pima County WWMD Avra Valley WWTP outfall at 32°09'58"/ 111°11'17" to confluence with Brawley Wash					A&Wedw		PBC				
SC	Bog Hole Tank	31°28'36"/110°37'09"			A&Ww			FBC			FC		AgL
SC	Brawley Wash	Headwaters to confluence with Los Robles Wash				A&We			PBC				
SC	California Gulch	Headwaters To U.S./Mexico border			A&Ww			FBC			FC		AgL
SC	Cañada del Oro	Headwaters to State Route 77			A&Ww			FBC			FC	AgI	AgL
SC	Cañada del Oro	Below State Route 77 to confluence with the Santa Cruz River				A&We			PBC				AgL
SC	Cienega Creek	Headwaters to confluence with Gardner Canyon			A&Ww			FBC			FC		AgL
SC	Cienega Creek (OAW)	From confluence with Gardner Canyon to USGS gaging station (#09484600)			A&Ww			FBC			FC		AgL
SC	Davidson Canyon	Headwaters to unnamed spring at 31°59'00"/ 110°38'49"				A&We			PBC				AgL
SC	Davidson Canyon (OAW)	From unnamed Spring to confluence with unnamed tributary at 31°59'09"/110°38'44"			A&Ww			FBC			FC		AgL
SC	Davidson Canyon (OAW)	Below confluence with unnamed tributary to unnamed spring at 32°00'40"/110°38'36"				A&We			PBC				AgL

SC	Davidson Canyon (OAW)	From unnamed spring to confluence with Cienega Creek			A&Ww			FBC			FC		AgL
SC	Empire Gulch	Headwaters to unnamed spring at 31°47'18"/ 110°38'17"				A&We			PBC				
SC	Empire Gulch	From 31°47'18"/110°38'17" to 31°47'03"/110°37'35"			A&Ww			FBC			FC		
SC	Empire Gulch	From 31°47'03"/110°37'35" to 31°47'05"/ 110°36'58"				A&We			PBC				AgL
SC	Empire Gulch	From 31°47'05"/110°36'58" to confluence with Cienega Creek			A&Ww			FBC			FC		
SC	Flux Canyon	Headwaters to confluence with Alum Gulch				A&We			PBC				AgL
SC	Gardner Canyon Creek	Headwaters to confluence with Sawmill Canyon		A&Wc				FBC			FC		
SC	Gardner Canyon Creek	Below Sawmill Canyon to confluence with Cienega Creek			A&Ww			FBC			FC		
SC	Greene Wash	Santa Cruz River to the Tohono O'odham Indian Reservation boundary				A&We			PBC				
SC	Greene Wash	Tohono O'odham Indian Reservation boundary to confluence with Santa Rosa Wash at 32°53'52"/ 111°56'48"				A&We			PBC				
SC	Harshaw Creek	Headwaters to confluence with Sonoita Creek at				A&We			PBC				AgL
SC	Hit Tank	32°43'57"/111°03'18"			A&Ww			FBC			FC		AgL
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border			A&Ww			FBC			FC		
SC	Huachuca Tank	31°21'11"/110°30'18"			A&Ww			FBC			FC		AgL
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River				A&We			PBC				
SC	Kennedy Lake	Mission Road & Ajo Road, Tucson at 32°10'49"/ 111°00'27"	Urban		A&Ww				PBC		FC		
SC	Lakeside Lake	8300 East Stella Road, Tucson at 32°11'11"/ 110°49'00"	Urban		A&Ww				PBC		FC		
SC	Lemmon Canyon Creek	Headwaters to confluence with unnamed tributary at 32°23'48"/ 110°47'49"		A&Wc				FBC			FC		
SC	Lemmon Canyon Creek	Below unnamed tributary at 32°23'48"/110°47'49" to confluence with Sabino Canyon Creek			A&Ww			FBC			FC		
SC	Los Robles Wash	Headwaters to confluence with the Santa Cruz River				A&We			PBC				
SC	Madera Canyon Creek	Headwaters to confluence with unnamed tributary at 31°43'42"/ 110°52'51"		A&Wc				FBC			FC		AgL
SC	Madera Canyon Creek	Below unnamed tributary at 31°43'42"/110°52'51 to confluence with the Santa Cruz River			A&Ww			FBC			FC		AgL
SC	Mattie Canyon	Headwaters to confluence with Cienega Creek			A&Ww			FBC			FC		AgL
SC	Nogales Wash	Headwaters to confluence with Potrero Creek			A&Ww				PBC		FC		
SC	Oak Tree Canyon	Headwaters to confluence with Cienega Creek				A&We			PBC				
SC	Palisade Canyon	Headwaters to confluence with unnamed tributary at 32°22'33"/ 110°45'31"		A&Wc				FBC			FC		
SC	Palisade Canyon	Below 32°22'33"/110°45'31" to unnamed tributary of Sabino Canyon			A&Ww			FBC			FC		
SC	Pantano Wash	Headwaters to confluence with Tanque Verde Creek				A&We			PBC				
SC	Parker Canyon Creek	Headwaters to confluence with unnamed tributary at 31°24'17"/ 110°28'47"	A&Wc					FBC			FC		
SC	Parker Canyon Creek	Below unnamed tributary to U.S./Mexico border			A&Ww			FBC			FC		
SC	Parker Canyon Lake	31°25'35"/110°27'15"	Deep	A&Wc				FBC			FC	AgI	AgL
SC	Patagonia Lake	31°29'56"/110°50'49"	Deep		A&Ww			FBC			FC	AgI	AgL
SC	Peña Blanca Lake	31°24'15"/111°05'12"	Igneous		A&Ww			FBC			FC	AgI	AgL
SC	Potrero Creek	Headwaters to Interstate 19				A&We			PBC				AgL
SC	Potrero Creek	Below Interstate 19 to confluence with Santa Cruz River			A&Ww			FBC			FC		AgL
SC	Puertocito Wash	Headwaters to confluence with Altar Wash				A&We			PBC				
SC	Quitobaquito Spring	(Pond and Springs) 31°56'39"/113°01'06"			A&Ww			FBC			FC		AgL
SC	Redrock Canyon Creek	Headwaters to confluence with Harshaw Creek			A&Ww			FBC			FC		
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River				A&We			PBC				AgL
SC	Romero Canyon Creek	Headwaters to confluence with unnamed tributary at 32°24'29"/ 110°50'39"		A&Wc				FBC			FC		
SC	Romero Canyon Creek	Below unnamed tributary to confluence with Sutherland Wash			A&Ww			FBC			FC		
SC	Rose Canyon Creek	Headwaters to confluence with Sycamore Canyon		A&Wc				FBC			FC		
SC	Rose Canyon Lake	32°23'13"/110°42'38"	Igneous	A&Wc				FBC			FC		AgL
SC	Ruby Lakes	31°26'29"/111°14'22"	Igneous		A&Ww			FBC			FC		AgL
SC	Sabino Canyon	Headwaters to 32°23'20"/110°47'06"		A&Wc				FBC		DWS	FC	AgI	
SC	Sabino Canyon	Below 32°23'20"/110°47'06" to confluence with Tanque Verde River			A&Ww			FBC		DWS	FC	AgI	
SC	Salero Ranch Tank	31°35'43"/110°53'25"			A&Ww			FBC			FC		AgL
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border			A&Ww			FBC			FC	AgI	AgL
SC	Santa Cruz River	U.S./Mexico border to the Nogales International WWTP outfall at 31°27'25"/110°58'04"			A&Ww			FBC		DWS	FC	AgI	AgL
SC	Santa Cruz River (EDW)	Nogales International WWTP outfall to the Tubac Bridge					A&Wedw		PBC				AgL
SC	Santa Cruz River	Tubac Bridge to Agua Nueva WRF outfall at 32°17'04"/111°01'45"				A&We			PBC				AgL
SC	Santa Cruz River (EDW)	Agua Nueva WRF outfall to Baumgartner Road					A&Wedw		PBC				
SC	Santa Cruz River, West Branch	Headwaters to the confluence with Santa Cruz River				A&We			PBC				AgL
SC	Santa Cruz River	Baumgartner Road to the Ak Chin Indian Reservation boundary				A&We			PBC				AgL
SC	Santa Cruz Wash, North Branch	Headwaters to City of Casa Grande WRF outfall at 32°54'57"/ 111°47'13"				A&We			PBC				
SC	Santa Cruz Wash, North Branch (EDW)	City of Casa Grande WRF outfall to 1 km downstream					A&Wedw		PBC				
SC	Santa Rosa Wash	Below Tohono O'odham Indian Reservation to the Ak Chin Indian Reservation				A&We			PBC				
SC	Santa Rosa Wash (EDW)	Palo Verde Utilities CO-WRF outfall at 33°04'20"/ 112°01'47" to the Chin Indian Reservation					A&Wedw		PBC				
SC	Soldier Tank	32°25'34"/110°44'43"		A&Wc				FBC			FC		AgL
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/ 110°45'31"				A&We			PBC				AgL
SC	Sonoita Creek (EDW)	Town of Patagonia WWTP outfall to permanent groundwater upwelling point approximately 1600 feet downstream of outfall					A&Wedw		PBC				AgL

SC	Sonoita Creek	Below 1600 feet downstream of Town of Patagonia WWTP outfall groundwater upwelling point to confluence with the Santa Cruz River			A&Ww			FBC			FC	AgI	AgL
SC	Split Tank	31°28'11"/111°05'12"			A&Ww			FBC			FC		AgL
SC	Sutherland Wash	Headwaters to confluence with Cañada del Oro			A&Ww			FBC			FC		
SC	Sycamore Canyon	Headwaters to 32°21'60" / 110°44'48"		A&Wc				FBC			FC		
SC	Sycamore Canyon	From 32°21'60" / 110°44'48" to Sycamore Reservoir			A&Ww			FBC			FC		
SC	Sycamore Canyon	Headwaters to the U.S./Mexico border			A&Ww			FBC			FC		AgL
SC	Sycamore Reservoir	32°20'57"/110°47'38"		A&Wc				FBC			FC		AgL
SC	Tanque Verde Creek	Headwaters to Houghton Road			A&Ww			FBC			FC		AgL
SC	Tanque Verde Creek	Below Houghton Road to confluence with Rillito Creek				A&We			PBC				AgL
SC	Three R Canyon	Headwaters to Unnamed Trib to Three R Canyon at 31°28'26"/ 110°46'04"				A&We			PBC				AgL
SC	Three R Canyon	From 31°28'26"/110°46'04" to 31°28'28"/110°47'15" (Cox Gulch)			A&Ww			FBC			FC		AgL
SC	Three R Canyon	From (Cox Gulch) 31°28'28"/110°47'15" to confluence with Sonoita Creek				A&We			PBC				AgL
SC	Tinaja Wash	Headwaters to confluence with the Santa Cruz River				A&We			PBC				AgL
SC	Unnamed Wash (EDW)	Oracle Sanitary District WWTP outfall at 32°36'54"/ 110°48'02" to 5 km downstream					A&Wedw		PBC				
SC	Unnamed Wash (EDW)	Arizona City Sanitary District WWTP outfall at 32°45'43"/111°44'24" to confluence with Santa Cruz Wash					A&Wedw		PBC				
SC	Unnamed Wash (EDW)	Saddlebrook WWTP outfall at 32°32'00"/110°53'01" to confluence with Cañada del Oro					A&Wedw		PBC				
SC	Vekol Wash	Headwater to Santa Cruz Wash: Those reaches not located on the Ak-Chin, Tohono O'odham and Gila River Indian Reservations				A&We			PBC				
SC	Wakefield Canyon	Headwaters to confluence with unnamed tributary at 31°52'48"/ 110°26'27"		A&Wc				FBC			FC		AgL
SC	Wakefield Canyon	Below confluence with unnamed tributary to confluence with Cienega Creek			A&Ww			FBC			FC		AgL
SC	Wild Burro Canyon	Headwaters to confluence with unnamed tributary at 32°27'43"/ 111°05'47"			A&Ww			FBC			FC		AgL
SC	Wild Burro Canyon	Below confluence with unnamed tributary to confluence with Santa Cruz River				A&We			PBC				AgL
SP	Abbot Canyon	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Aravaipa Creek	Headwaters to confluence with Stowe Gulch			A&Ww			FBC			FC		AgL
SP	Aravaipa Creek (OAW)	Stowe Gulch to downstream boundary of Aravaipa Canyon Wilderness Area			A&Ww			FBC			FC		AgL
SP	Aravaipa Creek	Below downstream boundary of Aravaipa Canyon Wilderness Area to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Ash Creek	Headwaters to 31°50'28"/109°40'04"			A&Ww			FBC			FC	AgI	AgL
SP	Babocomari River	Headwaters to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Bass Canyon Creek	Headwaters to confluence with unnamed tributary at 32°26'06"/ 110°13'22"		A&Wc				FBC			FC		AgL
SP	Bass Canyon Creek	Below confluence with unnamed tributary to confluence with Hot Springs Canyon Creek			A&Ww			FBC			FC		AgL
SP	Bass Canyon Tank	32°24'00"/110°13'00"			A&Ww			FBC			FC		AgL
SP	Bear Creek	Headwaters to U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Blacktail Pond	Fort Huachuca Military Reservation at 31°31'04"/110°24'47", headwater lake in Blacktail Canyon			A&Ww			FBC			FC		
SP	Black Draw	Headwaters to the U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Booger Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Buck Canyon	Headwaters to confluence with Buck Creek Tank			A&Ww			FBC			FC		AgL
SP	Buck Canyon	Below Buck Creek Tank to confluence with Dry Creek				A&We			PBC				AgL
SP	Buehman Canyon Creek (OAW)	Headwaters to confluence with unnamed tributary at 32°24'54"/ 110°32'10"			A&Ww			FBC			FC		AgL
SP	Buehman Canyon Creek	Below confluence with unnamed tributary to confluence with San Pedro River			A&Ww			FBC			FC		AgL
SP	Bullock Canyon	Headwaters to confluence with Buehman Canyon			A&Ww			FBC			FC		AgL
SP	Carr Canyon Creek	Headwaters to confluence with unnamed tributary at 31°27'01"/ 110°15'48"		A&Wc				FBC			FC		AgL
SP	Carr Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Copper Creek	Headwaters to confluence with Prospect Canyon			A&Ww			FBC			FC		AgL
SP	Copper Creek	Below confluence with Prospect Canyon to confluence with the San Pedro River				A&We			PBC				AgL
SP	Deer Creek	Headwaters to confluence with unnamed tributary at 32°59'57"/ 110°20'11"		A&Wc				FBC			FC		AgL
SP	Deer Creek	Below confluence with unnamed tributary to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Dixie Canyon	Headwaters to confluence with Mexican Canyon			A&Ww			FBC			FC		AgL
SP	Double R Canyon Creek	Headwaters to confluence with Bass Canyon			A&Ww			FBC			FC		
SP	Dry Canyon	Headwaters to confluence with Whitewater draw			A&Ww			FBC			FC		AgL
SP	East Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'54"/ 110°19'44"	Sedimentary		A&Ww			FBC			FC		
SP	Espiritu Canyon Creek	Headwaters to confluence with Soza Wash			A&Ww			FBC			FC		AgL
SP	Fourmile Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Fourmile Canyon, Left Prong	Headwaters to confluence with unnamed tributary at 32°43'15"/ 110°23'46"		A&Wc				FBC			FC		AgL
SP	Fourmile Canyon, Left Prong	Below confluence with unnamed tributary to confluence with Fourmile Canyon Creek			A&Ww			FBC			FC		AgL
SP	Fourmile Canyon, Right Prong	Headwaters to confluence with Fourmile Canyon			A&Ww			FBC			FC		AgL
SP	Gadwell Canyon	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Garden Canyon Creek	Headwaters to confluence with unnamed tributary at 31°29'01"/ 110°19'44"		A&Wc				FBC		DWS	FC	AgI	

SP	Garden Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC		DWS	FC	AgI	
SP	Glance Creek	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Gold Gulch	Headwaters to U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'52"/ 110°19'49"	Sedimentary		A&Ww			FBC			FC		
SP	Greenbush Draw	From U.S./Mexico border to confluence with San Pedro River				A&We			PBC				
SP	Hidden Pond	Fort Huachuca Military Reservation at 32°30'30"/ 109°22'17"			A&Ww			FBC			FC		
SP	Horse Camp Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Hot Springs Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Johnson Canyon	Headwaters to Whitewater Draw at 31°32'46"/ 109°43'32"			A&Ww			FBC			FC		AgL
SP	Leslie Canyon Creek	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Lower Garden Canyon Pond	Fort Huachuca Military Reservation at 31°29'39"/ 110°18'34"			A&Ww			FBC			FC		
SP	Mexican Canyon	Headwaters to confluence with Dixie Canyon			A&Ww			FBC			FC		AgL
SP	Miller Canyon	Headwaters to Broken Arrow Ranch Road at 31°25'35"/110°15'04"		A&Wc				FBC		DWS	FC		AgL
SP	Miller Canyon	Below Broken Arrow Ranch Road to confluence with the San Pedro River			A&Ww			FBC		DWS	FC		AgL
SP	Mountain View Golf Course Pond	Fort Huachuca Military Reservation at 31°32'14"/ 110°18'52"	Sedimentary		A&Ww				PBC		FC		
SP	Mule Gulch	Headwaters to the Lavender Pit at 31°26'11"/ 109°54'02"			A&Ww				PBC		FC		
SP	Mule Gulch	The Lavender Pit to the' Highway 80 bridge at 31°26'30"/109°49'28"				A&We			PBC				
SP	Mule Gulch	Below the Highway 80 bridge to confluence with Whitewater Draw				A&We			PBC				AgL
SP	Oak Grove Canyon	Headwaters to confluence with Turkey Creek			A&Ww			FBC			FC		AgL
SP	Officers Club Pond	Fort Huachuca Military Reservation at 31°32'51"/ 110°21'37"	Sedimentary		A&Ww				PBC		FC		
SP	Paige Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Parsons Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Ramsey Canyon Creek	Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"		A&Wc				FBC			FC	AgI	AgL
SP	Ramsey Canyon Creek	Below Forest Service Road #110 to confluence with Carr Wash			A&Ww			FBC			FC	AgI	AgL
SP	Rattlesnake Creek	Headwaters to confluence with Brush Canyon		A&Wc				FBC			FC		AgL
SP	Rattlesnake Creek	Below confluence with Brush Canyon to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Redfield Canyon	Headwaters to confluence with unnamed tributary at 32°33'40"/ 110°18'42"		A&Wc				FBC			FC		AgL
SP	Redfield Canyon	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Rucker Canyon	Headwaters to confluence with Whitewater Draw		A&Wc				FBC			FC		AgL
SP	Rucker Canyon Lake	31°46'46"/109°18'30"	Shallow	A&Wc				FBC			FC		AgL
SP	San Pedro River	U.S./ Mexico Border to Buehman Canyon			A&Ww			FBC			FC	AgI	AgL
SP	San Pedro River	From Buehman canyon to confluence with the Gila River			A&Ww			FBC			FC		AgL
SP	Soto Canyon	Headwaters to confluence with Dixie Canyon			A&Ww			FBC			FC		AgL
SP	Swamp Springs Canyon	Headwaters to confluence with Redfield Canyon			A&Ww			FBC			FC		AgL
SP	Sycamore Pond I	Fort Huachuca Military Reservation at 31°35'12"/ 110°26'11"	Sedimentary		A&Ww			FBC			FC		
SP	Sycamore Pond II	Fort Huachuca Military Reservation at 31°34'39"/ 110°26'10"	Sedimentary		A&Ww			FBC			FC		
SP	Turkey Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Unnamed Wash (EDW)	Mt. Lemmon WWTP outfall at 32°26'51"/110°45'08" to 0.25 km downstream					A&Wedw		PBC				
SP	Virgus Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Walnut Gulch	Headwaters to Tombstone WWTP outfall at 31°43'47"/110°04'06"				A&We			PBC				
SP	Walnut Gulch (EDW)	Tombstone WWTP outfall to the confluence with Tombstone Wash					A&Wedw		PBC				
SP	Walnut Gulch	Tombstone Wash to confluence with San Pedro River				A&We			PBC				
SP	Whitewater Draw	Headwaters to confluence with unnamed tributary at 31°20'36"/ 109°43'48"				A&We			PBC				AgL
SP	Whitewater Draw	Below confluence with unnamed tributary to U.S./ Mexico border			A&Ww			FBC			FC		AgL
SP	Woodcutters Pond	Fort Huachuca Military Reservation at 31°30'09"/ 110°20'12"	Igneous		A&Ww			FBC			FC		
SR	Ackre Lake	33°37'01"/109°20'40"		A&Wc				FBC			FC	AgI	AgL
SR	Apache Lake	33°37'23"/111°12'26"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Barnhard Creek	Headwaters to confluence with unnamed tributary at 34°05'37/ 111°26'40"		A&Wc				FBC			FC		AgL
SR	Barnhardt Creek	Below confluence with unnamed tributary to confluence with Rye Creek			A&Ww			FBC			FC		AgL
SR	Basin Lake	33°55'00"/109°26'09"	Igneous		A&Ww			FBC			FC		AgL
SR	Bear Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Bear Wallow Creek (OAW)	Headwaters to confluence with the Black River		A&Wc				FBC			FC		AgL
SR	Bear Wallow Creek, North Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc				FBC			FC		AgL
SR	Bear Wallow Creek, South Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc				FBC			FC		AgL
SR	Beaver Creek	Headwaters to confluence with Black River		A&Wc				FBC			FC	AgI	AgL
SR	Big Lake	33°52'36"/109°25'33"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River	Headwaters to confluence with Salt River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, East Fork	From 33°51'19"/109°18'54" to confluence with the Black River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, North Fork of East Fork	Headwaters to confluence with Boneyard Creek		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, West Fork	Headwaters to confluence with the Black River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Bloody Tanks Wash	Headwaters to Schultze Ranch Road				A&We			PBC				AgL
SR	Bloody Tanks Wash	Schultze Ranch Road to confluence with Miami Wash				A&We			PBC				
SR	Boggy Creek	Headwaters to confluence with Centerfire Creek		A&Wc				FBC			FC	AgI	AgL
SR	Boneyard Creek	Headwaters to confluence with Black River, East Fork		A&Wc				FBC			FC	AgI	AgL
SR	Boulder Creek	Headwaters to confluence with LaBarge Creek			A&Ww			FBC			FC		
SR	Campaign Creek	Headwaters to Roosevelt Lake			A&Ww			FBC			FC		AgL

SR	Canyon Creek	Headwaters to the White Mountain Apache Reservation boundary		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Canyon Lake	33°32'44"/111°26'19"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Centerfire Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Chambers Draw Creek	Headwaters to confluence with the North Fork of the East Fork of Black River		A&Wc				FBC			FC		AgL
SR	Cherry Creek	Headwaters to confluence with unnamed tributary at 34°05'09"/110°56'07"		A&Wc				FBC			FC	AgI	AgL
SR	Cherry Creek	Below unnamed tributary to confluence with the Salt River			A&Ww			FBC			FC	AgI	AgL
SR	Christopher Creek	Headwaters to confluence with Tonto Creek		A&Wc				FBC			FC	AgI	AgL
SR	Cold Spring Canyon Creek	Headwaters to confluence with unnamed tributary at 33°49'50"/ 110°52'58"		A&Wc				FBC			FC		AgL
SR	Cold Spring Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Conklin Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Coon Creek	Headwaters to confluence with unnamed tributary at 33°46'41"/ 110°54'26"		A&Wc				FBC			FC		AgL
SR	Coon Creek	Below confluence with unnamed tributary to confluence with Salt River			A&Ww			FBC			FC		AgL
SR	Corduroy Creek	Headwaters to confluence with Fish Creek		A&Wc				FBC			FC	AgI	AgL
SR	Coyote Creek	Headwaters to confluence with the Black River, East Fork		A&Wc				FBC			FC	AgI	AgL
SR	Crescent Lake	33°54'38"/109°25'18"	Shallow	A&Wc				FBC			FC	AgI	AgL
SR	Deer Creek	Headwaters to confluence with the Black River, East Fork		A&Wc				FBC			FC		AgL
SR	Del Shay Creek	Headwaters to confluence with Gun Creek			A&Ww			FBC			FC		AgL
SR	Devils Chasm Creek	Headwaters to confluence with unnamed tributary at 33°48'46" / 110°52'35"		A&Wc				FBC			FC		AgL
SR	Devils Chasm Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Dipping Vat Reservoir	33°55'47"/109°25'31"	Igneous		A&Ww			FBC			FC		AgL
SR	Double Cienega Creek	Headwaters to confluence with Fish Creek		A&Wc				FBC			FC		AgL
SR	Fish Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Fish Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC		
SR	Gold Creek	Headwaters to confluence with unnamed tributary at 33°59'47"/ 111°25'10"		A&Wc				FBC			FC		AgL
SR	Gold Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Gordon Canyon Creek	Headwaters to confluence with Hog Canyon		A&Wc				FBC			FC		AgL
SR	Gordon Canyon Creek	Below confluence with Hog Canyon to confluence with Haigler Creek			A&Ww			FBC			FC		AgL
SR	Greenback Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Haigler Creek	Headwaters to confluence with unnamed tributary at 34°12'23"/ 111°00'15"		A&Wc				FBC			FC	AgI	AgL
SR	Haigler Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww			FBC			FC	AgI	AgL
SR	Hannagan Creek	Headwaters to confluence with Beaver Creek		A&Wc				FBC			FC		AgL
SR	Hay Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Home Creek	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Horse Creek	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Horse Camp Creek	Headwaters to confluence with unnamed tributary at 33°54'00"/ 110°50'07"		A&Wc				FBC			FC		AgL
SR	Horse Camp Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Horton Creek	Headwaters to confluence with Tonto Creek		A&Wc				FBC			FC	AgI	AgL
SR	Houston Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Hunter Creek	Headwaters to confluence with Christopher Creek		A&Wc				FBC			FC		AgL
SR	LaBarge Creek	Headwaters to Canyon Lake			A&Ww			FBC			FC		
SR	Lake Sierra Blanca	33°52'25"/109°16'05"		A&Wc				FBC			FC	AgI	AgL
SR	Miami Wash	Headwaters to confluence with Pinal Creek				A&We			PBC				
SR	Mule Creek	Headwaters to confluence with Canyon Creek		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Open Draw Creek	Headwaters to confluence with the East Fork of Black River		A&Wc				FBC			FC		AgL
SR	P B Creek	Headwaters to Forest Service Road #203 at 33°57'08"/110°56'12"		A&Wc				FBC			FC		AgL
SR	P B Creek	Below Forest Service Road #203 to Cherry Creek			A&Ww			FBC			FC		AgL
SR	Pinal Creek	Headwaters to confluence with unnamed EDW wash (Globe WWTP) at 33°25'29"/110°48'20"				A&We			PBC				AgL
SR	Pinal Creek (EDW)	Confluence with unnamed EDW wash (Globe WWTP) to 33°26'55"/ 110°49' 25"					A&Wedw		PBC				
SR	Pinal Creek	From 33°26'55"/110°49'25" to Lower Pinal Creek water treatment plant outfall #001 at 33°31'04"/ 110°51'55"				A&We			PBC				AgL
SR	Pinal Creek	From Lower Pinal Creek WTP outfall # to See Ranch Crossing at 33°32'25"/110°52'28"					A&Wedw		PBC				
SR	Pinal Creek	From See Ranch Crossing to confluence with unnamed tributary at 33°35'28"/110°54'31"			A&Ww			FBC					
SR	Pinal Creek	From unnamed tributary to confluence with Salt River			A&Ww			FBC			FC		
SR	Pine Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC		
SR	Pinto Creek	Headwaters to confluence with unnamed tributary at 33°19'27"/ 110°54'58"		A&Wc				FBC			FC	AgI	AgL
SR	Pinto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww			FBC			FC	AgI	AgL
SR	Pole Corral Lake	33°30'38"/110°00'15"	Igneous		A&Ww			FBC			FC	AgI	AgL
SR	Pueblo Canyon Creek	Headwaters to confluence with unnamed tributary at 33°50'23"/ 110°51'37"		A&Wc				FBC			FC		AgL
SR	Pueblo Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Reevis Creek	Headwaters to confluence with Pine Creek			A&Ww			FBC			FC		
SR	Reservation Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC		AgL
SR	Reynolds Creek	Headwaters to confluence with Workman Creek		A&Wc				FBC			FC		AgL

SR	Roosevelt Lake	33°52'17"/111°00'17"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Russell Gulch	From Headwaters to confluence with Miami Wash				A&We			PBC				
SR	Rye Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Saguaro Lake	33°33'44"/111°30'55"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Salome Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC	AgI	AgL
SR	Salt House Lake	33°57'04"/109°20'11"	Igneous		A&Ww			FBC			FC		AgL
SR	Salt River	White Mountain Apache Reservation Boundary at 33°48'52"/ 110°31'33" to Roosevelt Lake			A&Ww			FBC			FC		AgL
SR	Salt River	Theodore Roosevelt Dam to 2 km below Granite Reef Dam			A&Ww			FBC		DWS	FC	AgI	AgL
SR	Slate Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Snake Creek (OAW)	Headwaters to confluence with the Black River		A&Wc				FBC			FC		AgL
SR	Spring Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Stinky Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Thomas Creek	Headwaters to confluence with Beaver Creek		A&Wc				FBC			FC		AgL
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River		A&Wc				FBC			FC		AgL
SR	Tonto Creek	Headwaters to confluence with unnamed tributary at 34°18'11"/ 111°04'18"		A&Wc				FBC			FC	AgI	AgL
SR	Tonto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww			FBC			FC	AgI	AgL
SR	Turkey Creek	Headwaters to confluence with Rock Creek		A&Wc				FBC			FC		
SR	Wildcat Creek	Headwaters to confluence with Centerfire Creek		A&Wc				FBC			FC		AgL
SR	Willow Creek	Headwaters to confluence with Beaver Creek		A&Wc				FBC			FC		AgL
SR	Workman Creek	Headwaters to confluence with Reynolds Creek		A&Wc				FBC			FC	AgI	AgL
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek			A&Ww			FBC			FC	AgI	AgL
UG	Apache Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Ash Creek	Headwaters to confluence with unnamed tributary at 32°46'15"/ 109°51'45"		A&Wc				FBC			FC		AgL
UG	Ash Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Bennett Wash	Headwaters to the Gila River				A&We			PBC				
UG	Bitter Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		
UG	Blue River	Headwaters to confluence with Strayhorse Creek at 33°29'02"/ 109°12'14"		A&Wc				FBC			FC	AgI	AgL
UG	Blue River	Below confluence with Strayhorse Creek to confluence with San Francisco River			A&Ww			FBC			FC	AgI	AgL
UG	Bonita Creek (OAW)	San Carlos Indian Reservation boundary to confluence with the Gila River			A&Ww			FBC		DWS	FC		AgL
UG	Buckelew Creek	Headwaters to confluence with Castle Creek		A&Wc				FBC			FC		AgL
UG	Campbell Blue Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Castle Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
UG	Cave Creek (OAW)	Headwaters to confluence with South Fork Cave Creek		A&Wc				FBC			FC	AgI	AgL
UG	Cave Creek (OAW)	Below confluence with South Fork Cave Creek to Coronado National Forest boundary			A&Ww			FBC			FC	AgI	AgL
UG	Cave Creek	Below Coronado National Forest boundary to New Mexico border			A&Ww			FBC			FC	AgI	AgL
UG	Cave Creek, South Fork	Headwaters to confluence with Cave Creek		A&Wc				FBC			FC	AgI	AgL
UG	Chase Creek	Headwaters to the Phelps-Dodge Morenci Mine			A&Ww			FBC			FC		AgL
UG	Chase Creek	Below the Phelps-Dodge Morenci Mine to confluence with San Francisco River				A&We			PBC		FC		
UG	Chitty Canyon Creek	Headwaters to confluence with Salt House Creek		A&Wc				FBC			FC		AgL
UG	Cima Creek	Headwaters to confluence with Cave Creek		A&Wc				FBC			FC		AgL
UG	Cluff Reservoir #1	32°48'55"/109°50'46"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Cluff Reservoir #3	32°48'21"/109°51'46"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Coleman Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
UG	Dankworth Lake	32°43'13"/109°42'17"	Sedimentary	A&Wc				FBC			FC		
UG	Deadman Canyon Creek	Headwaters to confluence with unnamed tributary at 32°43'50"/ 109°49'03"		A&Wc				FBC		DWS	FC		AgL
UG	Deadman Canyon Creek	Below confluence with unnamed tributary to confluence with Graveyard Wash			A&Ww			FBC		DWS	FC		AgL
UG	Eagle Creek	Headwaters to confluence with unnamed tributary at 33°22'32"/ 109°29'43"		A&Wc				FBC		DWS	FC	AgI	AgL
UG	Eagle Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww			FBC		DWS	FC	AgI	AgL
UG	East Eagle Creek	Headwaters to confluence with Eagle Creek		A&Wc				FBC			FC		AgL
UG	East Turkey Creek	Headwaters to confluence with unnamed tributary at 31°58'22"/ 109°12'20"		A&Wc				FBC			FC		AgL
UG	East Turkey Creek	Below confluence with unnamed tributary to terminus near San Simon River			A&Ww			FBC			FC		AgL
UG	East Whitetail	Headwaters to terminus near San Simon River			A&Ww			FBC			FC		AgL
UG	Emigrant Canyon	Headwaters to terminus near San Simon River			A&Ww			FBC			FC		AgL
UG	Evans Pond #1	32°49'19"/109°51'12"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Evans Pond #2	32°49'14"/109°51'09"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Fishhook Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Foote Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Frye Canyon Creek	Headwaters to Frye Mesa Reservoir		A&Wc				FBC		DWS	FC		AgL
UG	Frye Canyon Creek	Frye Mesa reservoir to terminus at Highline Canal.			A&Ww			FBC			FC		AgL
UG	Frye Mesa Reservoir	32°45'14"/109°50'02"	Igneous	A&Wc				FBC		DWS	FC		
UG	Gibson Creek	Headwaters to confluence with Marijilda Creek		A&Wc				FBC			FC		AgL
UG	Gila River	New Mexico border to the San Carlos Indian Reservation boundary			A&Ww			FBC			FC	AgI	AgL
UG	Grant Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Judd Lake	33°51'15"/109°09'35"	Sedimentary	A&Wc				FBC			FC		
UG	K P Creek (OAW)	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL

UG	Lanphier Canyon Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Little Blue Creek	Headwaters to confluence with Dutch Blue Creek		A&Wc				FBC			FC		AgL
UG	Little Blue Creek	Below confluence with Dutch Blue Creek to confluence with Blue Creek			A&Ww			FBC			FC		AgL
UG	Little Creek	Headwaters to confluence with the San Francisco River		A&Wc				FBC			FC		
UG	Georges Tank	33°51'24"/109°08'30"	Sedimentary	A&Wc				FBC			FC		AgL
UG	Luna Lake	33°49'50"/109°05'06"	Sedimentary	A&Wc				FBC			FC		AgL
UG	Marijilda Creek	Headwaters to confluence with Gibson Creek		A&Wc				FBC			FC		AgL
UG	Marijilda Creek	Below confluence with Gibson Creek to confluence with Stockton Wash			A&Ww			FBC			FC	AgI	AgL
UG	Markham Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Pigeon Creek	Headwaters to confluence with the Blue River			A&Ww			FBC			FC		AgL
UG	Raspberry Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		
UG	Roper Lake	32°45'23"/109°42'14"	Sedimentary		A&Ww			FBC			FC		
UG	San Francisco River	Headwaters to the New Mexico border		A&Wc				FBC			FC	AgI	AgL
UG	San Francisco River	New Mexico border to confluence with the Gila River			A&Ww			FBC			FC	AgI	AgL
UG	San Simon River	Headwaters to confluence with the Gila River				A&We			PBC				AgL
UG	Sheep Tank	32°46'14"/109°48'09"	Sedimentary		A&Ww			FBC			FC		AgL
UG	Smith Pond	32°49'15"/109°50'36"	Sedimentary		A&Ww			FBC			FC		
UG	Squaw Creek	Headwaters to confluence with Thomas Creek		A&Wc				FBC			FC		AgL
UG	Stone Creek	Headwaters to confluence with the San Francisco River		A&Wc				FBC			FC	AgI	AgL
UG	Strayhorse Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		
UG	Thomas Creek	Headwaters to confluence with Rousensock Creek		A&Wc				FBC			FC		AgL
UG	Thomas Creek	Below confluence with Rousensock Creek to confluence with Blue River			A&Ww			FBC			FC		AgL
UG	Tinny Pond	33°47'49"/109°04'27"	Sedimentary		A&Ww			FBC			FC		AgL
UG	Turkey Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
VR	American Gulch	Headwaters to the Northern Gila County Sanitary District WWTP outfall at 34°14'02"/111°22'14"			A&Ww			FBC			FC	AgI	AgL
VR	American Gulch (EDW)	Below Northern Gila County Sanitary District WWTP outfall to confluence with the East Verde River					A&Wedw		PBC				
VR	Apache Creek	Headwaters to confluence with Walnut Creek			A&Ww			FBC			FC		AgL
VR	Ashbrook Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Aspen Creek	Headwaters to confluence with Granite Creek			A&Ww			FBC			FC		
VR	Bar Cross Tank	35°00'41"/112°05'39"			A&Ww			FBC			FC		AgL
VR	Barrata Tank	35°02'43"/112°24'21"			A&Ww			FBC			FC		AgL
VR	Bartlett Lake	33°49'52"/111°37'44"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
VR	Beaver Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Big Chino Wash	Headwaters to confluence with Sullivan Lake				A&We			PBC				AgL
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"				A&We			PBC				AgL
VR	Bitter Creek (EDW)	Jerome WWTP outfall to the Yavapai Apache Indian Reservation boundary					A&Wedw		PBC				AgL
VR	Bitter Creek	Below the Yavapai Apache Indian Reservation boundary to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Black Canyon Creek	Headwaters to confluence with unnamed tributary at 34°39'20"/ 112°05'06"		A&Wc				FBC			FC		AgL
VR	Black Canyon Creek	Below confluence with unnamed tributary to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Bonita Creek	Headwaters to confluence with Ellison Creek		A&Wc				FBC		DWS	FC		
VR	Bray Creek	Headwaters to confluence with Webber Creek		A&Wc				FBC			FC		AgL
VR	Camp Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Cereus Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Chase Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC		DWS	FC		
VR	Clover Creek	Headwaters to confluence with Headwaters of West Clear Creek		A&Wc				FBC			FC		AgL
VR	Coffee Creek	Headwaters to confluence with Spring Creek			A&Ww			FBC			FC		AgL
VR	Colony Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Dead Horse Lake	34°45'08"/112°00'42"	Shallow		A&Ww			FBC			FC		
VR	Deadman Creek	Headwaters to Horseshoe Reservoir			A&Ww			FBC			FC		AgL
VR	Del Monte Gulch	Headwaters to confluence with City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46"				A&We			PBC				
VR	Del Monte Gulch (EDW)	City of Cottonwood WWTP outfall 002 at 34°43'57"/ 112°02'46" to confluence with Verde River					A&Wedw		PBC				
VR	Del Rio Dam Lake	34°48'55"/112°28'03"	Sedimentary		A&Ww			FBC			FC		AgL
VR	Dry Beaver Creek	Headwaters to confluence with Beaver Creek			A&Ww			FBC			FC	AgI	AgL
VR	Dry Creek (EDW)	Sedona Ventures WWTP outfall at 34°50'02"/ 111°52'17" to 34°48'12"/111°52'48"					A&Wedw		PBC				
VR	Dude Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC			FC	AgI	AgL
VR	East Verde River	Headwaters to confluence with Ellison Creek		A&Wc				FBC		DWS	FC	AgI	AgL
VR	East Verde River	Below confluence with Ellison Creek to confluence with the Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Ellison Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC			FC		AgL
VR	Fossil Creek (OAW)	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Fossil Springs (OAW)	34°25'24"/111°34'27"			A&Ww			FBC		DWS	FC		
VR	Foxboro Lake	34°53'42"/111°39'55"			A&Ww			FBC			FC		AgL
VR	Fry Lake	35°03'45"/111°48'04"			A&Ww			FBC			FC		AgL
VR	Gap Creek	Headwaters to confluence with Government Spring		A&Wc				FBC			FC		AgL
VR	Gap Creek	Below Government Spring to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Garrett Tank	35°18'57"/112°42'20"			A&Ww			FBC			FC		AgL
VR	Goldwater Lake, Lower	34°29'56"/112°27'17"	Sedimentary	A&Wc				FBC		DWS	FC		
VR	Goldwater Lake, Upper	34°29'52"/112°26'59"	Igneous	A&Wc				FBC		DWS	FC		
VR	Granite Basin Lake	34°37'01"/112°32'58"	Igneous	A&Wc				FBC			FC	AgI	AgL

VR	Granite Creek	Headwaters to Watson Lake		A&Wc				FBC			FC	AgI	AgL
VR	Granite Creek	Below Watson Lake to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Green Valley Lake (EDW)	34°13'54"/111°20'45"	Urban				A&Wedw		PBC		FC		
VR	Heifer Tank	35°20'27"/112°32'59"			A&Ww			FBC			FC		AgL
VR	Hells Canyon Tank	35°04'59"/112°24'07"	Igneous		A&Ww			FBC			FC		AgL
VR	Homestead Tank	35°21'24"/112°41'36"	Igneous		A&Ww			FBC			FC		AgL
VR	Horse Park Tank	34°58'15"/111°36'32"			A&Ww			FBC			FC		AgL
VR	Horseshoe Reservoir	34°00'25"/111°43'36"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
VR	Houston Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Huffer Tank	34°27'46"/111°23'11"			A&Ww			FBC			FC		AgL
VR	J.D. Dam Lake	35°04'02"/112°01'48"	Shallow	A&Wc				FBC			FC	AgI	AgL
VR	Jacks Canyon	Headwaters to Big Park WWTP outfall at 34°45'46"/ 111°45'51"				A&We			PBC				
VR	Jacks Canyon (EDW)	Below Big Park WWTP outfall to confluence with Dry Beaver Creek					A&Wedw		PBC				
VR	Lime Creek	Headwaters to Horseshoe Reservoir			A&Ww			FBC			FC		AgL
VR	Masonry Number 2 Reservoir	35°13'32"/112°24'10"		A&Wc				FBC			FC	AgI	AgL
VR	McLellan Reservoir	35°13'09"/112°17'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
VR	Meath Dam Tank	35°07'52"/112°27'35"			A&Ww			FBC			FC		AgL
VR	Mullican Place Tank	34°44'16"/111°36'10"	Igneous		A&Ww			FBC			FC		AgL
VR	Oak Creek (OAW)	Headwaters to confluence with unnamed tributary at 34°59'15"/ 111°44'47"		A&Wc				FBC		DWS	FC	AgI	AgL
VR	Oak Creek (OAW)	Below confluence with unnamed tributary to confluence with Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Oak Creek, West Fork (OAW)	Headwaters to confluence with Oak Creek		A&Wc				FBC			FC		AgL
VR	Odell Lake	34°56'5"/111°37'53"	Igneous	A&Wc				FBC			FC		
VR	Peck's Lake	34°46'51"/112°02'01"	Shallow		A&Ww			FBC			FC	AgI	AgL
VR	Perkins Tank	35°06'42"/112°04'12"	Shallow	A&Wc				FBC			FC		AgL
VR	Pine Creek	Headwaters to confluence with unnamed tributary at 34°21'51"/ 111°26'49"		A&Wc				FBC		DWS	FC	AgI	AgL
VR	Pine Creek	Below confluence with unnamed tributary to confluence with East Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Red Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Reservoir #1	35°13'5"/111°50'09"	Igneous		A&Ww			FBC			FC		
VR	Reservoir #2	35°13'17"/111°50'39"	Igneous		A&Ww			FBC			FC		
VR	Roundtree Canyon Creek	Headwaters to confluence with Tangle Creek			A&Ww			FBC			FC		AgL
VR	Scholze Lake	35°11'53"/112°00'37"	Igneous	A&Wc				FBC			FC		AgL
VR	Spring Creek	Headwaters to confluence with unnamed tributary at 34°57'23"/ 111°57'21"		A&Wc				FBC			FC	AgI	AgL
VR	Spring Creek	Below confluence with unnamed tributary to confluence with Oak Creek			A&Ww			FBC			FC	AgI	AgL
VR	Steel Dam Lake	35°13'36"/112°24'54"	Igneous	A&Wc				FBC			FC		AgL
VR	Stehr Lake	34°22'01"/111°40'02"	Sedimentary		A&Ww			FBC			FC		AgL
VR	Stoneman Lake	34°46'47"/111°31'14"	Shallow	A&Wc				FBC			FC	AgI	AgL
VR	Sullivan Lake	34°51'42"/112°27'51"			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with unnamed tributary at 35°03'41"/ 111°57'31"		A&Wc				FBC			FC	AgI	AgL
VR	Sycamore Creek	Below confluence with unnamed tributary to confluence with Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with Verde River at 33°37'55"/111°39'58"			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with Fort McDowell Indian Reservation boundary at 33°39'19.8"/-111°37'42.7"			A&Ww			FBC			FC		AgL
VR	Tangle Creek	Headwaters to confluence with Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Trinity Tank	35°27'44"/112°48'01"			A&Ww			FBC			FC		AgL
VR	Unnamed Wash	Flagstaff Meadows WWTP outfall at '35°13'59"/ 111°48'35" to Volunteer Wash					A&Wedw		PBC				
VR	Verde River	From headwaters at confluence of Chino Wash and Granite Creek to Bartlett Lake Dam			A&Ww			FBC			FC	AgI	AgL
VR	Verde River	Below Bartlett Lake Dam to Salt River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Walnut Creek	Headwaters to confluence with Big Chino Wash			A&Ww			FBC			FC		AgL
VR	Watson Lake	34°34'58"/112°25'26"	Igneous		A&Ww			FBC			FC	AgI	AgL
VR	Webber Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC			FC		AgL
VR	West Clear Creek	Headwaters to confluence with Meadow Canyon		A&Wc				FBC			FC		AgL
VR	West Clear Creek	Below confluence with Meadow Canyon to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Wet Beaver Creek	Headwaters to unnamed springs at 34°41'17"/ 111°34'34"		A&Wc				FBC			FC	AgI	AgL
VR	Wet Beaver Creek	Below unnamed springs to confluence with Dry Beaver Creek			A&Ww			FBC			FC	AgI	AgL
VR	Whitehorse Lake	35°06'59"/112°00'48"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
VR	Williamson Valley Wash	Headwaters to confluence with Mint Wash				A&We			PBC				AgL
VR	Williamson Valley Wash	From confluence of Mint Wash to 10.5 km downstream			A&Ww			FBC			FC		AgL
VR	Williamson Valley Wash	From 10.5 km downstream of Mint Wash confluence to confluence with Big Chino Wash				A&We			PBC				AgL
VR	Williscraft Tank	35°11'22"/112°35'40"			A&Ww			FBC			FC		AgL
VR	Willow Creek	Above Willow Creek Reservoir		A&Wc				FBC			FC		AgL
VR	Willow Creek	Below Willow Creek Reservoir to confluence with Granite Creek			A&Ww			FBC			FC		AgL
VR	Willow Creek Reservoir	34°36'17"/112°26'19"	Shallow		A&Ww			FBC			FC	AgI	AgL
VR	Willow Valley Lake	34°41'08"/111°20'02"	Sedimentary		A&Ww			FBC			FC		AgL

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Appendix B repealed, new Appendix B adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix B amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Appendix B amended by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Appendix C. Site-Specific Standards

Watershed	Surface Water	Surface Water Description & Location	Parameter	Site-Specific Criterion
LC	Rio de Flag (EDW)	Flagstaff WWTP outfall to the confluence with San Francisco Wash	Copper (D)	36 µg/L (A&Wedw)
CL	Yuma East Wetlands	From inlet culvert from Colorado River into restored channel to Ocean Bridge	Selenium (T)	2.2 µg/L (A&Ww chronic)
			Total residual chlorine	33 µg/L (A&Ww acute)
				20 µg/L (A&Ww chronic)
SR	Pinto Creek	From confluence of Ellis Ranch tributary at 33°19'26.7"/110°54'57.5" to the confluence of West Fork of Pinto Creek at 33°27'32.3"/ 111°00'19.7"	Copper (D)	34 µg/L (A&Ww acute for hardness values below 268 mg/L)
				34 µg/L (A&Ww chronic)

Historical Note

Adopted effective February 18, 1992 (Supp. 92-1). Appendix C repealed effective April 24, 1996 (Supp. 96-2). New Appendix C made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix C amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

ARTICLE 2. WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS

R18-11-201. Definitions

The following terms apply to this Article:

1. "Acute toxicity" means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. "Agricultural irrigation AZ (AgI AZ)" means the use of a non-WOTUS protected surface water for crop irrigation.
3. "Agricultural livestock watering AZ (AgL AZ)" means the use of a non-WOTUS protected surface water as a water supply for consumption by livestock.
4. "Aquatic and wildlife AZ (cold water) (A&Wc AZ)" means the use of a non-WOTUS protected surface water by animals, plants, or other cold-water organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
5. "Aquatic and wildlife AZ (warm water) (A&Ww AZ)" means the use of a non-WOTUS protected surface water by animals, plants, or other warm-water organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
6. "Assimilative capacity" means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
7. "Complete Mixing" means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.
8. "Criteria" means elements of water quality standards expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
9. "Critical flow conditions of the discharge" means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone's receiving water as follows:
   a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
   b. For chronic aquatic water quality standard criteria, the discharge flow critical flow condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
   c. For human health-based water quality standard criteria, the discharge flow critical condition is the long-term arithmetic mean flow, averaged over several years so as to simulate long-term exposure.
10. "Critical flow conditions of the receiving water" means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
    a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day average flow event expected to occur once every ten years, on average (1Q10).
    b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
    c. For human health-based water quality standard criteria, in order to simulate long-term exposure, the

receiving water critical flow condition is the harmonic mean flow.

11. "Designated use" means a use specified on the Protected Surface Waters List for a non-WOTUS protected surface water.
12. "Domestic water source AZ (DWS AZ)" means the use of a non-WOTUS protected surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
13. "Fish consumption AZ (FC AZ)" means the use of a non-WOTUS protected surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
14. "Full-body contact AZ (FBC AZ)" means the use of a non-WOTUS protected surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely, and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
15. "Geometric mean" means the nth root of the product of n items or values. The geometric mean is calculated using the following formula:

$$GM_y = \sqrt[n]{(Y_1)(Y_2)(Y_3)(Y_n)}$$

16. "Hardness" means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO3) in milligrams per liter.
17. "Mixing zone" means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
18. "Non-WOTUS protected surface water" means a protected surface water designated in Table A of R18-11-216 or added to the PSWL by an emergency action authorized by A.R.S. § 49-221(G)(7) that is not a WOTUS.
19. "Oil" means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
20. "Partial-body contact AZ (PBC AZ)" means the recreational use of a non-WOTUS protected surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and, sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
21. "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance.
22. "Practical quantitation limit" means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
23. "Recharge Project" means a facility necessary or convenient to obtain, divert, withdraw, transport, exchange, deliver, treat, or store water to infiltrate or reintroduce that water into the ground.
24. "Toxic" means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.
25. "Urban lake" means a manmade lake within an urban landscape.
26. "Wastewater" does not mean:
    a. Stormwater,
    b. Discharges authorized under the De Minimus General Permit,
    c. Other allowable non-stormwater discharges permitted under the Construction General Permit or the Multi-sector General Permit, or
    d. Stormwater discharges from a municipal storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
27. "Wetland" means, for the purposes of non-WOTUS protected surface waters, an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
28. "WOTUS" means waters of the state that are also navigable waters as defined by Section 502(7) of the Clean Water Act.
29. "WOTUS protected surface water" means a protected surface water that is a WOTUS.
30. "Zone of initial dilution" means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

Historical Note

Amended effective January 29, 1980 (Supp. 80-1). Amended subsection A. effective April 17, 1984 (Supp. 84-2). Former Section R9-21-201 repealed, former Section R9-21-203 renumbered as Section R9-21-201 and amended effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-201 renumbered without change as Section R18-11-201 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-202. Applicability

A. The water quality standards prescribed in this Article apply to non-WOTUS protected surface waters.

B. The water quality standards prescribed in this Article do not apply to the following:
1. A waste treatment system, including an impoundment, pond, lagoon, or constructed wetland that is part of the waste treatment system;
2. A man-made surface impoundment and any associated ditch and conveyance used in the extraction, beneficiation, or processing of metallic ores including:
    a. A pit,
    b. Pregnant leach solution pond

c. Raffinate pond,
d. Tailing impoundment,
e. Decant pond,
f. Pond of sump in a mine put associated with dewatering activity,
g. Pond holding water that has come into contact with a process or product that is being held for recycling,
h. Spill or catchment pond, or
i. A pond used for onsite remediation

3. A man-made cooling pond that is neither created in a surface water nor results from the impoundment of a surface water; or
4. A surface water located on tribal lands.
5. WOTUS Protected Surface Waters.

Historical Note

Former Section R9-21-202 repealed, former Section R9-21-102 renumbered as Section R9-21-202 and amended effective January 7, 1985 (Supp. 85-1). Amended subsections (B), (D), and (E) effective August 12, 1986 (Supp. 86-4). Former Section R9-21-202 renumbered without change as Section R18-11-202 (Supp. 87-3). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed effective April 24, 1996 (Supp. 96-2). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-203. Designated Uses for Non-WOTUS Protected Surface Waters

A. The designated uses for specific non-WOTUS protected surface waters are listed in the Protected Surface Waters List in this article. The designated uses that may be assigned to a non-WOTUS protected surface water are:
1. Full-body contact AZ,
2. Partial-body contact AZ,
3. Domestic water source AZ,
4. Fish consumption AZ,
5. Aquatic and wildlife AZ (cold water),
6. Aquatic and wildlife AZ (warm water),
7. Agricultural irrigation AZ, and
8. Agricultural livestock watering AZ.

B. Numeric water quality criteria to maintain and protect water quality for the designated uses assigned to non-WOTUS protected surface waters are prescribed in R18-11-215. Narrative water quality standards to protect non-WOTUS protected surface waters are prescribed in R18-11-214.

C. If a non-WOTUS protected surface water has more than one designated use listed in the Protected Surface Waters List, the most stringent water quality criterion applies.

D. The Director shall revise the designated uses of a non-WOTUS protected surface water if water quality improvements result in a level of water quality that permits a use that is not currently listed as a designated use in the Protected Surface Waters List.

E. The Director may remove a designated use or adopt a subcategory of a designated use that requires less stringent water quality criteria through a rulemaking action for any of the following reasons:
1. A naturally-occurring pollutant concentration prevents the attainment of the use;
2. A human-caused condition or source of pollution prevents the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
3. A dam, diversion, or other type of hydrologic modification precludes the attainment of the use, and it is not feasible to restore the non-WOTUS protected surface water to its original condition or to operate the modification in a way that would result in attainment of the use;
4. A physical condition related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, precludes attainment of an aquatic life designated use.

Historical Note

Amended effective January 29, 1980 (Supp. 80-1). Amended subsection (B) by adding paragraphs (27) and (28) effective October 14, 1981 (Supp. 81-5). Former Section R9-21-203 renumbered as Section R9-21-201, former Section R9-21-204 renumbered as Section R9-21-203 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-203 renumbered and amended as Section R9-21-204, new Section R9-21-203 adopted effective August 12, 1986 (Supp. 86-4). Former Section R9-21-203 renumbered without change as Section R18-11-203 (Supp. 87-3). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed effective April 24, 1996 (Supp. 96-2). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-204. Interim, Presumptive Designated Uses

The following water quality standards apply to a non-WOTUS protected surface water that is not listed on the Protected Surface Waters List but is added on an emergency basis pursuant to A.R.S. § 49-221(G)(7):
1. The aquatic and wildlife AZ (cold water use applies to a non-WOTUS protected surface water above 5000 feet in elevation;
2. The aquatic and wildlife AZ (warm water) applies to a non-WOTUS protected surface water below 5000 feet in elevation;
3. The full-body contact AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
4. The partial-body contact AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans in a way that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
5. The fish consumption AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans for harvesting aquatic organisms for con-

sumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.

6. The domestic water source AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans as a source of potable water.
7. The agricultural irrigation AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used for crop irrigation.
8. The agricultural livestock watering AZ use applies to any non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used as a water supply for consumption by livestock.

Historical Note

Former Section R9-21-204 renumbered and amended as Section R9-21-207, former Section R9-21-206 renumbered and amended as Section R9-21-204 effective January 29, 1980 (Supp. 80-1). Former Section R9-21-204 renumbered as Section R9-21-203, former Section R9-21-205 renumbered as Section R9-21-204 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-204 renumbered and amended as Section R9-21-205, former Section R9-21-203 renumbered and amended as Section R9-21-204 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-204 renumbered without change as Section R18-11-204 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-205. Analytical Methods

A. A person conducting an analysis of a sample taken to determine compliance with a water quality standard shall use an analytical method prescribed in A.A.C. R9-14-610 or an alternative method approved under A.A.C. R9-14-610(C).

B. A test result from a sample taken to determine compliance with a water quality standard is valid only if the sample is analyzed by a laboratory that is licensed by the Arizona Department of Health Services, an out-of-state laboratory licensed under A.R.S. § 36-495.14, or a laboratory exempted under A.R.S. § 36-495.02, for the analysis performed.

Historical Note

Former Section R9-21-205 repealed, new Section R9-21-205 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-205 renumbered as Section R9-21-204, former Section R9-21-206 renumbered as Section R9-21-205 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-205 renumbered and amended as Section R9-21-206, former Section R9-21-204 renumbered and amended as Section R9-21-205 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-205 renumbered without change as Section R18-11-205 (Supp. 87-3). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed April 24, 1996 (Supp. 96-2). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-206. Mixing Zones

A. The Director may establish a mixing zone for a point source discharge to a non-WOTUS protected surface water as a condition of an individual AZPDES permit on a pollutant-by-pollutant basis. A mixing zone is prohibited where there is no water for dilution, or as prohibited pursuant to subsection (H).

B. The owner or operator of a point source seeking the establishment of a mixing zone shall submit a request to the Director for a mixing zone as part of an application for an AZPDES permit. The request shall include:

1. An identification of the pollutant for which the mixing zone is requested;
2. A proposed outfall design;
3. A definition of the boundary of the proposed mixing zone. For purposes of this subsection, the boundary of a mixing zone is where complete mixing occurs; and
4. A complete and detailed description of the existing physical, biological, and chemical conditions of the receiving water and the predicted impact of the proposed mixing zone on those conditions. The description shall also address the factors listed in subsection (D) that the Director must consider when deciding to grant or deny a request and shall address the mixing zone requirements in subsection (H).

C. The Director shall consider the following factors when deciding whether to grant or deny a request for a mixing zone:

1. The assimilative capacity of the receiving water;
2. The likelihood of adverse human health effects;
3. The location of drinking water plant intakes and public swimming areas;
4. The predicted exposure of biota and the likelihood that resident biota will be adversely affected;
5. Bioaccumulation;
6. Whether there will be acute toxicity in the mixing zone, and, if so, the size of the zone of initial dilution;
7. The known or predicted safe exposure levels for the pollutant for which the mixing zone is requested;
8. The size of the mixing zone;
9. The location of the mixing zone relative to biologically sensitive areas in the surface water;
10. The concentration gradient of the pollutant within the mixing zone;
11. Sediment deposition;
12. The potential for attracting aquatic life to the mixing zone; and
13. The cumulative impacts of other mixing zones and other discharges to the surface water.

D. Director determination.

1. The Director shall deny a request to establish a mixing zone if an applicable water quality standard will be violated outside the boundaries of the proposed mixing zone.
2. If the Director approves the request to establish a mixing zone, the Director shall establish the mixing zone as a condition of an AZPDES permit. The Director shall include any mixing zone condition in the AZPDES permit that is necessary to protect human health and the designated uses of the surface water.

E. Any person who is adversely affected by the Director's decision to grant or deny a request for a mixing zone may appeal the decision under A.R.S. § 49-321 et seq. and A.R.S. § 41-1092 et seq.

F. The Director shall reevaluate a mixing zone upon issuance, reissuance, or modification of the AZPDES permit for the point source or a modification of the outfall structure.

G. Mixing zone requirements.
1. A mixing zone shall be as small as practicable in that it shall not extend beyond the point in the waterbody at which complete mixing occurs under the critical flow conditions of the discharge and of the receiving water.
2. The total horizontal area allocated to all mixing zones on a lake shall not exceed 10 percent of the surface area of the lake.
3. Adjacent mixing zones in a lake shall not overlap or be located closer together than the greatest horizontal dimension of the largest mixing zone.
4. The design of any discharge outfall shall maximize initial dilution of the wastewater in a surface water.
5. The size of the zone of initial dilution in a mixing zone shall prevent lethality to organisms passing through the zone of initial dilution. The mixing zone shall prevent acute toxicity and lethality to organisms passing through the mixing zone.

H. The Director shall not establish a mixing zone in an AZPDES permit for the following persistent, bioaccumulative pollutants:
1. Chlordane,
2. DDT and its metabolites (DDD and DDE),
3. Dieldrin,
4. Dioxin,
5. Endrin,
6. Endrin aldehyde,
7. Heptachlor,
8. Heptachlor epoxide,
9. Lindane,
10. Mercury,
11. Polychlorinated biphenyls (PCBs), and
12. Toxaphene.

Historical Note

Former Section R9-21-206 renumbered and amended as Section R9-21-204, new Section R9-21-206 adopted effective January 29, 1980 (Supp. 80-1). Amended by adding subsection (B) effective October 14, 1981 (Supp. 81-5). Amended subsection (B) and Table 1 effective January 29, 1982 (Supp. 82-1). Amended subsection (B) and Table 1 effective August 13, 1982 (Supp. 82-4). Former Section R9-21-206 renumbered as Section R9-21-205, former Section R9-21-207 renumbered as Section R9-21-206 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-206 renumbered and amended as Section R9-21-207, former Section R9-21-205 renumbered and amended as R9-21-206 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-206 renumbered without change as Section R18-11-206 (Supp. 87-3). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-207. Natural Background

Where the concentration of a pollutant exceeds a water quality standard and the exceedance is caused solely by naturally occurring conditions, the exceedance shall not be considered a violation of the water quality standard.

Historical Note

Former Section R9-21-207 repealed, former Section R9-21-204 renumbered and amended as Section R9-21-207 effective January 29, 1980 (Supp. 80-1). Former Section R9-21-207 renumbered as Section R9-21-206, former Section R9-21-208 renumbered as Section R9-21-207 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-207 renumbered without change as Section R9-21-208, former Section R9-21-206 renumbered and amended as Section R9-21-207 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-207 renumbered without change as Section R18-11-207 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-208. Schedules of Compliance

A compliance schedule in an AZPDES permit shall require the permittee to comply with a discharge limitation based upon a new or revised water quality standard as soon as possible to achieve compliance. The permittee shall demonstrate that the point source cannot comply with a discharge limitation based upon the new or revised water quality standard through the application of existing water pollution control technology, operational changes, or source reduction. In establishing a compliance schedule, the Director shall consider:
1. How much time the permittee has already had to meet any effluent limitations under a prior permit;
2. The extent to which the permittee has made good faith efforts to comply with the effluent limitations and other requirements in a prior permit;
3. Whether treatment facilities, operations, or measures must be modified to meet the effluent limitations;
4. How long any necessary modifications would take to implement; and
5. Whether the permittee would be expected to use the same treatment facilities, operations or other measures to meet the effluent limitations as it would have used to meet the effluent limitations in a prior permit.

Historical Note

Former Section R9-21-208 repealed, new Section R9-21-208 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-208 renumbered as Section R9-21-207, Appendices 1 through 9 amended as Appendix A (now shown following R9-21-213), former Section R9-21-209 renumbered as R9-21-208 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-208 renumbered and amended as Section R9-21-209, former Section R9-21-207 renumbered without change as Section R9-21-208 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-208 renumbered without change as Section R18-11-208 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-209. Variances

A. Upon request, the Director may establish, by rule, a discharger-specific or water segment-specific or water segments-specific variance from a water quality standard if requirements pursuant to this Section are met.

B. A person who requests a variance must demonstrate all of the following information:
1. Identification of the specific pollutant and water quality standard for which a variance is sought.
2. Identification of the receiving surface water segment or segments to which the variance would apply.
3. A detailed discussion of the need for the variance, including the reasons why compliance with the water quality

standard cannot be achieved over the term of the proposed variance, and any other useful information or analysis to evaluate attainability.

4. A detailed description of proposed interim discharge limitations and pollutant control activities that represent the highest level of treatment achievable by a point source discharger or dischargers during the term of the variance.
5. Documentation that the proposed term is only as long as necessary to achieve compliance with applicable water quality standards.
6. Documentation that is appropriate to the type of designated use to which the variance would apply as follows. For a water quality standard variance documentation must include a demonstration of at least one of the following factors that preclude attainment of the use during the term of the variance:
   a. Naturally occurring pollutant concentrations prevent attainment of the use;
   b. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met;
   c. That human-caused conditions or sources of pollution prevent the attainment of the water quality standard for which the variance is sought and either (1) it is not possible to remedy the conditions or sources of pollution or (2) remedying the human-caused conditions would cause more environmental damage to correct than to leave in place;
   d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification n a way that would result in the attainment of the use;
   e. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;
   f. Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.
7. For a waterbody segment-specific or segments-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
   a. Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant or pollutants or water quality parameter or parameters and water body or waterbody segment or segments specified in the variance that could be implemented to make progress towards attaining the underlying designated use and criterion; and
   b. If any variance pursuant to subsection (B)(7)(a) previously applied to the water body or waterbody segment or segments, documentation must also demonstrate whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant or pollutants or water quality parameter or parameters subject to the water quality variance and the water quality progress achieved.
8. For a discharger-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section: Identification of the permittee subject to the variance.

C. The Director shall consider the following factors when deciding whether to grant or deny a variance request:
1. Bioaccumulation,
2. The predicted exposure of biota and the likelihood that resident biota will be adversely affected,
3. The known or predicted safe exposure levels for the pollutant for which the variance is requested, and
4. The likelihood of adverse human health effects.

D. The variance shall represent the highest attainable condition of the water body or water body segment applicable throughout the term of the variance.

E. A variance shall not result in any lowering of the currently attained ambient water quality, unless the variance is necessary for restoration activities, consistent with subsection (B)(6)(a)(vi). The Director must specify the highest attainable condition of the water body or waterbody segment as a quantifiable expression of one of the following:
1. The highest attainable interim criterion,
2. The interim effluent condition that reflects the greatest pollutant reduction achievable.

F. A variance shall not modify the underlying designated use and criterion. A variance is only a time limited exception to the underlying standard. For discharge-specific variances, other point source dischargers to the surface water that are not granted a variance shall still meet all applicable water quality standards.

G. Point source discharges shall meet all other applicable water quality standards for which a variance is not granted.

H. The term of the water quality variance may only be as long as necessary to achieve the highest attainable condition and must be consistent with the supporting documentation in subsection (E).

I. The Director shall periodically, but not more than every five years, reevaluate whether each variance continues to represent the highest attainable condition. Comment on the variance shall be considered regarding whether the variance continues to represent the highest attainable condition during each rulemaking for this Article. If the Director determines that the requirements of the variance do not represent the highest attainable condition, then the Director shall modify or repeal the variance during the rulemaking.

J. If the variance is modified by rulemaking, the requirements of the variance shall represent the highest attainable condition at the time of initial adoption of the variance, or the highest attainable condition identified during the current reevaluation, whichever is more stringent.

K. Upon expiration of a variance, point source dischargers shall comply with the water quality standard.

Historical Note

Former Section R9-21-209 renumbered and amended as Section R9-21-210, new Section R9-21-209 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-209 renumbered as Section R9-21-208, Tables I and II amended as Appendix B (now shown following R9-21-213 and Appendix A), former Section R9-21-210 renumbered as Section R9-21-209 and amended effective

January 7, 1985 (Supp. 85-1). Former Section R9-21-209 renumbered and amended as Section R9-21-210, former Section R9-21-208 renumbered and amended as Section R9-21-209 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-209 renumbered without change as Section R18-11-209 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-210. Site Specific Standards

A. The Director shall adopt a site-specific standard by rule.

B. The Director may adopt a site-specific standard based upon a request or upon the Director's initiative for any of the following reasons:

1. Local physical, chemical, or hydrological conditions of a non-WOTUS protected surface water such as pH, hardness, fate and transport, or temperature alters the biological availability or toxicity of a pollutant;
2. The sensitivity of resident aquatic organisms that occur in a non-WOTUS protected surface water to a pollutant differs from the sensitivity of the species used to derive the numeric water quality standards to protect aquatic life in R18-11-215;
3. Resident aquatic organisms that occur in a non-WOTUS protected surface water represent a narrower mix of species than those in the dataset used by ADEQ to derive numeric water quality standards to protect aquatic life in R18-11-215;
4. The natural background concentration of a pollutant is greater than the numeric water quality standard to protect aquatic life prescribed in R18-11-215. "Natural background" means the concentration of a pollutant in a non-WOTUS protected surface water due only to non-anthropogenic sources; or
5. Other factors or combination of factors that upon review by the Director warrant changing a numeric water quality standard for a non-WOTUS protected surface water.

C. Site-specific standard by request. To request that the Director adopt a site-specific standard, a person must conduct a study to support the development of a site-specific standard using a scientifically defensible procedure. Before conducting the study, a person shall submit a study outline to the Director for approval that contains the following elements:

1. Identifies the pollutant;
2. Describes the reach's boundaries;
3. Describes the hydrologic regime of the waterbody;
4. Describes the scientifically defensible procedure, which can include relevant aquatic life studies, ecological studies, laboratory tests, biological translators, fate and transport models, and risk analyses;
5. Describes and compares the taxonomic composition, distribution and density of the aquatic biota within the reach to a reference reach and describes the basis of any major taxonomic differences;
6. Describes the pollutant's effect on the affected species or appropriate surrogate species and on the other designated uses listed for the reach;
7. Demonstrates that all designated uses are protected; and
8. A person seeking to develop a site-specific standard based on natural background may use statistical or modeling approaches to determine natural background concentration.

Historical Note

Former Section R9-21-210 renumbered and amended as Section R9-21-211, former Section R9-21-209 renumbered and amended as Section R9-21-210 effective January 29, 1980 (Supp. 80-1). Amended subsection (A) effective April 17, 1984 (Supp. 84-2). Former Section R9-21-210 renumbered as Section R9-21-209, former Section R9-21-211 renumbered as Section R9-21-210 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-210 renumbered and amended as Section R9-21-211, former Section R9-21-209 renumbered and amended as Section R9-21-210 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-210 renumbered without change as Section R18-11-210 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-211. Enforcement of Non-permitted Discharges to Non-WOTUS Protected Surface Waters

A. The Department may establish a numeric water quality standard at a concentration that is below the practical quantitation limit. Therefore, in enforcement actions pursuant to subsection (B), the water quality standard is enforceable at the practical quantitation limit.

B. Except for chronic aquatic and wildlife criteria, for non-permitted discharge violations, the Department shall determine compliance with numeric water quality standard criteria from the analytical result of a single sample, unless additional samples are required under this article. For chronic aquatic and wildlife criteria, compliance for non-permitted discharge violations shall be determined from the geometric mean of the analytical results of the last four samples taken at least 24 hours apart. For the purposes of this Section, a "non-permitted discharge violation" does not include a discharge regulated under an AZPDES permit.

Historical Note

Former Section R9-21-210 renumbered and amended as Section R9-21-211 effective January 29, 1980 (Supp. 80-1). Amended subsections (D), (G) three (I), and added (J) effective October 14, 1981 (Supp. 81-5). Former Section R9-21-211 renumbered as Section R9-21-210, former Section R9-21-212 renumbered as Section R9-21-211 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-211 renumbered and amended as Section R9-21-212, former Section R9-21-210 renumbered and amended as Section R9-21-211 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-211 renumbered without change as Section R18-11-211 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-212. Statements of Intent and Limitations on the Reach of Article 2

A. Nothing in this Article prohibits fisheries management activities by the Arizona Game and Fish Department or the U.S. Fish and Wildlife Service. This Article does not exempt fish hatcheries from AZPDES permit requirements.

B. Nothing in this Article prevents the routine physical or mechanical maintenance of canals, drains, and the urban lakes identified as non-WOTUS protected surface waters on the Protected Surface Waters List. Physical or mechanical maintenance includes dewatering, lining, dredging, and the physical,

biological, or chemical control of weeds and algae. Increases in turbidity that result from physical or mechanical maintenance activities are permitted in canals, drains, and the urban lakes identified on the Protected Surface Waters List.

C. Increases in turbidity that result from the routine physical or mechanical maintenance of a dam or flood control structure are not violations of this Article.

D. Nothing in this Article requires the release of water from a dam or a flood control structure.

Historical Note

Adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-212 renumbered as Section R9-21-211, former Section R9-21-213 renumbered as Section R9-21-212 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-212 repealed, former Section R9-21-211 renumbered and amended as Section R9-21-212 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-212 renumbered without change as Section R18-11-212 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-213. Procedures for Determining Economic, Social, and Environmental Cost and Benefits

A. The Director shall perform an economic, social, and environmental cost and benefits analysis that shows the benefits outweigh the costs before conducting any of the following rulemaking actions:
1. Adopting a water quality standard that applies to non-WOTUS protected surface waters at a particular level or for a particular water category of non-WOTUS protected surface waters;
2. Adding a non-WOTUS protected surface water to the Protected Surface Waters List when the conditions of A.R.S. § 49-221(G)(4) apply; or
3. Removing a non-WOTUS protected surface water from the Protected Surface Waters List when the conditions of A.R.S. § 49-221(G)(6) apply.

B. The economic, social, and environmental cost and benefit analysis must include:
1. A justification of the valuation methodology used to quantify the costs or benefits of the rulemaking action;
2. A reference to any study relevant to the economic, social, and environmental cost and benefit analysis that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of the costs and benefits of the rulemaking action;
3. A description of any data on which an economic, social, and environmental cost and benefits analysis is based and an explanation of how the data was obtained and why the data is acceptable data.
4. A description of the probable impact of the rulemaking on any existing AZPDES permits that are impacted by the rulemaking action;
5. A description of the probable amount of additional AZPDES permits that will be required for known and ongoing point-source discharges after the rulemaking is completed that otherwise would not have been required if the Director did not undertake the rulemaking action; and
6. The administrative and other costs to ADEQ associated with the proposed rulemaking.

C. The Director shall publish a copy of the economic, social, and environmental cost and benefits analysis to the agency website prior to filing any rulemaking materials during any of the rulemaking actions listed in subsection (A) of this rule.

D. If for any reason enough data is not reasonably available to comply with the requirements of subsection (B) of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

E. The Director is not required to prepare the economic, social, and environmental cost and benefits analysis required by this rule when:
1. Adding or removing a WOTUS-protected surface water from the Protected Surface Waters List; or
2. Adding a water to the Protected Surface Waters List on an emergency basis pursuant to A.R.S. § 49-221(G)(7).

Historical Note

Adopted effective January 29, 1980 (Supp. 80-1). Amended effective April 17, 1984 (Supp. 84-2). Former Section R9-21-213 renumbered as Section R9-21-212, former Section R9-21-103 renumbered as Section R9-21-213 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-213 renumbered without change as Section R9-21-214, new Section R9-21-213 adopted effective August 12, 1986 (Supp. 86-4). Former Section R9-21-213 renumbered without change as Section R18-11-213 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-214. Narrative Water Quality Standards for Non-WOTUS Protected Surface Waters

A. A non-WOTUS protected surface water shall not contain pollutants in amounts or combinations that:
1. Settle to form bottom deposits that inhibit or prohibit the habitation, growth, or propagation of aquatic life;
2. Cause objectionable odor in the area in which the non-WOTUS protected surface water is located;
3. Cause off-taste or odor in drinking water;
4. Cause off-flavor in aquatic organisms;
5. Are toxic to humans, animals, plants, or other organisms;
6. Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth, or propagation of other aquatic life or that impair recreational uses;
7. Cause or contribute to a violation of an aquifer water quality standard prescribed in R18-11-405 or R18-11-406; or
8. Change the color of the non-WOTUS protected surface water from natural background levels of color.

B. A non-WOTUS protected surface water shall not contain oil, grease, or any other pollutant that floats as debris, foam, or scum; or that causes a film or iridescent appearance on the surface of the water; or that causes a deposit on a shoreline, bank, or aquatic vegetation. The discharge of lubricating oil or gasoline associated with the normal operation of a recreational watercraft is not a violation of this narrative standard

C. A non-WOTUS protected surface water shall not contain a discharge of suspended solids in quantities or concentrations that interfere with the treatment processes at the nearest downstream potable water treatment plant or substantially increase the cost of handling solids produced at the nearest downstream potable water treatment plant.

Historical Note

Former Section R9-21-213 renumbered without change as Section R9-21-214 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-214 renumbered without change as Section R18-11-214 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-215. Numeric Water Quality Standards for Non-WOTUS Protected Surface Waters

A. *E. coli bacteria*. The following water quality standards for *Escherichia coli (E. coli)* are expressed in colony-forming units per 100 milliliters of water (cfu / 100 ml) or as a Most Probable Number (MPN):

E. coli	**FBC AZ**	**PBC AZ**
Geometric mean (minimum of four samples in 30 days)	126	126
Statistical threshold value	410	576

B. pH. The following water quality standards for non-WOTUS protected surface waters pH are expressed in standard units:

pH	**DWS AZ**	**FBC AZ, PBC AZ, A&Ww AZ, A&Wc AZ**	**AgI AZ**	**AgL AZ**
Maximum	9.0	9.0	9.0	9.0
Minimum	5.0	6.5	4.5	6.5

C. The maximum allowable increase in ambient water temperature, due to a thermal discharge is as follows:

A&Ww AZ	**A&Wc AZ**
3.0° C	1.0° C

D. Suspended sediment concentration.

1. The following water quality standards for suspended sediment concentration, expressed in milligrams per liter (mg/L), are expressed as a median value determined from a minimum of four samples collected at least seven days apart:
2. The Director shall not use the results of a suspended sediment concentration sample collected during or within 48 hours after a local storm event to determine the median value.

A&Wc AZ	**A&Ww AZ**
25	80

E. Dissolved oxygen. A non-WOTUS protected surface water meets the water quality standard for dissolved oxygen when either:

1. The percent saturation of dissolved oxygen is equal to or greater than 90 percent, or
2. The single sample minimum concentration for the designated use, as expressed in milligrams per liter (mg/L) is as follows:

Designated Use	**Single sample minimum concentration in mg/L**
A&Ww AZ	6.0
A&Wc AZ	7.0

The single sample minimum concentration is the same for the designated use in a lake, but the sample must be taken from a depth no greater than one meter.

F. Tables 1 through 17 prescribe water quality criteria for individual pollutants by designated use.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 1. Water Quality Criteria by Designated Use (see footnote)

Parameter	CAS NUMBER	DWS AZ (µg/L)	FC AZ (µg/L)	FBC AZ (µg/L)	PBC AZ (µg/L)	A&Wc AZ Acute (µg/L)	A&Wc AZ Chronic (µg/L)	A&Ww AZ Acute (µg/L)	A&Ww AZ Chronic (µg/L)	AgI AZ (µg/L)	AgL AZ (µg/L)
Acenaphthene	83329	420	198	56,000	56,000	850	550	850	550		
Acrolein	107028	3.5	1.9	467	467	3	3	3	3		
Acrylonitrile	107131	0.06	0.2	3	37,333	3,800	250	3,800	250		
Alachlor	15972608	2		9,333	9,333	2,500	170	2,500	170		
Aldrin	309002	0.002	0.00005	0.08	28	3		3		0.003	See (b)
Alpha Particles (Gross) Radioactivity		15 pCi/L See (h)									
Ammonia	7664417					See (e) & Tables 11 (present) & 14 (absent)	See (e) & Tables 13 (present) & 17 (absent)	See (e) & Tables 12 (present) & 15 (absent)	See (e) & Tables 13 (present) & 16 (absent)		
Anthracene	120127	2,100	74	280,000	280,000						
Antimony	7440360	6 T	640 T	747 T	747 T	88 D	30 D	88 D	30 D		
Arsenic	7440382	10 T	80 T	30 T	280 T	340 D	150 D	340 D	150 D	2,000 T	200 T
Asbestos	1332214	See (a)									
Atrazine	1912249	3		32,667	32,667						
Barium	7440393	2,000 T		98,000 T	98,000 T						
Benz(a)anthracene	56553	0.005	0.02	0.2	0.2						
Benzene	71432	5	140	93	3,733	2,700	180	2,700	180		
Benzo[b]fluoranthene Benzfluoranthene	205992	0.005	0.02	1.9	1.9						
Benzidine	92875	0.0002	0.0002	0.01	2,800	1,300	89	1,300	89	0.01	0.01
Benzo(a)pyrene	50328	0.2	0.02	0.2	0.2						
Benzo(k)fluoranthene	207089	0.005	0.02	1.9	1.9						
Beryllium	7440417	4 T	84 T	1,867 T	1,867 T	65 D	5.3 D	65 D	5.3 D		
Beta particles and photon emitters		4 millirems / year See (i)									
Bis(2-chloroethyl) ether	111444	0.03	0.5	1	1	120,000	6,700	120,000	6,700		
Bis(2-chloroisopropyl) ether	108601	280	3,441	37,333	37,333						
Boron	7440428	1,400 T		186,667 T	186,667 T					1,000 T	
Bromodichloromethane	75274	TTHM See (g)	17	TTHM	18,667						
4-Bromophenyl phenyl ether	101553					180	14	180	14		
Bromoform	75252	TTHM See (g)	133	180	18,667	15,000	10,000	15,000	10,000		
Bromomethane	74839	9.8	299	1,307	1,307	5,500	360	5,500	360		
Butyl benzyl phthalate	85687	1,400	386	186,667	186,667	1,700	130	1,700	130		

Cadmium	7440439	5 T	84 T	700 T	700 T	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	50	50
Carbaryl	63252					2.1	2.1	2.1	2.1		
Carbofuran	1563662	40		4,667	4,667	650	50	650	50		
Carbon tetrachloride	56235	5	2	11	980	18,000	1,100	18,000	1,100		
Chlordane	57749	2	0.0008	4	467	2.4	0.004	2.4	0.2		
Chlorine (total residual)	7782505	4,000		4000	4000	19	11	19	11		
Chlorobenzene	108907	100	1,553	18,667	18,667	3,800	260	3,800	260		
2-Chloroethyl vinyl ether	110758					180,000	9,800	180,000	9,800		
Chloroform	67663	TTHM See (g)	470	230	9,333	14,000	900	14,000	900		
p-Chloro-m-cresol	59507					15	4.7	15	4.7		
Chloromethane	74873					270,000	15,000	270,000	15,000		
beta-Chloronaphthalene	91587	560	317	74,667	74,667						
2-Chlorophenol	95578	35	30	4,667	4,667	2,200	150	2,200	150		
Chloropyrifos	2921882	21		2,800	2,800	0.08	0.04	0.08	0.04		
Chromium III	16065831		75,000 T	1,400,000 T	1,400,000 T	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4		
Chromium VI	18540299	21 T	150 T	2,800 T	2,800 T	16 D	11 D	16 D	11 D		
Chromium (Total)	7440473	100 T								1,000	1,000
Chrysene	218019	0.005	0.02	19	19						
Copper	7440508	1,300 T		1,300 T	1,300 T	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	5,000 T	500 T
Cyanide (as free cyanide)	57125	200 T	16,000 T	18,667 T	18,667 T	22 T	5.2 T	41 T	9.7 T		200 T
Dalapon	75990	200	8,000	28,000	28,000						
DDT and its breakdown products	50293	0.1	0.0002	14	467	1.1	0.001	1.1	0.001	0.001	0.001
Demeton	8065483						0.1		0.1		
Diazinon	333415					0.17	0.17	0.17	0.17		
Dibenz (ah) anthracene	53703	0.005	0.02	1.9	1.9						
Dibromochloromethane	124481	TTHM See (g)	13	TTHM	18,667						
1,2-Dibromo-3-chloropro- pane	96128	0.2		2,800	2,800						
1,2-Dibromoethane	106934	0.05		8,400	8,400						
Dibutyl phthalate	84742	700	899	93,333	93,333	470	35	470	35		
1,2-Dichlorobenzene	95501	600	205	84,000	84,000	790	300	1,200	470		
1,3-Dichlorobenzene	541731					2,500	970	2,500	970		
1,4-Dichlorobenzene	106467	75	5755	373,333	373,333	560	210	2,000	780		
3,3'-Dichlorobenzidine	91941	0.08	0.03	3	3						
1,2-Dichloroethane	107062	5	37	15	186,667	59,000	41,000	59,000	41,000		
1,1-Dichloroethylene	75354	7	7,143	46,667	46,667	15,000	950	15,000	950		
1,2-cis-Dichloroethylene	156592	70		70	70						
1,2-trans-Dichloroethylene	156605	100	10,127	18,667	18,667	68,000	3,900	68,000	3,900		
Dichloromethane	75092	5	593	190	56,000	97,000	5,500	97,000	5,500		
2,4-Dichlorophenol	120832	21	59	2,800	2,800	1,000	88	1,000	88		
2,4-Dichlorophenoxyacetic acid (2,4-D)	94757	70		9,333	9,333						
1,2-Dichloropropane	78875	5	17,518	84,000	84,000	26,000	9,200	26,000	9,200		
1,3-Dichloropropene	542756	0.7	42	420	28,000	3,000	1,100	3,000	1,100		
Dieldrin	60571	0.002	0.00005	0.09	47	0.2	0.06	0.2	0.06	0.003	See (b)
Diethyl phthalate	84662	5,600	8,767	746,667	746,667	26,000	1,600	26,000	1,600		
Di (2-ethylhexyl) adipate	103231	400		560,000	560,000						
Di (2-ethylhexyl) phthalate	117817	6	3	100	18,667	400	360	400	360		
2,4-Dimethylphenol	105679	140	171	18,667	18,667	1,000	310	1,000	310		
Dimethyl phthalate	131113					17,000	1,000	17,000	1,000		
4,6-Dinitro-o-cresol	534521	28	582	3,733	3,733	310	24	310	24		
2,4-Dinitrophenol	51285	14	1,067	1,867	1,867	110	9.2	110	9.2		
2,4-Dinitrotoluene	121142	14	421	1,867	1,867	14,000	860	14,000	860		
2,6-Dinitrotoluene	606202	0.05		2	3,733						
Di-n-octyl phthalate	117840	2,800		373,333	373,333						
Dinoseb	88857	7		933	933						
1,2-Diphenylhydrazine	122667	0.04	0.2	1.8	1.8	130	11	130	11		
Diquat	85007	20		2,053	2,053						
Endosulfan sulfate	1031078	42	18	5,600	5,600	0.2	0.06	0.2	0.06		
Endosulfan (Total)	115297	42	18	5,600	5,600	0.2	0.06	0.2	0.06		
Endothall	145733	100		18,667	18,667						
Endrin	72208	2	0.06	280	280	0.09	0.04	0.09	0.04	0.004	0.004
Endrin aldehyde	7421934	2				0.09	0.04	0.09	0.04		
Ethylbenzene	100414	700	2,133	93,333	93,333	23,000	1,400	23,000	1,400		
Fluoranthene	206440	280	28	37,333	37,333	2,000	1,600	2,000	1,600		
Fluorene	86737	280	1,067	37,333	37,333						
Fluoride	7782414	4,000		140,000	140,000						
Glyphosate	1071836	700	266,667	93,333	93,333						
Guthion	86500						0.01		0.01		
Heptachlor	76448	0.4	0.00008	0.4	467	0.5	0.004	0.5	0.004		
Heptachlor epoxide	1024573	0.2	0.00004	0.2	12	0.5	0.004	0.5	0.004		
Hexachlorobenzene	118741	1	0.0003	1	747	6	3.7	6	3.7		
Hexachlorobutadiene	87683	0.4	18	18	187	45	8.2	45	8.2		
Hexachlorocyclohexane alpha	319846	0.006	0.005	0.22	7,467	1,600	130	1,600	130		
Hexachlorocyclohexane beta	319857	0.02	0.02	0.78	560	1,600	130	1,600	130		
Hexachlorocyclohexane delta	319868					1,600	130	1,600	130		
Hexachlorocyclohexane gamma (lindane)	58899	0.2	1.8	280	280	1	0.08	1	0.28		
Hexachlorocyclopentadiene	77474	50	580	9,800	9,800	3.5	0.3	3.5	0.3		

Hexachloroethane	67721	2.5	3.3	100	933	490	350	490	350		
Hydrogen sulfide	7783064						2 See (c)		2 See (c)		
Indeno (1,2,3-cd) pyrene	193395	0.05	0.49	1.9	1.9						
Iron	7439896						1,000 D		1,000 D		
Isophorone	78591	37	961	1,500	186,667	59,000	43,000	59,000	43,000		
Lead	7439921	15 T		15 T	15 T	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	10,000 T	100 T
Malathion	121755	140		18,667	18,667		0.1		0.1		
Manganese	7439965	980		130,667	130,667					10,000	
Mercury	7439976	2 T		280 T	280 T	2.4 D	0.01 D	2.4 D	0.01 D		10 T
Methoxychlor	72435	40		4,667	4,667		0.03		0.03		
Methylmercury	22967926		0.3 mg/ kg								
Mirex	2385855	1		187	187		0.001		0.001		
Naphthalene	91203	140	1,524	18,667	18,667	1,100	210	3,200	580		
Nickel	7440020	140 T	4,600 T	28,000 T	28,000 T	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7		
Nitrate	14797558	10,000		3,733,333	3,733,333						
Nitrite	14797650	1,000		233,333	233,333						
Nitrate + Nitrite		10,000									
Nitrobenzene	98953	3.5	138	467	467	1,300	850	1,300	850		
p-Nitrophenol	100027					4,100	3,000	4,100	3,000		
N-nitrosodimethylamine	62759	0.001	3	0.03	0.03						
N-Nitrosodiphenylamine	86306	7.1	6	290	290	2,900	200	2,900	200		
N-nitrosodi-n-propylamine	621647	0.005	0.5	0.2	88,667						
Nonylphenol	104405					28	6.6	28	6.6		
Oxamyl	23135220	200		23,333	23,333						
Parathion	56382					0.07	0.01	0.07	0.01		
Paraquat	1910425	32		4,200	4,200	100	54	100	54		
Pentachlorophenol	87865	1	1,000	12	28,000	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10		
Permethrin	52645531	350		46,667	46,667	0.3	0.2	0.3	0.2		
Phenanthrene	85018					30	6.3	30	6.3		
Phenol	108952	2,100	37	280,000	280,000	5,100	730	7,000	1,000		
Picloram	1918021	500	2,710	65,333	65,333						
Polychlorinatedbiphenyls (PCBs)	1336363	0.5	0.00006	2 19	19	2	0.01	2	0.02	0.001	0.001
Pyrene	129000	210	800	28,000	28,000						
Radium 226 + Radium 228		5 pCi/L									
Selenium	7782492	50 T	667 T	4,667 T	4,667 T		2 T		2 T	20 T	50 T
Silver	7440224	35 T	8,000 T	4,667 T	4,667 T	See (d) & Table 8		See (d) & Table 8			
Simazine	112349	4		4,667	4,667						
Strontium	7440246	8 pCi/L									
Styrene	100425	100		186,667	186,667	5,600	370	5,600	370		
Sulfides											
2,3,7,8-Tetrachlorod- ibenzo-p-dioxin (2,3,7,8-TCDD)	1746016	0.00003	5x10-9	0.00003	0.0009	0.01	0.005	0.01	0.005		
1,1,2,2-Tetrachloroethane	79345	0.2	4	7	56,000	4,700	3,200	4,700	3,200		
Tetrachloroethylene	127184	5	261	9,333	9,333	2,600	280	6,500	680		
Thallium	7440280	2 T	7.2 T	75 T	75 T	700 D	150 D	700 D	150 D		
Toluene	108883	1,000	201.000	280,000	280,000	8,700	180	8,700	180		
Toxaphene	8001352	3	0.0003	1.3	933	0.7	0.0002	0.7	0.0002	0.005	0.005
Tributyltin						0.5	0.07	0.5	0.07		
1,2,4-Trichlorobenzene	120821	70	70	9,333	9,333	750	130	1,700	300		
1,1,1-Trichloroethane	71556	200	428,571	1,866,667	1,866,667	2,600	1,600	2,600	1,600	1,000	
1,1,2-Trichloroethane	79005	5	16	25	3,733	18,000	12,000	18,000	12,000		
Trichloroethylene	79016	5	29	280,000	280	20,000	1,300	20,000	1,300		
2,4,6-Trichlorophenol	88062	3.2	2	130	130	160	25	160	25		
2,4,5-Trichlorophenoxy proprionic acid (2,4,5-TP)	93721	50		7,467	7,467						
Trihalomethanes (T)		80									
Tritium	10028178	20,000 pCi/L									
Uranium	7440611	30 D		2,800	2,800						
Vinyl chloride	75014	2	5	2	2,800						
Xylenes (T)	1330207	10,000		186,667	186,667						
Zinc	7440666	2,100 T	5,106 T	280,000 T	280,000 T	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	10,000 T	25,000 T

Historical Note

Table 1 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 2. Acute Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife Coldwater AZ		Aquatic and Wildlife Warm Water AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	0.40	20	2.1
100	1.8	100	9.4
400	6.5	400	34
e(0.9789*LN(Hardness)-3.866)*(1.136672-LN(Hard-ness)*0.041838)		e(0.9789*LN(Hardness)-2.208)*(1.136672-LN(Hard-ness)*0.041838)	

Historical Note
Table 2 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 3. Chronic Water Quality Standards for Dissolved Cadmium

Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**
20	0.21
100	0.72
400	2.0
e(0.7977*LN(Hardness)-3.909)*(1.101672-LN(Hardness)*0.041838)	

Historical Note
Table 3 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 4. Water Quality Standards for Dissolved Chromium III

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	152	20	19.8
100	570	100	74.1
400	1,773	400	231
e(0.819*LN(Hardness)+3.7256)*(0.316)		e(0.819*LN(Hardness)+0.6848)*(0.86)	

Historical Note
Table 4 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 5. Water Quality Standards for Dissolved Copper

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	2.9	20	2.3
100	13	100	9.0
400	50	400	29
e(0.9422*LN(Hardness)-1.702)*(0.96)		e(0.8545*LN(Hardness)-1.702)*(0.96)	

Historical Note
Table 5 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 6. Water Quality Standards for Dissolved Lead

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	10.8	20	0.42
100	64.6	100	2.5
400	281	400	10.9
e(1.273*LN(Hardness)-1.46)*(1.46203-(LN(Hardness))*(0.145712))		e(1.273*LN(Hardness)-4.705) *(1.46203-(LN(Hardness))*(0.145712))	

Historical Note
Table 6 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 7. Water Quality Standards for Dissolved Nickel

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**	**Hard. mg/L**	**Std. µg/L**
20	120.0	20	13.3
100	468	100	52.0
400	1513	400	168
e(0.846*LN(Hardness)+2.255)*(0.998)		e(0.846*LN(Hardness)+0.0584)*(0.997)	

Historical Note
Table 7 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 8. Water Quality Standards for Dissolved Silver

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**

20	0.20
100	3.2
400	34.9
e(1.72*LN(Hardness)-6.59)*(0.85)	

Historical Note

Table 8 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 9. Water Quality Standards for Dissolved Zinc

Acute and Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
Hard. mg/L	**Std. µg/L**
20	30.0
100	117
400	379
e(0.8473*LN(Hardness)+0.884)*(0.978)	

Historical Note

Table 9 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 10. Water Quality Standards for Pentachlorophenol

Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ		Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ	
pH	**µg/L**	**pH**	**µg/L**
3	0.16	3	0.1
6	3.3	6	2.1
9	67.7	9	42.7
e(1.005*(pH)-4.83)		e(1.005*(pH)-5.29)	

Historical Note

Table 10 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 11. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ, Unionid Mussels Present

For the Aquatic and Wildlife Coldwater AZ uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	33	33	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	31	31	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	30	30	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	28	28	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	26	26	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	24	24	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	8	7.3
7.1	22	22	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	20	20	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	18	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	15	15	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	11	11	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	9.6	9.6	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	3
7.8	8.1	8.1	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	6.8	6.8	6.6	6	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	5.6	5.6	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	4.6	4.6	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	3.8	3.8	3.7	3.5	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	3.1	3.1	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	2.6	2.6	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	2.1	2.1	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	1.8	1.8	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.59	0.54
8.7	1.5	1.5	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.2	1.2	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37

8.9	1	1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9	0.88	0.88	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27
$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(23.12\times10^{0.036\times(20-T)}\right)\right)\right)$																	

Historical Note
Table 11 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 12. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater AZ, Unionid Mussels Present

For the Aquatic and Wildlife Warmwater AZ uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																				
	0-10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9	7.3
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	3	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	8.8	8.2	7.6	7	6.4	5.9	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	6	5.6	5.2	4.8	4.4	4	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

$$\frac{0.7249 \times \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}}\right) \times MIN(51.93, 23.12 \times 10^{0.036\times(20-T)})}{}$$

Historical Note

Table 12 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 13. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ and Warmwater AZ, Unionid Mussels Present

For the Aquatic and Wildlife Coldwater and Warmwater AZ uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																							
pH	**0-7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.5	1.4	1.3	1.2	1.1
6.6	4.8	4.5	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1
6.7	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1
6.8	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1
6.9	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1
7	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99
7.1	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95
7.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9
7.3	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85
7.4	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79
7.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73
7.6	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.4	1.4	1.3	1.2	1.1	1.1	0.98	0.92	0.86	0.81	0.76	0.71	0.67
7.7	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6
7.8	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53
7.9	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47
8	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6	0.56	0.53	0.5	0.44	0.44	0.41
8.1	1.5	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81	0.76	0.71	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35
8.2	1.3	1.2	1.2	1.1	1	0.96	0.9	0.84	0.79	0.74	0.7	0.65	0.61	0.57	0.54	0.5	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3
8.3	1.1	1.1	0.99	0.93	0.87	0.82	0.76	0.72	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26
8.4	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47	0.44	0.41	0.39	0.36	0.34	0.32	0.3	0.28	0.26	0.25	0.23	0.22
8.5	0.8	0.75	0.71	0.67	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31	0.29	0.27	0.25	0.24	0.22	0.21	0.2	0.18
8.6	0.68	0.64	0.6	0.56	0.53	0.49	0.46	0.43	0.41	0.38	0.36	0.33	0.31	0.29	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.16	0.15
8.7	0.57	0.54	0.51	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13
8.8	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26	0.24	0.23	0.21	0.2	0.19	0.17	0.16	0.15	0.14	0.13	0.13	0.12	0.11
8.9	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.12	0.11	0.1	0.09
9	0.36	0.34	0.32	0.3	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.11	0.1	0.09	0.09	0.08

$$0.8876 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(2.126 \times 10^{0.028 \times (20-MAX(T,7))}\right)$$

Historical Note

Table 13 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 14. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ, Unionid Mussels Absent

For the Aquatic and Wildlife Coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	33	33	33	33	33	33	33	33	33	33	33	33	33	33	31	29	27
6.6	31	31	31	31	31	31	31	31	31	31	31	31	31	31	30	28	26
6.7	30	30	30	30	30	30	30	30	30	30	30	30	30	30	29	26	24
6.8	28	28	28	28	28	28	28	28	28	28	28	28	28	28	27	25	23
6.9	26	26	26	26	26	26	26	26	26	26	26	26	26	26	25	23	21
7	24	24	24	24	24	24	24	24	24	24	24	24	24	24	23	21	20
7.1	22	22	22	22	22	22	22	22	22	22	22	22	22	22	21	19	18
7.2	20	20	20	20	20	20	20	20	20	20	20	20	20	20	19	17	16
7.3	18	18	18	18	18	18	18	18	18	18	18	18	18	18	17	16	14
7.4	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	14	13
7.5	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	12	11
7.6	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	10	9.3
7.7	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.3	8.6	7.9
7.8	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	7.8	7.2	6.6
7.9	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.5	6	5.5
8	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.6
8.1	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.5	4.1	3.8
8.2	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.7	3.4	3.1
8.3	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3	2.8	2.6
8.4	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.5	2.3	2.1
8.5	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	1.9	1.8
8.6	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.6	1.4
8.7	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.4	1.3	1.2
8.8	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1
8.9	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0.92	0.85
9	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.85	0.78	0.72

$$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}}+\frac{39.0}{1+10^{pH-7.204}}\right),\left(0.7249\times\left(\frac{0.0114}{1+10^{7.204-pH}}+\frac{1.6181}{1+10^{pH-7.204}}\right)\times\left(62.15\times 10^{0.036\times(20-T)}\right)\right)\right)$$

Historical Note

Table 14 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 15. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater AZ Uses, Unionid Mussels Absent

For the Aquatic and Wildlife Warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

	Temperature (°C)																
pH	**0-14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
6.5	51	51	51	51	51	51	51	51	51	48	44	40	37	34	31	29	27
6.6	49	49	49	49	49	49	49	49	49	46	42	39	36	33	30	28	26
6.7	46	46	46	46	46	46	46	46	46	43	40	37	34	31	29	26	24
6.8	44	44	44	44	44	44	44	44	44	41	38	35	32	29	27	25	23
6.9	41	41	41	41	41	41	41	41	41	38	35	32	30	27	25	23	21
7	38	38	38	38	38	38	38	38	38	35	32	30	27	25	23	21	20
7.1	34	34	34	34	34	34	34	34	34	32	29	27	25	23	21	19	18
7.2	31	31	31	31	31	31	31	31	31	29	26	24	22	21	19	17	16
7.3	27	27	27	27	27	27	27	27	27	26	23	22	20	18	17	16	14
7.4	24	24	24	24	24	24	24	24	24	22	21	19	17	16	15	14	13
7.5	21	21	21	21	21	21	21	21	21	19	18	16	15	14	13	12	11
7.6	18	18	18	18	18	18	18	18	18	17	15	14	13	12	11	10	9.3
7.7	15	15	15	15	15	15	15	15	15	14	13	12	11	10	9.3	8.6	7.9
7.8	13	13	13	13	13	13	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6
7.9	11	11	11	11	11	11	11	11	11	9.9	9.1	8.4	7.7	7.1	6.5	6	5.5
8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.2	7.5	6.9	6.4	5.9	5.4	5	4.6
8.1	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	6.8	6.2	5.7	5.3	4.9	4.5	4.1	3.8
8.2	6	6	6	6	6	6	6	6	6	5.6	5.1	4.7	4.4	4	3.7	3.4	3.1
8.3	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6
8.4	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	3.8	3.4	3.2	3	2.7	2.5	2.3	2.1
8.5	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.1	2.9	2.6	2.4	2.2	2.1	1.9	1.8
8.6	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4
8.7	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2	1.8	1.7	1.5	1.4	1.3	1.2
8.8	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1
8.9	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.4	1.3	1.2	1.1	1	0.92	0.85
9	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1	0.93	0.85	0.78	0.72

$$0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204-pH}} + \frac{1.6181}{1 + 10^{pH-7.204}}\right) \times MIN\left(51.93, \left(62.15 \times 10^{0.036\times(20-T)}\right)\right)$$

Historical Note

Table 15 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 16. Chronic Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater AZ, Unionid Mussels Absent

For the Aquatic and Wildlife Warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

	Temperature (°C)																							
pH	0-7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	19	17	16	15	14	13	13	12	11	10	9.7	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	18	17	16	15	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
6.7	18	17	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
6.8	17	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
6.9	17	16	15	14	13	12	12	11	10	9.5	8.9	8.4	7.8	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
7	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.9	5.5	5.1	4.8	4.5	4.2	4	3.7
7.1	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	15	14	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
7.3	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	12	11	11	10	9.4	8.8	8.2	7.7	7.2	6.8	6.4	6	5.6	5.2	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	11	10	10	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	9.9	9.3	8.7	8.1	7.7	7.2	6.8	6.3	5.9	5.6	5.2	4.9	4.6	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	8.8	8.3	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	6.8	6.3	6	5.6	5.2	4.9	4.6	4.3	4	3.8	3.6	3.3	3.1	2.9	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3
8.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3	2.8	2.6	2.5	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81
8.5	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	2.6	2.4	2.2	2.1	2	1.9	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.93	0.88	0.82	0.77	0.72	0.68	0.63	0.6	0.56	0.52	0.49
8.8	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79	0.74	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49	0.46	0.43	0.4	0.38	0.36
9	1.4	1.3	1.2	1.1	1	0.98	0.92	0.86	0.81	0.76	0.71	0.66	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times \left(7.547 \times 10^{0.028 \times (20-MAX(T,7))}\right)$$

Historical Note

Table 16 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table 17. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ, Unionid Mussels Absent

For the Aquatic and Wildlife Coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
6.7	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
6.8	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.6	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
6.9	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
7	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7
7.1	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
7.3	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3
8.2	2	2	2	2	2	2	2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.1	0.99	0.93	0.87	0.81
8.5	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	1	1	1	1	1	1	1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49
8.8	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.6	0.56	0.52	0.49	0.46	0.43	0.41	0.38	0.36
9	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left(\frac{0.0278}{1+10^{7.688-pH}} + \frac{1.1994}{1+10^{pH-7.688}}\right) \times MIN\left(6.920, \left(7.547 \times 10^{0.028 \times (20-T)}\right)\right)$$

Historical Note

Table 17 made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-216. The Protected Surface Waters List

Tables A through C prescribe the protected surface waters list.

Historical Note

Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table A. Non-WOTUS Protected Surface Waters and Designated Uses

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Aquatic and Wildlife		Human Health				Agricultural	
			A&Wc AZ	A&Ww AZ	FBC AZ	PBC AZ	DWS AZ	FC AZ	AgI AZ	AgL AZ
CG	Cottonwood Creek	Headwaters to confluence with unnamed tributary at 35°20'46"/113°35'31"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
CG	Cottonwood Creek	Below confluence with unnamed tributary to confluence with Truxton Wash		A&Ww AZ	FBC AZ			FC AZ		AgL AZ
CG	Wright Canyon Creek	Headwaters to confluence with unnamed tributary at 35°20'48"/113°30'40"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
CG	Wright Canyon Creek	Below confluence with unnamed tributary to confluence with Truxton Wash		A&Ww AZ	FBC AZ			FC AZ		AgL AZ
LC	Boot Lake	34°58'54"/111°20'11"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Little Ortega Lake	34°22'47"/109°40'06"	A&Wc AZ		FBC AZ			FC AZ		
LC	Mormon Lake	34°56'38"/111°27'25"	A&Wc AZ		FBC AZ		DWS AZ	FC AZ	AgI AZ	AgL AZ
LC	Potato Lake	35°03'15"/111°24'13"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Pratt Lake	34°01'32"/109°04'18"	A&Wc AZ		FBC AZ			FC AZ		
LC	Sponseller Lake	34°14'09"/109°50'45"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Vail Lake	35°05'23"/111°30'46"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
LC	Water Canyon Reservoir	34°03'38"/109°26'20		A&Ww AZ	FBC AZ			FC AZ	AgI AZ	AgL AZ
MG	Bonsall Park Lake	59th Avenue & Bethany Home Road at 33°31'24"/ 112°11'08"		A&Ww AZ		PBC AZ		FC AZ		
MG	Canal Park Lake	College Avenue & Curry Road, Tempe at 33°26'54"/ 111°56'19"		A&Ww AZ		PBC AZ		FC AZ		
SP	Big Creek	Headwaters to confluence with Pitchfork Canyon Wash	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	Goudy Canyon Wash	Headwaters to confluence with Grant Creek	A&Wc AZ		FBC AZ			FC AZ		
SP	Grant Creek	Headwaters to confluence with unnamed tributary at 32°38'10"/109°56'37"		A&Ww AZ	FBC AZ		DWS AZ	FC AZ		
SP	Grant Creek	Below confluence with unnamed tributary to terminus near Willcox Playa		A&Ww AZ	FBC AZ			FC AZ		
SP	High Creek	Headwaters to confluence with unnamed tributary at 32°33'08"/110°14'42"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	High Creek	Below confluence with unnamed tributary to terminus near Willcox Playa	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	Pinery Creek	Headwaters to State Highway 181	A&Wc AZ		FBC AZ		DWS AZ	FC AZ		AgL AZ
SP	Pinery Creek	Below State Highway 181 to terminus near Willcox Playa		A&Ww AZ	FBC AZ		DWS AZ	FC AZ		AgL AZ
SP	Post Creek	Headwaters to confluence with Grant Creek	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Riggs Flat Lake	32°42'28"/109°57'53"	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Rock Creek	Headwaters to confluence with Turkey Creek			FBC AZ			FC AZ		AgL AZ
SP	Soldier Creek	Headwaters to confluence with Post Creek at 32°40'50"/ 109°54'41"	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
SP	Snow Flat Lake	32°39'10"/109°51'54"	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Stronghold Canyon East	Headwaters to 31°55'9.28"/109°57'53.24"	A&Wc AZ			PBC AZ				
SP	Stronghold Canyon East	31°55'9.28"/109°57'53.24" to confluence with Carlink Canyon		A&Ww AZ		PBC AZ				
SP	Turkey Creek	Headwaters to confluence with Rock Creek	A&Wc AZ		FBC AZ			FC AZ	AgI AZ	AgL AZ
SP	Turkey Creek	Below confluence with Rock Creek to terminus near Willcox Playa		A&Ww AZ	FBC AZ			FC AZ	AgI AZ	AgL AZ
UG	Ward Canyon	Headwaters to confluence with Turkey Creek	A&Wc AZ		FBC AZ			FC AZ		AgL AZ
VR	Moonshine Creek	Headwaters to confluence with Post Creek	A&Wc AZ		FBC AZ			FC AZ		AgL AZ

Historical Note

Table A made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table B. WOTUS Protected Surface Waters

The waters listed in this table have been tentatively identified by ADEQ as WOTUS, under the law governing on 8/26/2022. Notwithstanding its inclusion on the list below, the status of a particular water in this table can be contested by a person in an enforcement or permit proceeding, a challenge to an identification as an impaired water, or a challenge to a proposed TMDL for an impaired water. Any changes to Table B will be made through formal rulemaking.

The waters on this list have their designated uses assigned by Title 18, Chapter 11, Article 1. Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the WOTUS Protected Surface Waters Table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.

Watersheds:

BW = Bill Williams
CG = Colorado – Grand Canyon
CL = Colorado – Lower Gila
LC = Little Colorado
MG = Middle Gila
SC = Santa Cruz – Rio Magdelena – Rio Sonoyta
SP = San Pedro – Willcox Playa – Rio Yaqui
SR = Salt River
UG = Upper Gila
VR = Verde River

Other Abbreviations:

WWTP = Wastewater Treatment Plant
Km = kilometers

Watershed	Surface Water	Segment Description and Location (Latitude and Longitudes are in NAD 83)
BW	Big Sandy River	Headwaters to Alamo Lake
BW	Boulder Creek	Below confluence with unnamed tributary to confluence with Burro Creek
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek
BW	Francis Creek (OAW)	Headwaters to confluence with Burro Creek
BW	Kirkland Creek	Headwaters to confluence with Santa Maria River
BW	Trout Creek	Below confluence with unnamed tributary to confluence with Knight Creek
CG	Beaver Dam Wash	Headwaters to confluence with the Virgin River
CG	Bright Angel Creek	Headwaters to confluence with Roaring Springs Creek
CG	Bright Angel Creek	Below Roaring Spring Springs Creek to confluence with Colorado River
CG	Colorado River	Lake Powell to Lake Mead
CG	Crystal Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Deer Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Garden Creek	Headwaters to confluence with Pipe Creek
CG	Havasu Creek	From the Havasupai Indian Reservation boundary to confluence with the Colorado River
CG	Hermit Creek	Below Hermit Pack Trail crossing to confluence with the Colorado River
CG	Kanab Creek	Headwaters to confluence with the Colorado River
CG	Lake Mead	36°06'18"/114°26'33"
CG	Lake Powell	36°59'53"/111°08'17"
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Paria River	Utah border to confluence with the Colorado River
CG	Phantom Creek	Below confluence with unnamed tributary to confluence with Bright Angel Creek
CG	Pipe Creek	Headwaters to confluence with the Colorado River
CG	Shinumo Creek	Below confluence with unnamed tributary to confluence with the Colorado River
CG	Short Creek	Headwaters to confluence with Fort Pearce Wash
CG	Tapeats Creek	Headwaters to confluence with the Colorado River
CG	Thunder River	Headwaters to confluence with Tapeats Creek
CG	Vasey's Paradise	A spring at 36°29'52"/111°51'26"
CG	Virgin River	Headwaters to confluence with the Colorado River
CG	White Creek	Headwaters to confluence with unnamed tributary at 36°18'45"/112°21'03"
CG	White Creek	Below confluence with unnamed tributary to confluence with the Colorado River
CL	A10 Backwater	33°31'45"/114°33'19"
CL	A7 Backwater	33°34'27"/114°32'04"
CL	Adobe Lake	33°02'36"/114°39'26"
CL	Cibola Lake	33°14'01"/114°40'31"
CL	Clear Lake	33°01'59"/114°31'19"
CL	Colorado River	Lake Mead to Topock Marsh
CL	Colorado River	Topock Marsh to Morelos Dam
CL	Gila River	Painted Rock Dam to confluence with the Colorado River
CL	Hunter's Hole Backwater	32°31'13"/114°48'07"
CL	Imperial Reservoir	32°53'02"/114°27'54"
CL	Island Lake	33°01'44"/114°36'42"
CL	Laguna Reservoir	32°51'35"/114°28'29"
CL	Lake Havasu	34°35'18"/114°25'47"
CL	Lake Mohave	35°26'58"/114°38'30"
CL	Martinez Lake	32°58'49"/114°28'09"
CL	Mittry Lake	32°49'17"/114°27'54"
CL	Nortons Lake	33°02'30"/114°37'59"
CL	Pretty Water Lake	33°19'51"/114°42'19"
CL	Topock Marsh	34°43'27"/114°28'59"

LC	Auger Creek	Headwaters to confluence with Nutrioso Creek
LC	Chevelon Canyon	Headwaters to confluence with the Little Colorado River
LC	Chevelon Canyon Lake	34°29'18"/110°49'30"
LC	Clear Creek	Headwaters to confluence with the Little Colorado River
LC	Clear Creek Reservoir	34°57'09"/110°39'14"
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek
LC	Colter Reservoir	33°56'39"/109°28'53"
LC	Coyote Creek	Headwaters to confluence with the Little Colorado River
LC	Cragin Reservoir (formerly Blue Ridge Reservoir)	34°32'40"/111°11'33"
LC	East Clear Creek	Headwaters to confluence with Clear Creek
LC	Ellis Wiltbank Reservoir	34°05'25"/109°28'25"
LC	Fool's Hollow Lake	34°16'30"/110°03'43"
LC	Lee Valley Creek	From Lee Valley Reservoir to confluence with the East Fork of the Little Colorado River
LC	Lily Creek	Headwaters to confluence with Coyote Creek
LC	Little Colorado River	Headwaters to Lyman Reservoir
LC	Little Colorado River	Below Lyman Reservoir to confluence with the Puerco River
LC	Little Colorado River	Below Puerco River confluence to the Colorado River, excluding segments on Native American Lands
LC	Little Colorado River, East Fork	Headwaters to confluence with the Little Colorado River
LC	Little Colorado River, South Fork	Headwaters to confluence with the Little Colorado River
LC	Little Colorado River, West Fork	Below Government Springs to confluence with the Little Colorado River
LC	Lyman Reservoir	34°21'21"/109°21'35"
LC	Mamie Creek	Headwaters to confluence with Coyote Creek
LC	Morrison Creek	Headwaters to Mamie Creek @ 33°59'24.45"/109°03'51.94
LC	Nutrioso Creek	Headwaters to confluence with the Little Colorado River
LC	Porter Creek	Headwaters to confluence with Show Low Creek
LC	Riggs Creek	Headwaters to Nutrioso Creek
LC	Rio de Flag	Headwaters to City of Flagstaff WWTP outfall at 35°12'21"/111°39'17"
LC	Rudd Creek	Headwaters to confluence with Nutrioso Creek
LC	Rosey Creek	Headwaters to 34°02'28.72"/109°27'24.3"
LC	Scott Reservoir	34°10'31"/109°57'31"
LC	Show Low Creek	Headwaters to confluence with Silver Creek
LC	Show Low Lake	34°11'36"/110°00'12"
LC	Silver Creek	Headwaters to confluence with the Little Colorado River
LC	White Mountain Lake	34°21'57"/109°59'21"
LC	Willow Creek	Headwaters to confluence with Clear Creek
LC	Zuni River	Headwaters to confluence with the Little Colorado River
MG	Agua Fria River	From State Route 169 to Lake Pleasant
MG	Ash Creek	Headwaters to confluence with Tex Canyon
MG	East Maricopa Floodway	From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary
MG	Fain Lake	Town of Prescott Valley Park Lake 34°34'29"/ 112°21'06"
MG	Gila River	San Carlos Indian Reservation boundary to the Ashurst-Hayden Dam
MG	Gila River (EDW)	From the confluence with the Salt River to Gillespie Dam
MG	Hassayampa Lake	34°25'45"/112°25'33"
MG	Hassayampa River	Below unnamed tributary to the Buckeye Irrigation Company Canal
MG	Hassayampa River	Headwaters to confluence with unnamed tributary at 34°26'09"/112°30'32"
MG	Lake Pleasant	33°53'46"/112°16'29"
MG	Little Ash Creek	Headwaters to confluence with Ash Creek at 34°20'45.74"/112°4'17.26"
MG	Little Sycamore Creek	Headwaters to Sycamore Creek @ 34°21'39.13"/111°58'49.98"
MG	Mineral Creek (diversion tunnel and lined channel)	33°12'24"/110°59'58" to 33°07'56"/110°58'34"
MG	Papago Park South Pond	Curry Road, Tempe 33°26'22"/111°55'55"
MG	Salt River	Verde River to 2 km below Granite Reef Dam
MG	Seven Springs Wash	Headwaters to Unnamed trib @ 33°57'58.66"/111°51'52.07"
MG	Tempe Town Lake	At Mill Avenue Bridge at 33°26'00"/111°56'26"
MG	Turkey Creek	Headwaters to confluence with unnamed tributary at 34°19'28"/112°21'33"
SC	Alum Gulch	Below 31°29'17"/110°44'25" to confluence with Sonoita Creek
SC	California Gulch	Headwaters To U.S./Mexico border
SC	Cienega Creek (OAW)	From confluence with Gardner Canyon to USGS gaging station (#09484600)
SC	Cox Gulch	Headwaters to Three R Canyon @ 31°28'28.03"/110°47'14.65"
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River
SC	Nogales Wash	Headwaters to confluence with Potrero Creek
SC	Parker Canyon Creek	Below unnamed tributary to U.S./Mexico border
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River
SC	Romero Canyon Creek	Below unnamed tributary to confluence with Sutherland Wash
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border
SC	Santa Cruz River	U.S./Mexico border to the Nogales International WWTP outfall at 31°27'25"/110°58'04"
SC	Santa Cruz River	Tubac Bridge to Agua Nueva WRF outfall at 32°17'04"/111°01'45"
SC	Santa Cruz River (EDW)	Agua Nueva WRF outfall to Baumgartner Road
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/110°45'31"
SC	Sonoita Creek (EDW)	Town of Patagonia WWTP outfall to permanent groundwater upwelling point approximately 1600 feet downstream of outfall
SC	Sycamore Canyon	Headwaters to the U.S./Mexico border
SP	Aravaipa Creek	Below downstream boundary of Aravaipa Canyon Wilderness Area to confluence with the San Pedro River
SP	Aravaipa Creek (OAW)	Stowe Gulch to downstream boundary of Aravaipa Canyon Wilderness Area
SP	Bass Canyon Creek	Below confluence with unnamed tributary to confluence with Hot Springs Canyon Creek
SP	Bear Creek	Headwaters to U.S./Mexico border
SP	Black Draw	Headwaters to the U.S./Mexico border
SP	Carr Canyon Creek	Headwaters to confluence with unnamed tributary at 31°27'01"/110°15'48"
SP	Gold Gulch	Headwaters to U.S./Mexico border
SP	Ramsey Canyon Creek	Below Forest Service Road #110 to confluence with Carr Wash
SP	San Pedro River	U.S./ Mexico Border to Buehman Canyon

SP	San Pedro River	From Buehman canyon to confluence with the Gila River
SP	Whitewater Draw	Headwaters to confluence with unnamed tributary at 31°20'36"/109°43'48"
SP	Whitewater Draw	Below confluence with unnamed tributary to U.S./ Mexico border
SR	Ackre Lake	33°37'01"/109°20'40"
SR	Apache Lake	33°37'23"/111°12'26"
SR	Bear Wallow Creek (OAW)	Headwaters to confluence with the Black River
SR	Beaver Creek	Headwaters to confluence with Black River
SR	Black River	Headwaters to confluence with Salt River
SR	Black River, East Fork	From 33°51'19"/109°18'54" to confluence with the Black River
SR	Black River, North Fork of East Fork	Headwaters to confluence with Boneyard Creek
SR	Black River, West Fork	Headwaters to confluence with the Black River
SR	Boggy Creek	Headwaters to confluence with Centerfire Creek
SR	Boneyard Creek	Headwaters to confluence with Black River, East Fork
SR	Canyon Lake	33°32'44"/111°26'19"
SR	Cherry Creek	Below unnamed tributary to confluence with the Salt River
SR	Conklin Creek	Headwaters to confluence with the Black River
SR	Corduroy Creek	Headwaters to confluence with Fish Creek
SR	Devils Chasm Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Dipping Vat Reservoir	33°55'47"/109°25'31"
SR	Fish Creek	Headwaters to confluence with the Black River
SR	Haigler Creek	Headwaters to confluence with unnamed tributary at 34°12'23"/111°00'15"
SR	Haigler Creek	Below confluence with unnamed tributary to confluence with Tonto Creek
SR	Hannagan Creek	Headwaters to confluence with Beaver Creek
SR	Hay Creek (OAW)	Headwaters to confluence with the Black River, West Fork
SR	Horton Creek	Headwaters to confluence with Tonto Creek
SR	P B Creek	Below Forest Service Road #203 to Cherry Creek
SR	Pinal Creek	From Lower Pinal Creek WTP outfall # to See Ranch Crossing at 33°32'25"/110°52'28"
SR	Pinal Creek	From unnamed tributary to confluence with Salt River
SR	Pinto Creek	Headwaters to confluence with unnamed tributary at 33°19'27"/110°54'58"
SR	Roosevelt Lake	33°52'17"/111°00'17"
SR	Rye Creek	Headwaters to confluence with Tonto Creek
SR	Saguaro Lake	33°33'44"/111°30'55"
SR	Salt River	White Mountain Apache Reservation Boundary at 33°48'52"/110°31'33" to Roosevelt Lake
SR	Salt River	Theodore Roosevelt Dam to 2 km below Granite Reef Dam
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River
SR	Tonto Creek	Headwaters to confluence with unnamed tributary at 34°18'11"/111°04'18"
SR	Tonto Creek	Below confluence with unnamed tributary to Roosevelt Lake
SR	Willow Creek	Headwaters to confluence with Beaver Creek
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek
UG	Apache Creek	Headwaters to confluence with the Gila River
UG	Bitter Creek	Headwaters to confluence with the Gila River
UG	Blue River	Headwaters to confluence with Strayhorse Creek at 33°29'02"/109°12'14"
UG	Blue River	Below confluence with Strayhorse Creek to confluence with San Francisco River
UG	Bob Thomas Creek	Headwaters to Stone Creek 33°51'93"/109°42'52"
UG	Bonita Creek (OAW)	San Carlos Indian Reservation boundary to confluence with the Gila River
UG	Campbell Blue Creek	Headwaters to confluence with the Blue River
UG	Cave Creek (OAW)	Headwaters to confluence with South Fork Cave Creek
UG	Cave Creek (OAW)	Below confluence with South Fork Cave Creek to Coronado National Forest boundary
UG	Cave Creek, South Fork	Headwaters to confluence with Cave Creek
UG	Deadman Canyon Creek	Headwaters to confluence with unnamed tributary at 32°43'50"/109°49'03"
UG	Eagle Creek	Below confluence with unnamed tributary to confluence with the Gila River
UG	Gila River	New Mexico border to the San Carlos Indian Reservation boundary
UG	Grant Creek	Headwaters to confluence with the Blue River
UG	Judd Lake	33°51'15"/109°09'35"
UG	K P Creek (OAW)	Headwaters to confluence with the Blue River
UG	Little Blue Creek	Below confluence with Dutch Blue Creek to confluence with Blue Creek
UG	Luna Lake	33°49'50"/109°05'06"
UG	North Fork Cave Creek	Headwaters to Cave Creek @ 31°52'56.63"/109°12'19.75"
UG	Raspberry Creek	Headwaters to confluence with the Blue River
UG	San Francisco River	Headwaters to the New Mexico border
UG	San Francisco River	New Mexico border to confluence with the Gila River
UG	San Simon River	Headwaters to confluence with the Gila River
UG	Stone Creek	Headwaters to confluence with the San Francisco River
UG	Thomas Creek	Below confluence with Rousensock Creek to confluence with Blue River
UG	Turkey Creek	Headwaters to confluence with Campbell Blue Creek
VR	Bartlett Lake	33°49'52"/111°37'44"
VR	Beaver Creek	Headwaters to confluence with the Verde River
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"
VR	Bitter Creek	Below the Yavapai Apache Indian Reservation boundary to confluence with the Verde River
VR	Dead Horse Lake	34°45'08"/112°00'42"
VR	East Verde River	Headwaters to confluence with Ellison Creek
VR	East Verde River	Below confluence with Ellison Creek to confluence with the Verde River
VR	Fossil Creek (OAW)	Headwaters to confluence with the Verde River
VR	Fossil Springs (OAW)	34°25'24"/111°34'27"
VR	Horseshoe Reservoir	34°00'25"/111°43'36"
VR	Oak Creek (OAW)	Headwaters to confluence with unnamed tributary at 34°59'15"/111°44'47"
VR	Oak Creek (OAW)	Below confluence with unnamed tributary to confluence with Verde River
VR	Spring Creek	Below confluence with unnamed tributary to confluence with Oak Creek
VR	Sullivan Lake	34°51'42"/112°27'51"
VR	Sycamore Creek	Headwaters to confluence with unnamed tributary at 35°03'41"/111°57'31"

VR	Sycamore Creek	Headwaters to confluence with Verde River at 33°37'55"/111°39'58"
VR	Verde River	From headwaters at confluence of Chino Wash and Granite Creek to Bartlett Lake Dam
VR	Verde River	Below Bartlett Lake Dam to Salt River
VR	West Clear Creek	Headwaters to confluence with Meadow Canyon
VR	West Clear Creek	Below confluence with Meadow Canyon to confluence with the Verde River
VR	Wet Beaver Creek	Below unnamed springs to confluence with Dry Beaver Creek
VR	Willow Creek Reservoir	34°36'17"/112°26'19"

Historical Note

Table B made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Table C. Historically Regulated as WOTUS and in Need of Confirmation

The waters listed in this table have historically been and will continue to be regulated as WOTUS unless ADEQ makes a determination that they are non-WOTUS. Notwithstanding its inclusion on the list below, the status of a particular water in this table can be contested by a person in an enforcement or permit proceeding, a challenge to an identification as an impaired water, or a challenge to a proposed TMDL for an impaired water. Any changes to Table C will be made through formal rulemaking.

The waters on this list have their designated uses assigned by Title 18, Chapter 11, Article 1. Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the Historically Regulated as WOTUS and in Need of Confirmation Table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.

Watersheds:

BW = Bill Williams
CG = Colorado – Grand Canyon
CL = Colorado – Lower Gila
LC = Little Colorado
MG = Middle Gila
SC = Santa Cruz – Rio Magdelena – Rio Sonoyta
SP = San Pedro – Willcox Playa – Rio Yaqui
SR = Salt River
UG = Upper Gila
VR = Verde River

Other Abbreviations:

WWTP = Wastewater Treatment Plant
Km = kilometers

Watershed	Surface Water	Segment Description and Location (Latitude and Longitudes are in NAD 83)
BW	Alamo Lake	34°14'06"/113°35'00"
BW	Bill Williams River	Alamo Lake to confluence with Colorado River
BW	Blue Tank	34°40'14"/112°58'17"
BW	Boulder Creek	Headwaters to confluence with unnamed tributary at 34°41'13"/113°03'37"
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek
BW	Carter Tank	34°52'27"/112°57'31"
BW	Conger Creek	Headwaters to confluence with unnamed tributary at 34°45'15"/113°05'46"
BW	Conger Creek	Below confluence with unnamed tributary to confluence with Burro Creek
BW	Copper Basin Wash	Headwaters to confluence with unnamed tributary at 34°28'12"/112°35'33"
BW	Copper Basin Wash	Below confluence with unnamed tributary to confluence with Skull Valley Wash
BW	Cottonwood Canyon	Headwaters to Bear Trap Spring
BW	Cottonwood Canyon	Below Bear Trap Spring to confluence at Sycamore Creek
BW	Date Creek	Headwaters to confluence with Santa Maria River
BW	Knight Creek	Headwaters to confluence with Big Sandy River
BW	Peoples Canyon (OAW)	Headwaters to confluence with Santa Maria River
BW	Red Lake	35°12'18"/113°03'57"
BW	Santa Maria River	Headwaters to Alamo Lake
BW	Trout Creek	Headwaters to confluence with unnamed tributary at 35°06'47"/113°13'01"
CG	Agate Canyon	Headwaters to confluence with the Colorado River
CG	Big Springs Tank	36°36'08"/112°21'01"
CG	Boucher Creek	Headwaters to confluence with the Colorado River
CG	Bright Angel Wash	Headwaters to Grand Canyon National Park South Rim WWTP outfall at 36°02'59"/112°09'02"
CG	Bright Angel Wash (EDW)	Grand Canyon National Park South Rim WWTP outfall to Coconino Wash
CG	Bulrush Canyon Wash	Headwaters to confluence with Kanab Creek
CG	Cataract Creek	Headwaters to Santa Fe Reservoir
CG	Cataract Creek	Santa Fe Reservoir to City of Williams WWTP outfall at 35°14'40"/112°11'18"
CG	Cataract Creek	Red Lake Wash to Havasupai Indian Reservation boundary
CG	Cataract Creek (EDW)	City of Williams WWTP outfall to 1 km downstream
CG	Cataract Lake	35°15'04"/112°12'58"
CG	Chuar Creek	Headwaters to confluence with unnamed tributary at 36°11'35"/111°52'20"
CG	Chuar Creek	Below unnamed tributary to confluence with the Colorado River
CG	City Reservoir	35°13'57"/112°11'25"
CG	Clear Creek	Headwaters to confluence with unnamed tributary at 36°07'33"/112°00'03"
CG	Clear Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Coconino Wash (EDW)	South Grand Canyon Sanitary District Tusayan WRF outfall at 35°58'39"/112°08'25" to 1 km downstream
CG	Crystal Creek	Headwaters to confluence with unnamed tributary at 36°13'41"/112°11'49"
CG	Deer Creek	Headwaters to confluence with unnamed tributary at 36°26'15"/112°28'20"
CG	Detrital Wash	Headwaters to Lake Mead
CG	Dogtown Reservoir	35°12'40"/112°07'54"
CG	Dragon Creek	Headwaters to confluence with Milk Creek
CG	Dragon Creek	Below confluence with Milk Creek to confluence with Crystal Creek
CG	Gonzalez Lake	35°15'26"/112°12'09"
CG	Grand Wash	Headwaters to Colorado River
CG	Grapevine Creek	Headwaters to confluence with the Colorado River
CG	Grapevine Wash	Headwaters to Colorado River
CG	Hakatai Canyon	Headwaters to confluence with the Colorado River
CG	Hance Creek	Headwaters to confluence with the Colorado River
CG	Hermit Creek	Headwaters to Hermit Pack Trail crossing at 36°03'38"/112°14'00"
CG	Horn Creek	Headwaters to confluence with the Colorado River

CG	Hualapai Wash	Headwaters to Lake Mead
CG	Jacob Lake	36°42'27"/112°13'50"
CG	Kaibab Lake	35°17'04"/112°09'32"
CG	Kwagunt Creek	Headwaters to confluence with unnamed tributary at 36°13'37"/111°54'50"
CG	Kwagunt Creek	Below confluence with unnamed tributary to confluence with the Colorado River
CG	Lonetree Canyon Creek	Headwaters to confluence with the Colorado River
CG	Matkatamiba Creek	Below Havasupai Indian Reservation boundary to confluence with the Colorado River
CG	Monument Creek	Headwaters to confluence with the Colorado River
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	National Canyon Creek	Headwaters to Hualapai Indian Reservation boundary at 36°15'15"/112°52'34"
CG	North Canyon Creek	Headwaters to confluence with unnamed tributary at 36°33'58"/111°55'41"
CG	North Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Olo Canyon	Headwaters to confluence with the Colorado River
CG	Parashant Canyon	Headwaters to confluence with unnamed tributary at 36°21'02"/113°27'56"
CG	Parashant Canyon	Below confluence with unnamed tributary to confluence with the Colorado River
CG	Phantom Creek	Headwaters to confluence with unnamed tributary at 36°09'29"/112°08'13"
CG	Red Canyon Creek	Headwaters to confluence with the Colorado River '
CG	Roaring Springs	36°11'45"/112°02'06"
CG	Roaring Springs Creek	Headwaters to confluence with Bright Angel Creek
CG	Royal Arch Creek	Headwaters to confluence with the Colorado River
CG	Ruby Canyon	Headwaters to confluence with the Colorado River
CG	Russell Tank	35°52'21"/111°52'45"
CG	Saddle Canyon Creek	Headwaters to confluence with unnamed tributary at 36°21'36"/112°22'43"
CG	Saddle Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River
CG	Santa Fe Reservoir	35°14'31"/112°11'10"
CG	Sapphire Canyon	Headwaters to confluence with the Colorado River
CG	Serpentine Canyon	Headwaters to confluence with the Colorado River
CG	Shinumo Creek	Headwaters to confluence with unnamed tributary at 36°18'18"/112°18'07"
CG	Slate Creek	Headwaters to confluence with the Colorado River
CG	Spring Canyon Creek	Headwaters to confluence with the Colorado River
CG	Trail Canyon Creek	Headwaters to confluence with the Colorado River
CG	Transept Canyon	Headwaters to Grand Canyon National Park North Rim WWTP outfall at 36°12'20"/112°03'35"
CG	Transept Canyon	From 1 km downstream of the Grand Canyon National Park North Rim WWTP outfall to confluence with Bright Angel Creek
CG	Transept Canyon (EDW)	Grand Canyon National Park North Rim WWTP outfall to 1 km downstream
CG	Travertine Canyon Creek	Headwaters to confluence with the Colorado River
CG	Turquoise Canyon	Headwaters to confluence with the Colorado River
CG	Unkar Creek	Below confluence with unnamed tributary at 36°07'54"/111°54'06" to confluence with Colorado River
CG	Unnamed Wash to Cedar Canyon (EDW)	Grand Canyon National Park Desert View WWTP outfall at 36°02'06"/111°49'13" to confluence with Cedar Canyon
CG	Unnamed Wash to Spring Valley Wash (EDW)	Valle Airpark WRF outfall at 35°38'34"/112°09'22" to confluence with Spring Valley Wash
CG	Vishnu Creek	Headwaters to confluence with the Colorado River
CG	Warm Springs Creek	Headwaters to confluence with the Colorado River
CG	West Cataract Creek	Headwaters to confluence with Cataract Creek
CL	Columbus Wash	Headwaters to confluence with the Gila River
CL	Holy Moses Wash	Headwaters to City of Kingman Downtown WWTP outfall at 35°10'33"/114°03'46"
CL	Holy Moses Wash	From 3 km downstream of City of Kingman Downtown WWTP outfall to confluence with Sawmill Wash
CL	Holy Moses Wash (EDW)	City of Kingman Downtown WWTP outfall to 3 km downstream
CL	Mohave Wash	Headwaters to Lower Colorado River
CL	Painted Rock (Borrow Pit) Lake	33°04'55"/113°01'17"
CL	Quigley Pond	32°43'40"/113°57'44"
CL	Redondo Lake	32°44'32"/114°29'03"
CL	Sacramento Wash	Headwaters to Topock Marsh
CL	Sawmill Canyon	Headwaters to abandoned gaging station at 35°09'45"/113°57'56"
CL	Sawmill Canyon	Below abandoned gaging station to confluence with Holy Moses Wash
CL	Tyson Wash (EDW)	Town of Quartzsite WWTP outfall at 33°42'39"/ 114°13'10" to 1 km downstream
CL	Wellton Canal	Wellton-Mohawk Irrigation District
CL	Yuma Area Canals	Above municipal water treatment plant intakes
CL	Yuma Area Canals	Below municipal water treatment plant intakes and all drains
LC	Als Lake	35°02'10"/111°25'17"
LC	Ashurst Lake	35°01'06"/111°24'18"
LC	Atcheson Reservoir	33°59'59"/109°20'43"
LC	Barbershop Canyon Creek	Headwaters to confluence with East Clear Creek
LC	Bear Canyon Creek	Headwaters to confluence with General Springs Canyon
LC	Bear Canyon Creek	Headwaters to confluence with Willow Creek
LC	Bear Canyon Lake	34°24'00"/111°00'06"
LC	Becker Lake	34°09'11"/109°18'23"
LC	Billy Creek	Headwaters to confluence with Show Low Creek
LC	Black Canyon	Headwaters to confluence with Chevelon Creek
LC	Bow and Arrow Wash	Headwaters to confluence with Rio de Flag
LC	Buck Springs Canyon Creek	Headwaters to confluence with Leonard Canyon Creek
LC	Bunch Reservoir	34°02'20"/109°26'48"
LC	Carnero Lake	34°06'57"/109°31'42"
LC	Chevelon Creek, West Fork	Headwaters to confluence with Chevelon Creek
LC	Chilson Tank	34°51'43"/111°22'54"
LC	Coconino Reservoir	35°00'05"/111°24'10"
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek
LC	Concho Creek	Headwaters to confluence with Carrizo Wash
LC	Concho Lake	34°26'37"/109°37'40"
LC	Cow Lake	34°53'14"/111°18'51"
LC	Crisis Lake (Snake Tank #2)	34°47'51"/111°17'32"
LC	Dane Canyon Creek	Headwaters to confluence with Barbershop Canyon Creek

LC	Daves Tank	34°44'22"/111°17'15"
LC	Deep Lake	35°03'34"/111°25'00"
LC	Ducksnest Lake	34°59'14"/111°23'57"
LC	Estates at Pine Canyon lakes (EDW)	35°09'32"/111°38'26"
LC	Fish Creek	Headwaters to confluence with the Little Colorado River
LC	General Springs Canyon Creek	Headwaters to confluence with East Clear Creek
LC	Geneva Reservoir	34°01'45"/109°31'46"
LC	Hall Creek	Headwaters to confluence with the Little Colorado River
LC	Hart Canyon Creek	Headwaters to confluence with Willow Creek
LC	Hay Lake	34°00'11"/109°25'57"
LC	Hog Wallow Lake	33°58'57"/109°25'39"
LC	Horse Lake	35°03'55"/111°27'50"
LC	Hulsey Creek	Headwaters to confluence with Nutrioso Creek
LC	Hulsey Lake	33°55'58"/109°09'40"
LC	Humphrey Lake (EDW)	35°11'51"/111°35'19"
LC	Indian Lake	35°00'39"/111°22'41"
LC	Jacks Canyon	Headwaters to confluence with the Little Colorado River
LC	Jarvis Lake	33°58'59"/109°12'36"
LC	Kinnikinick Lake	34°53'53"/111°18'18"
LC	Knoll Lake	34°25'38"/111°05'13"
LC	Lake Mary, Lower	35°06'21"/111°34'38"
LC	Lake Mary, Upper	35°03'23"/111°28'34"
LC	Lake of the Woods	34°09'40"/109°58'47"
LC	Lee Valley Creek (OAW)	Headwaters to Lee Valley Reservoir
LC	Lee Valley Reservoir	33°56'29"/109°30'04"
LC	Leonard Canyon Creek	Headwaters to confluence with Clear Creek
LC	Leonard Canyon Creek, East Fork	Headwaters to confluence with Leonard Canyon Creek
LC	Leonard Canyon Creek, Middle Fork	Headwaters to confluence with Leonard Canyon, West Fork
LC	Leonard Canyon Creek, West Fork	Headwaters to confluence with Leonard Canyon, East Fork
LC	Leroux Wash, tributary to Little Colorado River	From City of Holbrook-Painted Mesa WRF outfall at 34° 54' 30", -110° 11' 36" to Little Colorado River. The outfall discharges into Leroux Wash. All reaches of the Little Colorado River between the outfall to the Colorado River are perennial or intermittent.
LC	Little Colorado River, West Fork (OAW)	Headwaters to Government Springs
LC	Little George Reservoir	34°00'37"/109°19'15"
LC	Little Mormon Lake	34°17'00"/109°58'06"
LC	Long Lake, Lower	34°47'16"/111°12'40"
LC	Long Lake, Upper	35°00'08"/111°21'23"
LC	Long Tom Tank	34°20'35"/110°49'22"
LC	Lower Walnut Canyon Lake (EDW)	35°12'04"/111°34'07"
LC	Marshall Lake	35°07'18"/111°32'07"
LC	McKay Reservoir	34°01'27"/109°13'48"
LC	Merritt Draw Creek	Headwaters to confluence with Barbershop Canyon Creek
LC	Mexican Hay Lake	34°01'58"/109°21'25"
LC	Milk Creek	Headwaters to confluence with Hulsey Creek
LC	Miller Canyon Creek	Headwaters to confluence with East Clear Creek
LC	Miller Canyon Creek, East Fork	Headwaters to confluence with Miller Canyon Creek
LC	Morton Lake	34°53'37"/111°17'41"
LC	Mud Lake	34°55'19"/111°21'29"
LC	Ned Lake (EDW)	34°17'17"/110°03'22"
LC	Norton Reservoir	34°03'57"/109°31'27"
LC	Paddy Creek	Headwaters to confluence with Nutrioso Creek
LC	Pierce Seep	34°23'39"/110°31'17"
LC	Pine Tank	34°46'49"/111°17'21"
LC	Pintail Lake (EDW)	34°18'05"/110°01'21"
LC	Puerco River	Headwaters to confluence with the Little Colorado River
LC	Puerco River (EDW)	Sanders Unified School District WWTP outfall at 35°12'52"/109°19'40" to 0.5 km downstream
LC	Rainbow Lake	34°09'00"/109°59'09"
LC	Reagan Reservoir	34°02'09"/109°08'41"
LC	Rio de Flag (EDW)	From City of Flagstaff WWTP outfall to the confluence with San Francisco Wash
LC	River Reservoir	34°02'01"/109°26'07"
LC	Rogers Reservoir	33°56'30"/109°16'20"
LC	Russel Reservoir	33°59'29"/109°20'01"
LC	San Salvador Reservoir	33°58'51"/109°19'55"
LC	Slade Reservoir	33°59'41"/109°20'26"
LC	Soldiers Annex Lake	34°47'15"/111°13'51"
LC	Soldiers Lake	34°47'47"/111°14'04"
LC	Spaulding Tank	34°30'17"/111°02'06"
LC	St Johns Reservoir (Little Reservoir)	34°29'10"/109°22'06"
LC	Telephone Lake (EDW)	34°17'35"/110°02'42"
LC	Tremaine Lake	34°46'02"/111°13'51"
LC	Tunnel Reservoir	34°01'53"/109°26'34"
LC	Turkey Draw (EDW)	High Country Pines II WWTP outfall at 33°25'35"/ 110°38'13" to confluence with Black Canyon Creek
LC	Unnamed Wash to Pierce Wash (EDW)	Bison Ranch WWTP outfall at 34°23'31"/110°31'29" to Pierce Seep
LC	Unnamed wash, tributary to Rio de Flag River (Bow and Arrow Wash)	Treated municipal wastewater is piped from the Rio de Flag WWTP through a city-wide reuse system to the main effluent storage pond that is in an unnamed wash.
LC	Walnut Creek	Headwaters to confluence with Billy Creek
LC	Water Canyon Creek	Headwaters to confluence with the Little Colorado River
LC	Whale Lake (EDW)	35°11'13"/111°35'21"
LC	Whipple Lake	34°16'49"/109°58'29"
LC	White Mountain Reservoir	34°00'12"/109°30'39"
LC	Willow Creek	Headwaters to confluence with Clear Creek
LC	Willow Springs Canyon Creek	Headwaters to confluence with Chevelon Creek

LC	Willow Springs Lake	34°18'13"/110°52'16"
LC	Woodland Reservoir	34°07'35"/109°57'01"
LC	Woods Canyon Creek	Headwaters to confluence with Chevelon Creek
LC	Woods Canyon Lake	34°20'09"/110°56'45"
MG	Agua Fria River	Headwaters to confluence with unnamed tributary at 34°35'14"/112°16'18"
MG	Agua Fria River	Below Lake Pleasant to the City of El Mirage WWTP at ' 33°34'20"/112°18'32"
MG	Agua Fria River	Below 2 km downstream of the City of El Mirage WWTP to City of Avondale WWTP outfall at 33°23'55"/112°21'16"
MG	Agua Fria River	From City of Avondale WWTP outfall to confluence with Gila River
MG	Agua Fria River (EDW)	Below confluence with unnamed tributary to State Route 169
MG	Agua Fria River (EDW)	From City of El Mirage WWTP outfall to 2 km downstream
MG	Andorra Wash	Headwaters to confluence with Cave Creek Wash
MG	Antelope Creek	Headwaters to confluence with Martinez Creek
MG	Arlington Canal	From Gila River at 33°20'54"/112°35'39" to Gila River at 33°13'44"/112°46'15"
MG	Arnett Creek	Headwaters to Queen Creek @ 33°16'43.24"/111°10'12.49"
MG	Ash Creek	Headwaters to confluence with Tex Canyon
MG	Beehive Tank	32°52'37"/111°02'20"
MG	Big Bug Creek	Headwaters to confluence with Eugene Gulch
MG	Big Bug Creek	Below confluence with Eugene Gulch to confluence with Agua Fria River
MG	Black Canyon Creek	Headwaters to confluence with the Agua Fria River
MG	Blind Indian Creek	Headwaters to confluence with the Hassayampa River
MG	Cash Gulch	Headwaters to Jersey Gulch @ 34°25'31.39"/112°25'30.96"
MG	Cave Creek	Headwaters to the Cave Creek Dam
MG	Cave Creek	Cave Creek Dam to the Arizona Canal
MG	Centennial Wash	Headwaters to confluence with the Gila River at 33°16'32"/112°48'08"
MG	Centennial Wash Ponds	33°54'52"/113°23'47"
MG	Chaparral Park Lake	Hayden Road & Chaparral Road, Scottsdale at 33°30'40"/111°54'27"
MG	Corgett Wash	From Corgett Wash WRF outfall at 33°21'42", -112°27'05" to Gila River. The discharge point is 0.5 miles from the ephemeral conveyance Corgett Wash. The Gila River is then 1.5 miles downstream from Corgett Wash.
MG	Devils Canyon	Headwaters to confluence with Mineral Creek
MG	Eldorado Park Lake	Miller Road & Oak Street, Tempe at 33°28'25"/ 111°54'53"
MG	Eugene Gulch	Headwaters to Big Bug Creek @ 34°27'11.51"/112°18'30.95"
MG	French Gulch	Headwaters to confluence with Hassayampa River
MG	Galena Gulch	Headwaters to confluence with the Agua Fria River
MG	Galloway Wash (EDW)	Town of Cave Creek WWTP outfall at 33°50'15"/ 111°57'35" to confluence with Cave Creek
MG	Gila River	Ashurst-Hayden Dam to the Town of Florence WWTP outfall at 33°02'20"/111°24'19"
MG	Gila River	Felix Road to the Gila River Indian Reservation boundary
MG	Gila River	Gillespie Dam to confluence with Painted Rock Dam
MG	Gila River (EDW)	Town of Florence WWTP outfall to Felix Road
MG	Groom Creek	Headwaters to confluence with the Hassayampa River
MG	Hassayampa River	Below confluence with unnamed tributary to confluence with unnamed tributary at 33°51"52"/112°39'56".
MG	Hassayampa River	Below Buckeye Irrigation Company canal to the Gila River
MG	Hassayampa River	From City of Buckeye-Palo Verde Road WWTP outfall at 33° 23' 54.3", -112° 40' 33.7" to Buckeye Canal
MG	Horsethief Lake	34°09'42"/112°17'57"
MG	Indian Bend Wash	Headwaters to confluence with the Salt River
MG	Indian Bend Wash Lakes	Scottsdale at 33°30'32"/111°54'24"
MG	Indian School Park Lake	Indian School Road & Hayden Road, Scottsdale at 33°29'39"/111°54'37"
MG	Jersey Gulch	Headwaters to Hassayampa River @ 34°25'40.16"/112°25'45.64"
MG	Kiwanis Park Lake	6000 South Mill Avenue, Tempe at 33°22'27"/111°56'22"
MG	Lake Pleasant, Lower	33°50'32"/112°16'03"
MG	Lion Canyon	Headwaters to confluence with Weaver Creek
MG	Lynx Creek	Headwaters to confluence with unnamed tributary at 34°34'29"/112°21'07"
MG	Lynx Creek	Below confluence with unnamed tributary at 34°34'29"/112°21'07" to confluence with Agua Fria River
MG	Lynx Lake	34°31'07"/112°23'07"
MG	Martinez Canyon	Headwaters to confluence with Box Canyon
MG	Martinez Creek	Headwaters to confluence with the Hassayampa River
MG	McKellips Park Lake	Miller Road & McKellips Road, Scottsdale at 33°27'14"/111°54'49"
MG	McMicken Wash (EDW)	City of Peoria Jomax WWTP outfall at 33°43'31"/ 112°20'15" to confluence with Agua Fria River
MG	Mineral Creek	Headwaters to 33°12'34"/110°59'58"
MG	Mineral Creek	End of diversion channel to confluence with Gila River
MG	Minnehaha Creek	Headwaters to confluence with the Hassayampa River
MG	Money Metals Trib	Headwaters to Unnamed Trib (UB1)
MG	New River	Headwaters to Interstate 17 at 33°54'19.5"/112°08'46"
MG	New River	Below Interstate 17 to confluence with Agua Fria River
MG	Painted Rock Reservoir	33°04'23"/113°00'38"
MG	Papago Park Ponds	Galvin Parkway, Phoenix at 33°27'15"/111°56'45"
MG	Perry Mesa Tank	34°11'03"/112°02'01"
MG	Phoenix Area Canals	Granite Reef Dam to all municipal WTP intakes
MG	Phoenix Area Canals	Below municipal WTP intakes and all other locations
MG	Picacho Reservoir	32°51'10"/111°28'25"
MG	Poland Creek	Headwaters to confluence with Lorena Gulch
MG	Poland Creek	Below confluence with Lorena Gulch to confluence with Black Canyon Creek
MG	Queen Creek	Headwaters to the Town of Superior WWTP outfall at 33°16'33"/111°07'44"
MG	Queen Creek	Below Potts Canyon to ' Whitlow Dam
MG	Queen Creek	Below Whitlow Dam to confluence with Gila River
MG	Queen Creek (EDW)	Below Town of Superior WWTP outfall to confluence with Potts Canyon
MG	Salt River	2 km below Granite Reef Dam to City of Mesa NW WRF outfall at 33°26'22"/111°53'14"
MG	Salt River	Below Tempe Town Lake to Interstate 10 bridge
MG	Salt River	Below Interstate 10 bridge to the City of Phoenix 23rd Avenue WWTP outfall at 33°24'44"/ 112°07'59"
MG	Salt River (EDW)	City of Mesa NW WRF outfall to Tempe Town Lake
MG	Salt River (EDW)	From City of Phoenix 23rd Avenue WWTP outfall to confluence with Gila River
MG	Siphon Draw (EDW)	Superstition Mountains CFD WWTP outfall at 33°21'40"/111°33'30" to 6 km downstream

MG	Sycamore Creek	Headwaters to confluence with Tank Canyon
MG	Sycamore Creek	Below confluence with Tank Canyon to confluence with Agua Fria River
MG	The Lake Tank	32°54'14"/111°04'15"
MG	Tule Creek	Headwaters to confluence with the Agua Fria River
MG	Turkey Creek	Below confluence with unnamed tributary to confluence with Poland Creek
MG	Unnamed Trib (UQ2) to Queen Creek	Headwaters to Queen Creek @ 33°18'26.15"/111°04'19.3"
MG	Unnamed Trib (UQ3) to Queen Creek	Headwaters to Queen Creek @ 33°18'33.75"/111°04'02.61"
MG	Unnamed Trib to Big Bug Creek (UB1)	Headwaters to Big Bug Creek @ 34°25'38.86"/112°22'29.32"
MG	Unnamed Trib to Eugene Gulch	Headwaters to Eugene Gulch @ 34°27'34.6"/112°20'24.53"
MG	Unnamed Trib to Lynx Creek	Headwaters to Superior Mining Div. Outfall @ Lynx Creek @ 34°27'10.57"/112°23'14.22"
MG	Unnamed tributary to Deadman's Wash	From EPCOR Water Anthem Water Campus WWTP outfall at 33° 50' 47.9", -112° 08' 25.6" to Deadman's Wash
MG	Unnamed tributary to Gila River (EDW)	Gila Bend WWTP outfall to confluence with the Gila River
MG	Unnamed tributary to Gila River (EDW)	North Florence WWTP outfall at 33°03'50"/ 111°23'13" to confluence with Gila River
MG	Unnamed tributary to the Agua Fria River	From Softwinds WWTP outfall at 34˚ 32' 43", -112˚ 14' 21" to the Agua Fria River. Discharges to Agua Fria which is a jurisdictional tributary to Lake Pleasant (TNW)
MG	Unnamed tributary to Winters Wash	From Balterra WWTP outfall at 33? 29' 45", -112? 55' 10" to Winters Wash
MG	Unnamed Wash (EDW)	Luke Air Force Base WWTP outfall at 33°32'21"/112°19'15" to confluence with the Agua Fria River
MG	Unnamed Wash (EDW)	Town of Prescott Valley WWTP outfall at 34°35'16"/ 112°16'18" to confluence with the Agua Fria River
MG	Unnamed Wash (EDW)	Town of Cave Creek WRF outfall at 33°48'02"/ 111°59'22" to confluence with Cave Creek
MG	Unnamed wash, tributary to Black Canyon Creek	From Black Canyon Ranch RV Resort WWTP outfall to Agua Fria River.
MG	Unnamed wash, tributary to Queen Creek	Queen Creek, AZ15050100-013B is closest WBID to outfall coordinates
MG	Unnamed wash, tributary to Waterman Wash	The Rainbow Valley outfall discharges to an unnamed wash to Waterman wash to the Gila River.
MG	Wagner Wash (EDW)	City of Buckeye Festival Ranch WRF outfall at 33°39'14"/112°40'18" to 2 km downstream
MG	Walnut Canyon Creek	Headwaters to confluence with the Gila River
MG	Weaver Creek	Headwaters to confluence with Antelope Creek, tributary to Martinez Creek
MG	White Canyon	Headwaters to confluence with Walnut Canyon Creek
MG	Yavapai Lake (EDW)	Town of Prescott Valley WWTP outfall 002 at 34°36'07"/112°18'48" to Navajo Wash
SC	Agua Caliente Lake	12325 East Roger Road, Tucson 32°16'51"/ 110°43'52"
SC	Agua Caliente Wash	Headwaters to confluence with Soldier Trail
SC	Agua Caliente Wash	Below Soldier Trail to confluence with Tanque Verde Creek
SC	Aguirre Wash	From the Tohono O'odham Indian Reservation boundary to 32°28'38"/111°46'51"
SC	Alambre Wash	Headwaters to confluence with Brawley Wash
SC	Alamo Wash	Headwaters to confluence with Rillito Creek
SC	Altar Wash	Headwaters to confluence with Brawley Wash
SC	Alum Gulch	Headwaters to 31°28'20"/110°43'51"
SC	Alum Gulch	From 31°28'20"/110°43'51" to 31°29'17"/110°44'25"
SC	Arivaca Creek	Headwaters to confluence with Altar Wash
SC	Arivaca Lake	31°31'52"/111°15'06"
SC	Atterbury Wash	Headwaters to confluence with Pantano Wash
SC	Bear Grass Tank	31°33'01"/111°11'03"
SC	Big Wash	Headwaters to confluence with Cañada del Oro
SC	Black Wash (EDW)	Pima County WWMD Avra Valley WWTP outfall at 32°09'58"/111°11'17" to confluence with Brawley Wash
SC	Bog Hole Tank	31°28'36"/110°37'09"
SC	Brawley Wash	Headwaters to confluence with Los Robles Wash
SC	Cañada del Oro	Headwaters to State Route 77
SC	Cañada del Oro	Below State Route 77 to confluence with the Santa Cruz River
SC	Cienega Creek	Headwaters to confluence with Gardner Canyon
SC	Davidson Canyon	Headwaters to unnamed spring at 31°59'00"/ 110°38'49"
SC	Davidson Canyon (OAW)	From unnamed Spring to confluence with unnamed tributary at 31°59'09"/110°38'44"
SC	Davidson Canyon (OAW)	Below confluence with unnamed tributary to unnamed spring at 32°00'40"/110°38'36"
SC	Davidson Canyon (OAW)	From unnamed spring to confluence with Cienega Creek
SC	Empire Gulch	Headwaters to unnamed spring at 31°47'18"/ 110°38'17"
SC	Empire Gulch	From 31°47'18"/110°38'17" to 31°47'03"/110°37'35"
SC	Empire Gulch	From 31°47'03"/110°37'35" to 31°47'05"/ 110°36'58"
SC	Empire Gulch	From 31°47'05"/110°36'58" to confluence with Cienega Creek
SC	Flux Canyon	Headwaters to confluence with Alum Gulch
SC	Gardner Canyon Creek	Headwaters to confluence with Sawmill Canyon
SC	Gardner Canyon Creek	Below Sawmill Canyon to confluence with Cienega Creek
SC	Greene Wash	Santa Cruz River to the Tohono O'odham Indian Reservation boundary
SC	Greene Wash	Tohono O'odham Indian Reservation boundary to confluence with Santa Rosa Wash at 32°53'52"/ 111°56'48"
SC	Harshaw Creek	Headwaters to confluence with Sonoita Creek at
SC	Hit Tank	32°43'57"/111°03'18"
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border
SC	Huachuca Tank	31°21'11"/110°30'18"
SC	Humboldt Canyon	Headwaters to Alum Gulch @ 31°28'25.84"/110°44'01.57"
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River
SC	Kennedy Lake	Mission Road & Ajo Road, Tucson at 32°10'49"/ 111°00'27"
SC	Lakeside Lake	8300 East Stella Road, Tucson at 32°11'11"/ 110°49'00"
SC	Lemmon Canyon Creek	Headwaters to confluence with unnamed tributary at 32°23'48"/110°47'49"
SC	Lemmon Canyon Creek	Below unnamed tributary at 32°23'48"/110°47'49" to confluence with Sabino Canyon Creek
SC	Los Robles Wash	Headwaters to confluence with the Santa Cruz River
SC	Madera Canyon Creek	Headwaters to confluence with unnamed tributary at 31°43'42"/110°52'51"
SC	Madera Canyon Creek	Below unnamed tributary at 31°43'42"/110°52'51 to confluence with the Santa Cruz River
SC	Mattie Canyon	Headwaters to confluence with Cienega Creek
SC	Oak Tree Canyon	Headwaters to confluence with Cienega Creek
SC	Palisade Canyon	Headwaters to confluence with unnamed tributary at 32°22'33"/110°45'31"
SC	Palisade Canyon	Below 32°22'33"/110°45'31" to unnamed tributary of Sabino Canyon
SC	Pantano Wash	Headwaters to confluence with Tanque Verde Creek
SC	Parker Canyon Creek	Headwaters to confluence with unnamed tributary at 31°24'17"/110°28'47"
SC	Parker Canyon Lake	31°25'35"/110°27'15"
SC	Patagonia Lake	31°29'56"/110°50'49"

SC	Peña Blanca Lake	31°24'15"/111°05'12"
SC	Potrero Creek	Headwaters to Interstate 19
SC	Potrero Creek	Below Interstate 19 to confluence with Santa Cruz River
SC	Puertocito Wash	Headwaters to confluence with Altar Wash
SC	Quitobaquito Spring	(Pond and Springs) 31°56'39"/113°01'06"
SC	Redrock Canyon Creek	Headwaters to confluence with Harshaw Creek
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River
SC	Romero Canyon Creek	Headwaters to confluence with unnamed tributary at 32°24'29"/110°50'39"
SC	Rose Canyon Creek	Headwaters to confluence with Sycamore Canyon
SC	Rose Canyon Lake	32°23'13"/110°42'38"
SC	Ruby Lakes	31°26'29"/111°14'22"
SC	Sabino Creek	Headwaters to 32°23'20"/110°47'06"
SC	Sabino Creek	Below 32°23'20"/110°47'06" to confluence with Tanque Verde River
SC	Salero Ranch Tank	31°35'43"/110°53'25"
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border
SC	Santa Cruz River	Baumgartner Road to the Ak Chin Indian Reservation boundary
SC	Santa Cruz River (EDW)	Nogales International WWTP outfall to the Tubac Bridge
SC	Santa Cruz River, West Branch	Headwaters to the confluence with Santa Cruz River
SC	Santa Cruz Wash, North Branch	Headwaters to City of Casa Grande WRF outfall at 32°54'57"/111°47'13"
SC	Santa Cruz Wash, North Branch (EDW)	City of Casa Grande WRF outfall to 1 km downstream
SC	Santa Rosa Wash	Below Tohono O'odham Indian Reservation to the Ak Chin Indian Reservation
SC	Santa Rosa Wash (EDW)	Palo Verde Utilities CO-WRF outfall at 33°04'20"/ 112°01'47" to the Chin Indian Reservation
SC	Soldier Tank	32°25'34"/110°44'43"
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/110°45'31"
SC	Sonoita Creek	Below 1600 feet downstream of Town of Patagonia WWTP outfall groundwater upwelling point to confluence with the Santa Cruz River
SC	Split Tank	31°28'11"/111°05'12"
SC	Sutherland Wash	Headwaters to confluence with Cañada del Oro
SC	Sycamore Canyon	Headwaters to 32°21'60" / 110°44'48"
SC	Sycamore Canyon	From 32°21'60" / 110°44'48" to Sycamore Reservoir
SC	Sycamore Reservoir	32°20'57"/110°47'38"
SC	Tanque Verde Creek	Headwaters to Houghton Road
SC	Tanque Verde Creek	Below Houghton Road to confluence with Rillito Creek
SC	Three R Canyon	Headwaters to Unnamed Trib to Three R Canyon at 31°28'26"/110°46'04"
SC	Three R Canyon	From 31°28'26"/110°46'04" to 31°28'28"/110°47'15" (Cox Gulch)
SC	Three R Canyon	From (Cox Gulch) 31°28'28"/110°47'15" to confluence with Sonoita Creek
SC	Tinaja Wash	Headwaters to confluence with the Santa Cruz River
SC	Unnamed Trib (Endless Mine Tributary) to Harshaw Creek	Headwaters to Harshaw Creek @ 31°26'12.3"/110°43'27.26"
SC	Unnamed Trib (UA2) to Alum Gulch	Headwaters to Alum Gulch @ 31°28'49.67"/110°44'12.86"
SC	Unnamed Trib to Cox Gulch	Headwaters to Cox Gulch @ 31°27'53.86"/110°46'51.29"
SC	Unnamed Trib to Three R Canyon	Headwaters to Three R Canyon @ 31°28'25.82"/110°46'04.11"
SC	Unnamed Wash to Canada Del Oro (EDW)	Oracle Sanitary District WWTP outfall at 32°36'54"/ 110°48'02" to 5 km downstream
SC	Unnamed Wash to Canada del Oro (EDW)	Saddlebrook WWTP outfall at 32°32'00"/110°53'01" to confluence with Cañada del Oro
SC	Unnamed Wash to Santa Cruz Wash (EDW)	Arizona City Sanitary District WWTP outfall at 32°45'43"/111°44'24" to confluence with Santa Cruz Wash
SC	Vekol Wash	Headwater to Santa Cruz Wash: Those reaches not located on the Ak-Chin, Tohono O'odham and Gila River Indian Reservations
SC	Wakefield Canyon	Headwaters to confluence with unnamed tributary at 31°52'48"/110°26'27"
SC	Wakefield Canyon	Below confluence with unnamed tributary to confluence with Cienega Creek
SC	Wild Burro Canyon	Headwaters to confluence with unnamed tributary at 32°27'43"/111°05'47"
SC	Wild Burro Canyon	Below confluence with unnamed tributary to confluence with Santa Cruz River
SP	Abbot Canyon	Headwaters to confluence with Whitewater Draw
SP	Aravaipa Creek	Headwaters to confluence with Stowe Gulch
SP	Ash Creek	Headwaters to 31°50'28"/109°40'04"
SP	Babocomari River	Headwaters to confluence with the San Pedro River
SP	Bass Canyon Creek	Headwaters to confluence with unnamed tributary at 32°26'06"/110°13'22"
SP	Bass Canyon Tank	32°24'00"/110°13'00"
SP	Blacktail Pond	Fort Huachuca Military Reservation at 31°31'04"/110°24'47", headwater lake in Blacktail Canyon
SP	Booger Canyon	Headwaters to confluence with Aravaipa Creek
SP	Brewery Gulch	Headwaters to Mule Gulch @ 31°26'27.88"/109°54'48.1"
SP	Buck Canyon	Headwaters to confluence with Buck Creek Tank
SP	Buck Canyon	Below Buck Creek Tank to confluence with Dry Creek
SP	Buehman Canyon Creek	Below confluence with unnamed tributary to confluence with San Pedro River
SP	Buehman Canyon Creek (OAW)	Headwaters to confluence with unnamed tributary at 32°24'54"/110°32'10"
SP	Bullock Canyon	Headwaters to confluence with Buehman Canyon
SP	Carr Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River
SP	Copper Creek	Headwaters to confluence with Prospect Canyon
SP	Copper Creek	Below confluence with Prospect Canyon to confluence with the San Pedro River
SP	Curry Draw	Headwaters to San Pedro River
SP	Deer Creek	Headwaters to confluence with unnamed tributary at 32°59'57"/110°20'11"
SP	Deer Creek	Below confluence with unnamed tributary to confluence with Aravaipa Creek
SP	Dixie Canyon	Headwaters to confluence with Mexican Canyon
SP	Double R Canyon Creek	Headwaters to confluence with Bass Canyon
SP	Dry Canyon	Headwaters to confluence with Whitewater draw
SP	East Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'54"/ 110°19'44"
SP	Espiritu Canyon Creek	Headwaters to confluence with Soza Wash
SP	Fourmile Canyon Creek	Headwaters to confluence with Aravaipa Creek
SP	Fourmile Canyon, Left Prong	Headwaters to confluence with unnamed tributary at 32°43'15"/110°23'46"
SP	Fourmile Canyon, Left Prong	Below confluence with unnamed tributary to confluence with Fourmile Canyon Creek
SP	Fourmile Canyon, Right Prong	Headwaters to confluence with Fourmile Canyon
SP	Gadwell Canyon	Headwaters to confluence with Whitewater Draw
SP	Garden Canyon Creek	Headwaters to confluence with unnamed tributary at 31°29'01"/110°19'44"
SP	Garden Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River

SP	Glance Creek	Headwaters to confluence with Whitewater Draw
SP	Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'52"/ 110°19'49"
SP	Greenbush Draw	From U.S./Mexico border to confluence with San Pedro River
SP	Greenbush Draw	From City of Bisbee San Jose WWTP outfall at 31˚ 20' 35.4", -109˚ 56' 10.2" to San Pedro River. The City of Bisbee San Jose WWTP outfall discharges to Greenbush Draw.
SP	Hidden Pond	Fort Huachuca Military Reservation at 32°30'30"/ 109°22'17"
SP	Horse Camp Canyon	Headwaters to confluence with Aravaipa Creek
SP	Hot Springs Canyon	Headwaters to confluence with the San Pedro River
SP	Johnson Canyon	Headwaters to Whitewater Draw at 31°32'46"/ 109°43'32"
SP	Leslie Creek	Headwaters to confluence with Whitewater Draw
SP	Lower Garden Canyon Pond	Fort Huachuca Military Reservation at 31°29'39"/ 110°18'34"
SP	Mexican Canyon	Headwaters to confluence with Dixie Canyon
SP	Miller Canyon	Headwaters to Broken Arrow Ranch Road at 31°25'35"/110°15'04"
SP	Miller Canyon	Below Broken Arrow Ranch Road to confluence with the San Pedro River
SP	Montezuma Creek	Headwaters to Mexico Border @ 31°20'01.87"/110°13'40.97"
SP	Mountain View Golf Course Pond	Fort Huachuca Military Reservation at 31°32'14"/ 110°18'52"
SP	Mule Gulch	Headwaters to the Lavender Pit at 31°26'11"/ 109°54'02"
SP	Mule Gulch	The Lavender Pit to the' Highway 80 bridge at 31°26'30"/109°49'28"
SP	Mule Gulch	Below the Highway 80 bridge to confluence with Whitewater Draw
SP	Oak Grove Canyon	Headwaters to confluence with Turkey Creek
SP	Officers Club Pond	Fort Huachuca Military Reservation at 31°32'51"/ 110°21'37"
SP	Paige Canyon Creek	Headwaters to confluence with the San Pedro River
SP	Parsons Canyon	Headwaters to confluence with Aravaipa Creek
SP	Ramsey Canyon Creek	Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"
SP	Rattlesnake Creek	Headwaters to confluence with Brush Canyon
SP	Rattlesnake Creek	Below confluence with Brush Canyon to confluence with Aravaipa Creek
SP	Redfield Canyon	Headwaters to confluence with unnamed tributary at 32°33'40"/110°18'42"
SP	Redfield Canyon	Below confluence with unnamed tributary to confluence with the San Pedro River
SP	Rucker Canyon	Headwaters to confluence with Whitewater Draw
SP	Rucker Canyon Lake	31°46'46"/109°18'30"
SP	Soto Canyon	Headwaters to confluence with Dixie Canyon
SP	Swamp Springs Canyon Creek	Headwaters to confluence with Redfield Canyon
SP	Sycamore Pond I	Fort Huachuca Military Reservation at 31°35'12"/ 110°26'11"
SP	Sycamore Pond II	Fort Huachuca Military Reservation at 31°34'39"/ 110°26'10"
SP	Turkey Creek	Headwaters to confluence with Aravaipa Creek
SP	Unnamed Wash Mt. Lemmon (EDW)	Mt. Lemmon WWTP outfall at 32°26'51"/110°45'08" to 0.25 km downstream
SP	Virgus Canyon	Headwaters to confluence with Aravaipa Creek
SP	Walnut Gulch	Headwaters to Tombstone WWTP outfall at 31°43'47"/110°04'06"
SP	Walnut Gulch	Tombstone Wash to confluence with San Pedro River
SP	Walnut Gulch (EDW)	Tombstone WWTP outfall to the confluence with Tombstone Wash
SP	Woodcutters Pond	Fort Huachuca Military Reservation at 31°30'09"/ 110°20'12"
SR	Barnhard Creek	Headwaters to confluence with unnamed tributary at 34°05'37/111°26'40"
SR	Barnhardt Creek	Below confluence with unnamed tributary to confluence with Rye Creek
SR	Basin Lake	33°55'00"/109°26'09"
SR	Bear Creek	Headwaters to confluence with the Black River
SR	Bear Wallow Creek, North Fork (OAW)	Headwaters to confluence with the Bear Wallow Creek
SR	Bear Wallow Creek, South Fork (OAW)	Headwaters to confluence with the Bear Wallow Creek
SR	Big Lake	33°52'36"/109°25'33"
SR	Bloody Tanks Wash	Headwaters to Schultze Ranch Road
SR	Bloody Tanks Wash	Schultze Ranch Road to confluence with Miami Wash
SR	Boulder Creek	Headwaters to confluence with LaBarge Creek
SR	Campaign Creek	Headwaters to Roosevelt Lake
SR	Canyon Creek	Headwaters to the White Mountain Apache Reservation boundary
SR	Centerfire Creek	Headwaters to confluence with the Black River
SR	Chambers Draw Creek	Headwaters to confluence with the North Fork of the East Fork of Black River
SR	Cherry Creek	Headwaters to confluence with unnamed tributary at 34°05'09"/110°56'07"
SR	Christopher Creek	Headwaters to confluence with Tonto Creek
SR	Cold Spring Canyon Creek	Headwaters to confluence with unnamed tributary at 33°49'50"/110°52'58"
SR	Cold Spring Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Coon Creek	Headwaters to confluence with unnamed tributary at 33°46'41"/110°54'26"
SR	Coon Creek	Below confluence with unnamed tributary to confluence with Salt River
SR	Coyote Creek	Headwaters to confluence with the Black River, East Fork
SR	Deer Creek (D2E)	Headwaters to confluence with the Black River, East Fork
SR	Del Shay Creek	Headwaters to confluence with Gun Creek
SR	Devils Chasm Creek	Headwaters to confluence with unnamed tributary at 33°48'46" /110°52'35"
SR	Dipping Vat Reservoir	33°55'47"/109°25'31"
SR	Double Cienega Creek	Headwaters to confluence with Fish Creek
SR	Fish Creek	Headwaters to confluence with the Salt River
SR	Five Point Mountain Tributary	Headwaters to Pinto Creek @ 33°22'25.93"/110°58'14"
SR	Gibson Mine Tributary	Headwaters to Pinto Creek @ 33°20'48.99"/110°56'42.31"
SR	Gold Creek	Headwaters to confluence with unnamed tributary at 33°59'47"/111°25'10"
SR	Gold Creek	Below confluence with unnamed tributary to confluence with Tonto Creek
SR	Gordon Canyon Creek	Headwaters to confluence with Hog Canyon
SR	Gordon Canyon Creek	Below confluence with Hog Canyon to confluence with Haigler Creek
SR	Greenback Creek	Headwaters to confluence with Tonto Creek
SR	Home Creek	Headwaters to confluence with the Black River, West Fork
SR	Horse Camp Creek	Headwaters to confluence with unnamed tributary at 33°54'00"/110°50'07"
SR	Horse Camp Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Houston Creek	Headwaters to confluence with Tonto Creek
SR	Hunter Creek	Headwaters to confluence with Christopher Creek
SR	LaBarge Creek	Headwaters to Canyon Lake

SR	Lake Sierra Blanca	33°52'25"/109°16'05"
SR	Miami Wash	Headwaters to confluence with Pinal Creek
SR	Mule Creek	Headwaters to confluence with Canyon Creek
SR	Open Draw Creek	Headwaters to confluence with the East Fork of Black River
SR	P B Creek	Headwaters to Forest Service Road #203 at 33°57'08"/110°56'12"
SR	Pinal Creek	Headwaters to confluence with unnamed EDW wash (Globe WWTP) at 33°25'29"/110°48'20"
SR	Pinal Creek	From 33°26'55"/110°49'25" to Lower Pinal Creek water treatment plant outfall #001 at 33°31'04"/ 110°51'55"
SR	Pinal Creek	From See Ranch Crossing to confluence with unnamed tributary at 33°35'28"/110°54'31"
SR	Pinal Creek (EDW)	Confluence with unnamed EDW wash (Globe WWTP) to 33°25'29"/110°48'20"
SR	Pine Creek	Headwaters to confluence with the Salt River
SR	Pinto Creek	Below confluence with unnamed tributary to Roosevelt Lake
SR	Pole Corral Lake	33°30'38"/110°00'15"
SR	Pueblo Canyon Creek	Headwaters to confluence with unnamed tributary at 33°50'23"/110°51'37"
SR	Pueblo Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek
SR	Reevis Creek	Headwaters to confluence with Pine Creek
SR	Reservation Creek	Headwaters to confluence with the Black River
SR	Reynolds Creek	Headwaters to confluence with Workman Creek
SR	Russell Gulch	From Headwaters to confluence with Miami Wash
SR	Salome Creek	Headwaters to confluence with the Salt River
SR	Salt House Lake	33°57'04"/109°20'11"
SR	Slate Creek	Headwaters to confluence with Tonto Creek
SR	Snake Creek (OAW)	Headwaters to confluence with the Black River
SR	Spring Creek	Headwaters to confluence with Tonto Creek
SR	Stinky Creek (OAW)	Headwaters to confluence with the Black River, West Fork
SR	Thomas Creek	Headwaters to confluence with Beaver Creek
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River
SR	Turkey Creek	Headwaters to confluence with Rock Creek
SR	Unnamed trib to Black River North Fork East Fork	Headwaters to Black River NF of EF
SR	Wildcat Creek	Headwaters to confluence with Centerfire Creek
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek
UG	Ash Creek	Headwaters to confluence with unnamed tributary at 32°46'15"/109°51'45"
UG	Ash Creek	Below confluence with unnamed tributary to confluence with the Gila River
UG	Bennett Wash	Headwaters to the Gila River
UG	Buckelew Creek	Headwaters to confluence with Castle Creek
UG	Castle Creek	Headwaters to confluence with Campbell Blue Creek
UG	Cave Creek	Below Coronado National Forest boundary to New Mexico border
UG	Chase Creek	Headwaters to the Phelps-Dodge Morenci Mine
UG	Chase Creek	Below the Phelps-Dodge Morenci Mine to confluence with San Francisco River
UG	Chitty Canyon Creek	Headwaters to confluence with Salt House Creek
UG	Cima Creek	Headwaters to confluence with Cave Creek
UG	Cluff Reservoir #1	32°48'55"/109°50'46"
UG	Cluff Reservoir #3	32°48'21"/109°51'46"
UG	Coleman Creek	Headwaters to confluence with Campbell Blue Creek
UG	Dankworth Lake	32°43'13"/109°42'17"
UG	Deadman Canyon Creek	Below confluence with unnamed tributary to confluence with Graveyard Wash
UG	Eagle Creek	Headwaters to confluence with unnamed tributary at 33°22'32"/109°29'43"
UG	East Eagle Creek	Headwaters to confluence with Eagle Creek
UG	East Turkey Creek	Headwaters to confluence with unnamed tributary at 31°58'22"/109°12'20"
UG	East Turkey Creek	Below confluence with unnamed tributary to terminus near San Simon River
UG	East Whitetail	Headwaters to terminus near San Simon River
UG	Emigrant Canyon	Headwaters to terminus near San Simon River
UG	Evans Pond #1	32°49'19"/109°51'12"
UG	Evans Pond #2	32°49'14"/109°51'09"
UG	Fishhook Creek	Headwaters to confluence with the Blue River
UG	Foote Creek	Headwaters to confluence with the Blue River
UG	Frye Canyon Creek	Headwaters to Frye Mesa Reservoir
UG	Frye Canyon Creek	Frye Mesa reservoir to terminus at Highline Canal.
UG	Frye Mesa Reservoir	32°45'14"/109°50'02"
UG	Georges Tank	33°51'24"/109°08'30"
UG	Gibson Creek	Headwaters to confluence with Marijilda Creek
UG	Lanphier Canyon	Headwaters to confluence with the Blue River
UG	Little Blue Creek	Headwaters to confluence with Dutch Blue Creek
UG	Little Creek	Headwaters to confluence with the San Francisco River
UG	Marijilda Creek	Headwaters to confluence with Gibson Creek
UG	Marijilda Creek	Below confluence with Gibson Creek to confluence with Stockton Wash
UG	Markham Creek	Headwaters to confluence with the Gila River
UG	Pigeon Creek	Headwaters to confluence with the Blue River
UG	Roper Lake	32°45'23"/109°42'14"
UG	Sheep Tank	32°46'14"/109°48'09"
UG	Smith Pond	32°49'15"/109°50'36"
UG	Squaw Creek	Headwaters to confluence with Thomas Creek
UG	Stone Creek	Headwaters to confluence with the San Francisco River
UG	Strayhorse Creek	Headwaters to confluence with the Blue River
UG	Thomas Creek	Headwaters to confluence with Rousensock Creek
UG	Tinny Pond	33°47'49"/109°04'27"
VR	American Gulch	Headwaters to the Northern Gila County Sanitary District WWTP outfall at 34°14'02"/111°22'14"
VR	American Gulch (EDW)	Below Northern Gila County Sanitary District WWTP outfall to confluence with the East Verde River
VR	Apache Creek	Headwaters to confluence with Walnut Creek
VR	Ashbrook Wash	Headwaters to the Fort McDowell Indian Reservation boundary
VR	Aspen Creek	Headwaters to confluence with Granite Creek

VR	Banning Creek	Headwaters to Granite Creek @ 34°31'01.02"/112°28'37.63"
VR	Bar Cross Tank	35°00'41"/112°05'39"
VR	Barrata Tank	35°02'43"/112°24'21"
VR	Big Chino Wash	Headwaters to confluence with Sullivan Lake
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"
VR	Bitter Creek (EDW)	Jerome WWTP outfall to the Yavapai Apache Indian Reservation boundary
VR	Black Canyon Creek	Headwaters to confluence with unnamed tributary at 34°39'20"/112°05'06"
VR	Black Canyon Creek	Below confluence with unnamed tributary to confluence with the Verde River
VR	Bonita Creek	Headwaters to confluence with Ellison Creek
VR	Bray Creek	Headwaters to confluence with Webber Creek
VR	Butte Creek	Headwaters to Miller Creek @ 34°32'49.03"/112°28'29.3"
VR	Camp Creek	Headwaters to confluence with Verde River
VR	Cereus Wash	Headwaters to the Fort McDowell Indian Reservation boundary
VR	Chase Creek	Headwaters to confluence with the East Verde River
VR	Clover Creek	Headwaters to confluence with Headwaters of West Clear Creek
VR	Coffee Creek	Headwaters to confluence with Spring Creek
VR	Colony Wash	Headwaters to the Fort McDowell Indian Reservation boundary
VR	Deadman Creek	Headwaters to Horseshoe Reservoir
VR	Del Monte Gulch	Headwaters to confluence with City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46"
VR	Del Monte Gulch (EDW)	City of Cottonwood WWTP outfall 002 at 34°43'57"/ 112°02'46" to confluence with Verde River
VR	Del Rio Dam Lake	34°48'55"/112°28'03"
VR	Dry Beaver Creek	Headwaters to confluence with Beaver Creek
VR	Dry Creek (EDW)	Sedona Ventures WWTP outfall at 34°50'42"/ 111°52'26" to 34°50'02"/ 111°52'17"
VR	Dude Creek	Headwaters to confluence with the East Verde River
VR	Ellison Creek	Headwaters to confluence with the East Verde River
VR	Foxboro Lake	34°53'42"/111°39'55"
VR	Fry Lake	35°03'45"/111°48'04"
VR	Gap Creek	Headwaters to confluence with Government Spring
VR	Gap Creek	Below Government Spring to confluence with the Verde River
VR	Garrett Tank	35°18'57"/112°42'20"
VR	Goldwater Lake, Lower	34°29'56"/112°27'17"
VR	Goldwater Lake, Upper	34°29'52"/112°26'59"
VR	Government Canyon	Headwaters to Granite Creek @ 34°33'29.49"/112°26'53.18"
VR	Granite Basin Lake	34°37'01"/112°32'58"
VR	Granite Creek	Headwaters to Watson Lake
VR	Granite Creek	Below Watson Lake to confluence with the Verde River
VR	Green Valley Lake (EDW)	34°13'54"/111°20'45"
VR	Heifer Tank	35°20'27"/112°32'59"
VR	Hells Canyon Tank	35°04'59"/112°24'07"
VR	Homestead Tank	35°21'24"/112°41'36"
VR	Horse Park Tank	34°58'15"/111°36'32"
VR	Houston Creek	Headwaters to confluence with the Verde River
VR	Huffer Tank	34°27'46"/111°23'11"
VR	J.D. Dam Lake	35°04'02"/112°01'48"
VR	Jacks Canyon	Headwaters to Big Park WWTP outfall at 34°45'46"/ 111°45'51"
VR	Jacks Canyon (EDW)	Below Big Park WWTP outfall to confluence with Dry Beaver Creek
VR	Lime Creek	Headwaters to Horseshoe Reservoir
VR	Mail Creek	Headwaters to East Verde River @ 34°25'03.88"/111°15'49.6"
VR	Manzanita Creek	Headwaters to Granite Creek @ 34°31'31.19"/112°28'44.34"
VR	Masonry Number 2 Reservoir	35°13'32"/112°24'10"
VR	McLellan Reservoir	35°13'09"/112°17'06"
VR	Meath Dam Tank	35°07'52"/112°27'35"
VR	Miller Creek	Headwaters to Granite Creek @ 34°32'48.55"/112°28'12.96"
VR	Mullican Place Tank	34°44'16"/111°36'10"
VR	Munds Creek (EDW), Tributary to Oak Creek	From Pinewood Sanitary District Kay S. Blackman WWTP outfall at 34? 56' 09", -111? 38' 35" to Oak Creek.
VR	North Fork Miller	Headwaters to Miller Creek
VR	North Granite Creek	Headwaters to Granite Creek @ 34°33'04.33"/112°27'50.45"
VR	Oak Creek, West Fork (OAW)	Headwaters to confluence with Oak Creek
VR	Odell Lake	34°56'5"/111°37'53"
VR	Peck's Lake	34°46'51"/112°02'01"
VR	Perkins Tank	35°06'42"/112°04'12"
VR	Pine Creek	Headwaters to confluence with unnamed tributary at 34°21'51"/111°26'49"
VR	Pine Creek	Below confluence with unnamed tributary to confluence with East Verde River
VR	Red Creek	Headwaters to confluence with the Verde River
VR	Reservoir #1	35°13'5"/111°50'09"
VR	Reservoir #2	35°13'17"/111°50'39"
VR	Roundtree Canyon Creek	Headwaters to confluence with Tangle Creek
VR	Scholze Lake	35°11'53"/112°00'37"
VR	Slaugterhouse Gulch	Headwaters to Yavapai Res. Boundary
VR	Spring Creek	Headwaters to confluence with unnamed tributary at 34°57'23"/111°57'21"
VR	Steel Dam Lake	35°13'36"/112°24'54"
VR	Stehr Lake	34°22'01"/111°40'02"
VR	Stoneman Lake	34°46'47"/111°31'14"
VR	Sycamore Creek	Below confluence with unnamed tributary to confluence with Verde River
VR	Sycamore Creek	Headwaters to confluence with Verde River at 34°04'42"/111°42'14"
VR	Tangle Creek	Headwaters to confluence with Verde River
VR	Trinity Tank	35°27'44"/112°48'01"
VR	Unnamed Trib to Granite Creek (UGC)	Headwaters to Yavapai Prescott Reservation Boundary
VR	Unnamed Trib to UGC (UUG)	Headwaters to Unnamed Trib to Granite Creek (UGC)
VR	Unnamed Wash	Flagstaff Meadows WWTP outfall at 35°13'53.54"/ 111°48'40.32"'to Volunteer Wash

VR	Walnut Creek	Headwaters to confluence with Big Chino Wash
VR	Watson Lake	34°34'58"/112°25'26"
VR	Webber Creek	Headwaters to confluence with the East Verde River
VR	Wet Beaver Creek	Headwaters to unnamed springs at 34°41'17"/ 111°34'34"
VR	Whitehorse Lake	35°06'59"/112°00'48"
VR	Williamson Valley Wash	Headwaters to confluence with Mint Wash
VR	Williamson Valley Wash	From confluence of Mint Wash to 10.5 km downstream
VR	Williamson Valley Wash	From 10.5 km downstream of Mint Wash confluence to confluence with Big Chino Wash
VR	Williscraft Tank	35°11'22"/112°35'40"
VR	Willow Creek	Above Willow Creek Reservoir
VR	Willow Valley Lake	34°41'08"/111°20'02"

Historical Note

Table C made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

R18-11-217. Best Management Practices for non-WOTUS Protected Surface Waters

A. The BMPs described in this rule are intended to ensure that activities within the ordinary high-water mark of perennial or intermittent non-WOTUS protected surface waters, or within the bed and bank of other waters that materially impact (i.e., are within 1/4 mile upstream of) non-WOTUS protected surface waters, do not violate applicable surface water quality standards in the non-WOTUS protected surface waters. For purposes of this Section, the activities described in the prior sentence will be referred to as "regulated activities." Depending on the regulated activities conducted, not all of the BMPs described below may be applicable to a particular project. The owner or operator is responsible to consider the BMPs outlined below and to implement those necessary to ensure that the regulated activities will not violate applicable surface water quality standards in the non-WOTUS protected surface water.

B. The BMPs described below are not applicable to any activities that are addressed under an individual or general AZPDES permit that are otherwise regulated under A.R.S. Title 49.

C. Erosion and sedimentation control BMPs:

1. When flow is present in any non-WOTUS protected surface waters within a project area, flow shall not be altered except to prevent erosion or pollution of any non-WOTUS protected surface waters.
2. Any disturbance within the ordinary high-water mark of non-WOTUS protected surface waters or within the bed and banks of other waters, that is not intended to be permanently altered, shall be stabilized as soon as practicable to prevent erosion and sedimentation.
3. When flow in any non-WOTUS protected surface water is sufficient to erode, carry, or deposit material, regulated activities shall cease until:
   a. The flow decreases below the point where sediment movement ceases; or
   b. Control measures have been undertaken, i.e., equipment and material easily transported by flow are protected within non-erodible barriers or moved outside the flow area.
4. Silt laden or turbid water resulting from regulated activities should be managed in a manner to reduce sediment load prior to discharging.
5. No washing or dewatering of fill material should occur within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters. Other than the replacement of native fill or material used to support vegetation rooting or growth, fill placed within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface water must resist washout whether such resistance is derived via particle size limits, presence of a binder, vegetation, or other armoring.

D. Pollutant management BMPs:

1. If regulated activities are likely to violate applicable surface water quality standards in a perennial or intermittent non-WOTUS protected surface water, operations shall cease until the problem is resolved or until control measures have been implemented.
2. Construction material and/or fill (other than native fill or that necessary to support revegetation) placed within surface waters as a result of regulated activities shall not include pollutants in concentrations that will violate applicable surface water quality standards in a perennial or intermittent non-WOTUS protected surface water.

E. Construction phase BMPs:

1. Equipment staging and storage areas or fuel, oil, and other petroleum products storage and solid waste containment should not be located within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface water.
2. Any equipment maintenance, washing, or fueling shall not be done within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters with the following exception: Equipment too large or unwieldy to be readily moved, such as large cranes, may be fueled and serviced in non-WOTUS protected surface waters (but outside of standing or flowing water) provided material specifically manufactured and sold as spill containment is in place during fueling/servicing.
3. All equipment shall be inspected for leaks, all leaks shall be repaired, and all repaired equipment shall be cleaned to remove any fuel or other fluid residue prior to use within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters.
4. Washout of concrete handling equipment shall not take place within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters.

F. Post-construction BMPs:

1. Upon completion of regulated activities, areas within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters shall be promptly cleared of all forms, piling, construction residues, equipment, debris, or other obstructions.
2. If fully, partially, or occasionally submerged structures are constructed of cast-in-place concrete instead of precast concrete, steps will be taken using sheet piling or temporary dams to prevent contact between water (instream and runoff) and the concrete until it cures and until any curing agents have evaporated or are no longer a pollutant threat.
3. Any permanent water crossings within the ordinary high-water mark of any perennial or intermittent in a non-WOTUS protected surface water (other than fords) shall

not be equipped with gutters, drains, scuppers, or other conveyances that allow untreated runoff (due to events equal to or lesser in magnitude than the design event for the crossing structure) to directly enter a non-WOTUS protected surface water if such runoff can be directed to a local stormwater drainage, containment, and/or treatment system.

4. Debris shall be cleared as needed from culverts, ditches, dips, and other drainage structures within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface water to prevent clogging or conditions that may lead to a washout.
5. Temporary structures constructed or imported materials shall be removed no later than upon completion of the regulated activities.
6. Temporary structures constructed of native materials, if they provide an obstacle to flow or can contribute to or cause erosion, or cause changes in sediment load, shall be removed no later than upon completion of the regulated activities.

G. Design consideration BMPs:

1. All temporary structures constructed of imported materials and all permanent structures, including but not limited to, access roadways, culvert crossings, staging areas, material stockpiles, berms, dikes, and pads, shall be constructed so as to accommodate overtopping and resist washout by streamflow.
2. Any temporary crossing, other than fords on native material, shall be constructed in such a manner so as to provide armoring of the stream channel. Materials used to provide this armoring shall not include anything easily transportable by flow. Examples of acceptable materials include steel plates, untreated wooden planks, pre-cast concrete planks or blocks. Examples of unacceptable materials include clay, silt, sand, and gravel finer than cobble (roughly fist-sized). The armoring shall, via mass, anchoring systems, or a combination of the two, resist washout.

H. Notification. The owner or operator of any regulated activities shall, five days prior to initiation of the regulated activities, submit a notice to ADEQ on a form that includes basic information including the GPS location, the waterbody ID of the nearest non-WOTUS protected surface water, general description of planned activities, types of BMPs to be employed during the project, and phone number and email for a contact person. Work may proceed after five calendar days have passed since the owner/operator provided notification to ADEQ unless ADEQ responds in writing to the contact person for the owner/operator.

I. Exclusions: The BMPS and notification requirements in this Section shall not apply to:

1. Activities that are already regulated under A.R.S. Title 49.
2. Discharges to a non-WOTUS protected surface water incidental to a recharge project.
3. Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
4. Maintenance but not construction of drainage ditches.
5. Construction and maintenance of irrigation ditches.
6. Maintenance of structures as dams, dikes, and levees.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 302 (January 27, 2023), effective February 20, 2023 (Supp. 22-4).

Appendix A. Repealed

Historical Note

Former Section R9-21-208, Appendices 1 through 9 renumbered and amended as new Appendix A adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

Appendix B. Repealed

Historical Note

Former R9-21-209, Table 1 and Table 2 renumbered and amended as Appendix B adopted effective January 7, 1985 (Supp.85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

R18-11-301. Definitions

The terms in this Article have the following meanings:

"Direct reuse" has the meaning prescribed in R18-9-701(1).

"Disinfection" means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

"Filtration" means a treatment process that removes particulate matter from wastewater by passage through porous media.

"Gray water" means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

"Industrial wastewater" means wastewater generated from an industrial process.

"Landscape impoundment" means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

"NTU" means nepholometric turbidity unit.

"On-site wastewater treatment facility" has the meaning prescribed in A.R.S. § 49-201(24).

"Open access" means that access to reclaimed water by the general public is uncontrolled.

"Reclaimed water" has the meaning prescribed in A.R.S. § 49-201(31).

"Recreational impoundment" means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

"Restricted access" means that access to reclaimed water by the general public is controlled.

"Secondary treatment" means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

"Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

Historical Note

Adopted effective July 9, 1981 (Supp. 81-4). Former Section R9-21-301 renumbered without change as Section R18-11-301 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-302. Applicability

This Article applies to the direct reuse of reclaimed water, except for:

1. The direct reuse of gray water, or
2. The direct reuse of reclaimed water from an onsite wastewater treatment facility regulated by a general Aquifer Protection Permit under 18 A.A.C. 9, Article 3.

Historical Note

Adopted effective June 8, 1981 (Supp. 81-3). Amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-302 renumbered without change as Section R18-11-302 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-303. Class A+ Reclaimed Water

A. Class A+ reclaimed water is wastewater that has undergone secondary treatment, filtration, nitrogen removal treatment, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in (B)(1) is achieved without chemical addition.

B. An owner of a facility shall ensure that:

1. The turbidity of Class A+ reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
   a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
   b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
   c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A+ reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.
3. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.

C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A+ reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) and the total nitrogen criteria in subsection (B)(3) before discharge to a reclaimed water distribution system.

D. Class A+ reclaimed water is not required for any type of direct reuse. A person may use Class A+ reclaimed water for any type of direct reuse listed in Table A.

Historical Note

Adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-303 renumbered without change as Section R18-11-303 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-304. Class A Reclaimed Water

A. Class A reclaimed water is wastewater that has undergone secondary treatment, filtration, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in subsection (B)(1) is achieved without chemical addition.

B. An owner of a facility shall ensure that:

1. The turbidity of Class A reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
   a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
   b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
   c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.

C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsec-

tion (B)(2) before discharge to a reclaimed water distribution system.

D. A person shall use Class A reclaimed water for a type of direct reuse listed as Class A in Table A. A person may use Class A reclaimed water for a type of direct reuse listed as Class B or Class C in Table A.

Historical Note
Adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-304 renumbered without change as Section R18-11-304 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-305. Class B+ Reclaimed Water

A. Class B+ reclaimed water is wastewater that has undergone secondary treatment, nitrogen removal treatment, and disinfection.

B. An owner of a facility shall ensure that:
1. Class B+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
   a. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.
2. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.

C. Class B+ reclaimed water is not required for a type of direct reuse. A person may use Class B+ reclaimed water for a type of direct reuse listed as Class B or Class C in Table A. A person shall not use Class B+ reclaimed water for a type of direct reuse listed as Class A in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-306. Class B Reclaimed Water

A. Class B reclaimed water is wastewater that has undergone secondary treatment and disinfection.

B. An owner of a facility shall ensure that Class B reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
1. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
2. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.

C. A person shall use a minimum of Class B reclaimed water for a type of direct reuse listed as Class B in Table A. A person may use Class B reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class B reclaimed water for a type of direct reuse listed as Class A in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-307. Class C Reclaimed Water

A. Class C reclaimed water is wastewater that has undergone secondary treatment in a series of wastewater stabilization ponds, including aeration, with or without disinfection.

B. The owner of a facility shall ensure that:
1. The total retention time of Class C reclaimed water in wastewater stabilization ponds is at least 20 days.
2. Class C reclaimed water meets the following criteria after treatment and before discharge to a reclaimed water distribution system:
   a. The concentration of fecal coliform organisms in four of the last seven reclaimed water samples taken is less than 1000 / 100 ml.
   b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 4000 / 100 ml.

C. A person shall use a minimum of Class C reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class C reclaimed water for a type of direct reuse listed as Class A or Class B in Table A.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-308. Industrial Reuse

A. The reclaimed water quality requirements for the following direct reuse applications are industry-specific and shall be determined by the Department on a case-by-case basis in a reclaimed water permit issued by the Department under 18 A.A.C. 9, Article 7:
1. Direct reuse of industrial wastewater containing sewage.
2. Direct reuse of industrial wastewater for the production or processing of any crop used as human or animal food.

B. The Department shall use best professional judgment to determine the reclaimed water quality requirements needed to protect public health and the environment for a type of direct reuse specified in subsection (A).

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

R18-11-309. Reclaimed Water Quality Standards for an Unlisted Type of Direct Reuse

A. The Department may prescribe in an individual reclaimed water permit issued under 18 A.A.C. 9, Article 7, reclaimed water quality requirements for a type of direct reuse not listed in Table A. Before permitting a direct reuse of reclaimed water not listed in Table A, the Department shall, using its best professional judgment, determine and require compliance with reclaimed water quality requirements needed to protect public health and the environment.

B. Department may determine that Class A+, A, B+, B, or C reclaimed water is appropriate for a new type of direct reuse.

C. The Department shall consider the following factors when prescribing reclaimed water quality requirements for a new type of direct reuse:
1. The risk to public health;
2. The degree of public access to the site where the reclaimed water is reused and human exposure to the reclaimed water;
3. The level of treatment necessary to ensure that the reclaimed water is aesthetically acceptable;
4. The level of treatment necessary to prevent nuisance conditions;

5. Specific water quality requirements for the intended type of direct reuse;
6. The means of application of the reclaimed water;
7. The degree of treatment necessary to avoid a violation of surface water quality standards or aquifer water quality standards;
8. The potential for improper or unintended use of the reclaimed water;
9. The reuse guidelines, criteria, or standards adopted or recommended by the U.S. Environmental Protection Agency or other federal or state agencies that apply to the new type of direct reuse; and
10. Similar wastewater reclamation experience of reclaimed water providers in the United States.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

Table A. Minimum Reclaimed Water Quality Requirements for Direct Reuse

Type of Direct Reuse	Minimum Class of Reclaimed Water Required
Irrigation of food crops	A
Recreational impoundments	A
Residential landscape irrigation	A
Schoolground landscape irrigation	A
Open access landscape irrigation	A
Toilet and urinal flushing	A
Fire protection systems	A
Spray irrigation of an orchard or vineyard	A
Commercial closed loop air conditioning systems	A
Vehicle and equipment washing (does not include self-service vehicle washes)	A
Snowmaking	A
Surface irrigation of an orchard or vineyard	B
Golf course irrigation	B
Restricted access landscape irrigation	B
Landscape impoundment	B
Dust control	B
Soil compaction and similar construction activities	B
Pasture for milking animals	B
Livestock watering (dairy animals)	B
Concrete and cement mixing	B
Materials washing and sieving	B
Street cleaning	B
Pasture for non-dairy animals	C
Livestock watering (non-dairy animals)	C
Irrigation of sod farms	C
Irrigation of fiber, seed, forage, and similar crops	C
Silviculture	C

Note: Nothing in this Article prevents a wastewater treatment plant from using a higher quality reclaimed water for a type of direct reuse than the minimum class of reclaimed water listed in Table A. For example, a wastewater treatment plant may provide Class A reclaimed water for a type of direct reuse where Class B or Class C reclaimed water is acceptable.

Historical Note
New Table adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

R18-11-401. Definitions
In addition to the definitions contained in A.R.S. §§ 49-101 and 49-201, the terms of this Article shall have the following meanings:

1. "Beta particle and photon radioactivity from man-made radionuclides" means all radionuclides emitting beta particles or photons, except Thorium-232, Uranium-235, Uranium-238 and their progeny.
2. "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements.
3. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
4. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
5. "Mg/l" means milligrams per liter.
6. "Millirem" means 1/1000 of a rem. A rem means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system.
7. "Non-drinking water protected use" means the protection and maintenance of aquifer water quality for a use other than for human consumption.
8. "pCi" means picocurie, or the quantity of radioactive material producing 2.22 nuclear transformations per minute.
9. "Total trihalomethanes" means the sum of the concentrations of the following trihalomethane compounds: trichloromethane (chloroform), dibromo-chloromethane, bromodichloromethane and tribromo-methane (bromoform).

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1). Amended effective August 14, 1992 (Supp. 92-3).

R18-11-402. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1). Repealed effective August 14, 1992 (Supp. 92-3).

R18-11-403. Analytical Methods
Analysis of a sample to determine compliance with an aquifer water quality standard shall be in accordance with an analytical method specified in A.A.C. Title 9, Chapter 14, Article 6 or an alternative analytical method that is approved by the Director of the Arizona Department of Health Services pursuant to A.A.C. R9-14-610(C).

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1). Amended effective August 14, 1992 (Supp. 92-3). Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-404. Laboratories
A test result from a sample taken to determine compliance with an aquifer water quality standard shall be valid only if the sample has

been analyzed by a laboratory that is licensed by the Arizona Department of Health Services for the analysis performed.

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-405. Narrative Aquifer Water Quality Standards

A. A discharge shall not cause a pollutant to be present in an aquifer classified for a drinking water protected use in a concentration which endangers human health.

B. A discharge shall not cause or contribute to a violation of a water quality standard established for a navigable water of the state.

C. A discharge shall not cause a pollutant to be present in an aquifer which impairs existing or reasonably foreseeable uses of water in an aquifer.

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

A. The aquifer water quality standards in this Section apply to aquifers that are classified for drinking water protected use.

B. The following are the aquifer water quality standards for inorganic chemicals:

Pollutant	mg/L)
Antimony	0.006
Arsenic	0.05
Asbestos	7 million fibers/liter (longer than 10 mm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (As Free Cyanide)	0.2
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nickel	0.1
Nitrate (as N)	10
Nitrite (as N)	1
Nitrate and nitrite (as N)	10
Selenium	0.05
Thallium	0.002

C. The following are the aquifer water quality standards for organic chemicals:

Pollutant	(mg/L)
Benzene	0.005
Benzo (a) pyrene	0.0002
Carbon Tetrachloride	0.005
o-Dichlorobenzene	0.6
para-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
1,2-Dichloropropane	0.005
Dichloromethane	0.005
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) pthalate	0.006
Ethylbenzene	0.7
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Pentachlorophenol	0.001
Styrene	0.1
2,3,7,8-TCDD (Dioxin)	0.00000003
Tetrachloroethylene	0.005
Toluene	1
Trihalomethanes (Total)	0.10
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.20
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Vinyl Chloride	0.002
Xylenes (Total)	10

D. The following are the aquifer water quality standards for pesticides and polychlorinated biphenyls (PCBs):

Pollutant	(mg/L)
Alachlor	0.002
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dalapon	0.2
1,2-Dibromo-3-Chloropropane (DBCP)	0.0002
2,4,-Dichlorophenoxyacetic Acid(2,4-D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor Epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl	0.2
Picloram	0.5
Polychlorinated Biphenols (PCBs)	0.0005
Simazine	0.004
Toxaphene	0.003
2,4,5-Trichlorophenoxypropionic Acid (2,4,5-TP or Silvex)	0.05

E. The following are the aquifer water quality standards for radionuclides:

1. The maximum concentration for gross alpha particle activity, including Radium-226 but excluding radon and uranium, shall not exceed 15 pCi/l.
2. The maximum concentration for combined Radium-226 and Radium-228 shall not exceed 5 pCi/l.
3. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.
4. Except for the radionuclides listed in this subsection, the concentration of man-made radionuclides causing 4 millirem total body or organ dose equivalents shall be calculated on the basis of a 2-liter-per-day drinking water intake using the 168-hour data listed in “Maximum Permissible Body Burdens and Maximum Permissible Con-

centration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, National Bureau of Commerce, as amended August 1963 (and no future editions), incorporated herein by reference and on file with the Office of the Secretary of State and with the Department. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year. The following average annual concentrations are assumed to produce a total body or organ dose of 4 millirem/year:

Radionuclide	Critical Organ	pCi/l
Tritium	Total body	20,000
Strontium-90	Bone Marrow	8

F. The aquifer water quality standard for microbiological contaminants is based upon the presence or absence of total coliforms in a 100-milliliter sample. If a sample is total coliform-positive, a 100-milliliter repeat sample shall be taken within two weeks of the time the sample results are reported. Any total coliform-positive repeat sample following a total coliform-positive sample constitutes a violation of the aquifer water quality standard for microbiological contaminants.

G. The following are the aquifer water quality standards for turbidity:

1. One nephelometric turbidity unit as determined by a monthly average except that five or fewer nephelometric turbidity units may be allowed if it can be determined that the higher turbidity does not interfere with disinfection, prevent maintenance of effective disinfectant agents in water supply distribution systems, or interfere with microbiological determinations.
2. Five nephelometric turbidity units based on an average of two consecutive days.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).
Amended effective May 26, 1994 (Supp. 94-2).

R18-11-407. Aquifer Water Quality Standards in Reclassified Aquifers

A. All aquifers in the state are classified for drinking water protected use except for aquifers which are reclassified to a nondrinking water protected use pursuant to A.R.S. § 49-224 and A.A.C. R18-11-503.

B. Aquifer water quality standards for drinking water protected use apply to reclassified aquifers except where expressly superseded by aquifer water quality standards adopted pursuant to subsection (C).

C. The Director shall adopt, by rule, aquifer water quality standards for reclassified aquifers within one year of the date of the order reclassifying the aquifer to a nondrinking water protected use. The Director shall adopt aquifer water quality standards for reclassified aquifers only for pollutants that are specifically identified in a petition for reclassification as prescribed by A.R.S. § 49-223(E) and A.A.C. R18-11-503(B). Aquifer water quality standards for reclassified aquifers shall be sufficient to protect the use of the reclassified aquifer.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-408. Petition for Adoption of a Numeric Aquifer Water Quality Standard

A. Any person may petition the Director to adopt, by rule, a numeric aquifer water quality standard for a pollutant for which no numeric aquifer water quality standard exists.

B. Petitions for adoption of a numeric aquifer water quality standard shall be filed with the Department and shall comply with the requirements applicable to petitions for rule adoption as provided by A.R.S. § 41-1033 and A.A.C. R18-1-302, except as otherwise provided by A.R.S. § 49-223 or this Section.

C. In addition to the requirements of A.A.C. R18-1-302, a petition for rule adoption to establish a numeric aquifer water quality standard shall include specific reference to:

1. Technical information that the pollutant is a toxic pollutant.
2. Technical information upon which the Director reasonably may base the establishment of a numeric aquifer water quality standard.
3. Evidence that the pollutant that is the subject of the petition is or may in the future be present in an aquifer or part of an aquifer that is classified for drinking water protected use. Evidence may include, but is not limited to, any of the following:
   a. A laboratory analysis of a water sample by a laboratory licensed by the Arizona Department of Health Services which indicates the presence of the pollutant in the aquifer.
   b. A hydrogeological study which demonstrates that the pollutant that is the subject of the petition may be present in an aquifer in the future. The hydrogeological study shall include the following:
      i. A description of the use that results in a discharge of the pollutant that is the subject of the petition.
      ii. A description of the mobility of the pollutant in the vadose zone and in the aquifer.
      iii. A description of the persistence of the pollutant in the vadose zone and in the aquifer.

D. Within 180 calendar days of the receipt of a complete petition for rule adoption to establish a numeric aquifer water quality standard, the Director shall make a written determination of whether the petition should be granted or denied. The Director shall give written notice by regular mail of the determination to the petitioner.

E. If the petition for rule adoption is granted, the Director shall initiate rulemaking proceedings to adopt a numeric aquifer water quality standard. The Director shall, within one year of the date that the petition for adoption of a numeric aquifer water quality standard is granted, either adopt a rule establishing a numeric aquifer water quality standard or publish a notice of termination of rulemaking in the Arizona Administrative Register.

F. If the petition for rule adoption is denied, the Director shall issue a denial letter to the petitioner which explains the reasons for the denial. The denial of a petition for rule adoption to establish a numeric aquifer water quality standard is not subject to judicial review.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).

Appendix 1. Repealed

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 2. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 3. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 4. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 5. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 6. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 7. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION

R18-11-501. Definitions
In addition to the definitions contained in A.R.S. § 49-201, the words and phrases of this Article shall have the following meaning:

1. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
2. "Hardrock areas containing little or no water" means areas of igneous or metamorphic rock which do not yield usable quantities of water.
3. "Nondrinking water protected use" means the protection and maintenance of aquifer water quality for a use other than human consumption.
4. "Usable quantities" means five gallons of water per day.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-502. Aquifer Boundaries

A. Except as provided in subsection (B), aquifer boundaries for the aquifers in this state are identified and defined as being identical to the hydrologic basin and subbasin boundaries, as found by the Director of the Department of Water Resources, Findings and Order In the Matter of The Designation of Groundwater Basins and Subbasins In The State of Arizona (dated June 21, 1984), pursuant to A.R.S. §§ 45-403 and 45-404, which is incorporated herein by reference, on file and available for public inspection at the Department of Environmental Quality. No later amendments or editions are incorporated by reference.

B. Excluded from the boundaries of the aquifers are hard rock areas which contain little or no water, as identified in Plate 1 of the Department of Water Resources, Water Resource Hydrologic Map Series Report Number 2 (dated January 1981) and as further identified in the Bureau of Mines, University of Arizona County Geologic Map Series (individual county maps dated 1957 through 1960), which are incorporated herein by reference, on file and available for public inspection at the Department of Environmental Quality. No later amendments or editions are incorporated by reference.

C. The Director may, by rule, modify or add an aquifer boundary provided that one or more of the following applies:

1. The Department of Water Resources modifies the boundaries of its basins or subbasins.
2. The Director is made aware of new technical information or data which supports refinement of an aquifer boundary.

D. Facilities located outside of the boundaries defined in these rules shall be subject to A.R.S. § 49-241 except as provided therein.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-503. Petition for reclassification

A. Any person may petition the Director to reclassify an aquifer from a drinking water protected use to a nondrinking water protected use pursuant to A.R.S. § 49-224(C).

B. A written petition for reclassification pursuant to A.R.S. § 49-224(C) or A.R.S. § 49-224(D) shall be filed with the Department and shall include the following categories of information:

1. The proposed protected use for which the reclassification is being requested.
2. The pollutant and affected aquifer water quality standards for which the reclassification is being requested.
3. A hydrogeologic report which demonstrates that the aquifer proposed for reclassification is or will be hydrologically isolated, to the extent described in A.R.S. § 49-224(C)(1). This report and demonstration of hydrologic isolation for the area containing such aquifer, and immediate adjacent geologic units, shall include at least the following:
   a. Hydrogeologic area maps and cross sections.
   b. An analysis of subsurface geology, including geologic and hydrologic separation.
   c. Water level elevation or piezometric level contour maps.
   d. Analysis of hydrologic characteristics of the aquifer and the immediate adjacent geologic units.
   e. Description of existing water quality and analysis of water chemistry.
   f. Projected annual quantity of water to be withdrawn.
   g. Identification of pumping centers, cones of depression and areas of recharge.
   h. A water balance.
   i. Existing flow direction and evaluation of the effects of seasonal and future pumping on flow.
   j. An evaluation as to whether the reclassification will contribute to or cause a violation of aquifer water quality standards in other aquifers, or in parts of the aquifer not being proposed for reclassification.
4. Documentation demonstrating that water from the aquifer or part of the aquifer for which reclassification is pro-

posed is not being used as drinking water. This documentation shall include at least the following:

a. A list of all wells or springs including their location, ownership and use within the aquifer or part of the aquifer being proposed for reclassification.
b. Identification of groundwater withdrawal rights, on file with the Department of Water Resources, within the aquifer or part of the aquifer being proposed for reclassification.
c. A comprehensive list of agencies, persons and other information sources consulted for aquifer use documentation.

5. A cost-benefit analysis developed pursuant to the requirements of A.R.S. § 49-224(C)(3), except for petitions submitted pursuant to A.R.S. § 49-224(D). This analysis shall identify potential future uses of the aquifer being proposed for reclassification, as well as other opportunity costs associated with reclassification, and shall contain a description of the cost-benefit methodology used, including all assumptions, data, data sources and criteria considered and all supporting statistical analyses.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-504. Agency Action on Petition

A. Upon receipt of a petition for reclassification, the Director shall review the petition for compliance with the requirements of R18-11-503. If additional information is necessary, the petitioner shall be notified of specific deficiencies in writing within 30 calendar days of receipt of the petition.

B. Within 120 calendar days after receipt of a complete petition, and after consultation with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C), the Director shall make a final decision to grant or deny the petition and shall notify the petitioner of such decision and the reason for such determination in writing.

C. Upon a decision to grant a petition for aquifer reclassification, the Director shall initiate proceedings for promulgation of aquifer water quality standards and, if applicable, for aquifer boundary designation for the reclassified aquifers.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

R18-11-505. Public participation

A. Within 30 days of receipt of a complete petition for reclassification filed pursuant to A.R.S. § 49-224(D), or if the Director deems it necessary to consider a reclassification under A.R.S. § 49-224(C), the Director shall give public notice of the proposed reclassification pursuant to A.A.C. R18-1-401.

B. The Director shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification. The Director shall give notice of each public hearing and conduct the public hearing in accordance with the provisions of A.A.C. R18-1-402.

Historical Note
Adopted effective June 29, 1989 (Supp. 89-2).

R18-11-506. Rescission of Reclassification

The Director may, by rule, rescind an aquifer reclassification and return an aquifer to a drinking water protected use if he determines that any of the conditions under which the reclassification was granted are no longer valid. If the Director initiates a change under this Section, he shall consult with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C).

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).
Amended by final expedited rulemaking at 29 A.A.R. 2344 (October 6, 2023), with an immediate effective date of September 22, 2023 (Supp. 23-3).

ARTICLE 6. IMPAIRED WATER IDENTIFICATION

Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-601. Definitions

In addition to the definitions established in A.R.S. §§ 49-201 and 49-231, and A.A.C. R18-11-101, the following terms apply to this Article:

1. "303(d) List" means the list of surface waters or segments required under section 303(d) of the Clean Water Act and A.R.S. Title 49, Chapter 2, Article 2.1, for which TMDLs are developed and submitted to EPA for approval.
2. "Attaining" means there is sufficient, credible, and scientifically defensible data to assess a surface water or segment and the surface water or segment does not meet the definition of impaired or not attaining.
3. "AZPDES" means the Arizona Pollutant Elimination Discharge System.
4. "Credible and scientifically defensible data" means data submitted, collected, or analyzed using:
   a. Quality assurance and quality control procedures under A.A.C. R18-11-602;
   b. Samples or analyses representative of water quality conditions at the time the data were collected;
   c. Data consisting of an adequate number of samples based on the nature of the water in question and the parameters being analyzed; and
   d. Methods of sampling and analysis, including analytical, statistical, and modeling methods that are generally accepted and validated by the scientific community as appropriate for use in assessing the condition of the water.
5. "Designated use" means those uses specified in 18 A.A.C. 11, Article 1 for each surface water or segment whether or not they are attaining.
6. "EPA" means the U.S. Environmental Protection Agency.
7. "Impaired water" means a Navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code § 1313(d) and the regulations implementing that statute. A.R.S. § 49-231(1).
8. "Laboratory detection limit" means a "Method Reporting Limit" (MRL) or "Reporting Limit" (RL). These analogous terms describe the laboratory reported value, which is the lowest concentration level included on the calibration curve from the analysis of a pollutant that can be quantified in terms of precision and accuracy.
9. "Monitoring entity" means the Department or any person who collects physical, chemical, or biological data used for an impaired water identification or a TMDL decision.
10. "Naturally occurring condition" means the condition of a surface water or segment that would have occurred in the

absence of pollutant loadings as a result of human activity.

11. "Not attaining" means a surface water is assessed as impaired, but is not placed on the 303(d) List because:
    a. A TMDL is prepared and implemented for the surface water;
    b. An action, which meets the requirements of R18-11-604(D)(2)(h), is occurring and is expected to bring the surface water to attaining before the next 303(d) List submission; or
    c. The impairment of the surface water is due to pollution but not a pollutant, for which a TMDL load allocation cannot be developed.
12. "NPDES" means National Pollutant Discharge Elimination System.
13. "Planning List" means a list of surface waters and segments that the Department will review and evaluate to determine if the surface water or segment is impaired and whether a TMDL is necessary.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. 1362(6). Characteristics of water, such as dissolved oxygen, pH, temperature, turbidity, and suspended sediment are considered pollutants if they result or may result in the non-attainment of a water quality standard.
15. "Pollution" means "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." 33 U.S.C. 1362(19).
16. "QAP" means a quality assurance plan detailing how environmental data operations are planned, implemented, and assessed for quality during the duration of a project.
17. "Sampling event" means one or more samples taken under consistent conditions on one or more days at a distinct station or location.
18. "SAP" means a site specific sampling and analysis plan that describes the specifics of sample collection to ensure that data quality objectives are met and that samples collected and analyzed are representative of surface water conditions at the time of sampling.
19. "Spatially independent sample" means a sample that is collected at a distinct station or location. The sample is independent if the sample was collected:
    a. More than 200 meters apart from other samples, or
    b. Less than 200 meters apart, and collected to characterize the effect of an intervening tributary, outfall or other pollution source, or significant hydrographic or hydrologic change.
20. "Temporally independent sample" means a sample that is collected at the same station or location more than seven days apart from other samples.
21. "Threatened" means that a surface water or segment is currently attaining its designated use, however, trend analysis, based on credible and scientifically defensible data, indicates that the surface water or segment is likely to be impaired before the next listing cycle.
22. "TMDL" means total maximum daily load.
23. "TMDL decision" means a decision by the Department to:
    a. Prioritize an impaired water for TMDL development,
    b. Develop a TMDL for an impaired water, or
    c. Develop a TMDL implementation plan.
24. *"Total maximum daily load" means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water, as required by section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards.* A.R.S. § 49-231(4).
25. "Water quality standard" means a standard composed of designated uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, the antidegradation policy, and moderating provisions, for example, mixing zones, site-specific alternative criteria, and exemptions, in A.A.C. Title 18, Chapter 11, Article 1.
26. "WQARF" means the water quality assurance revolving fund established under A.R.S. § 49-282.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-602. Credible Data

A. Data are credible and relevant to an impaired water identification or a TMDL decision when:

1. Quality Assurance Plan. A monitoring entity, which contribute data for an impaired water identification or a TMDL decision, provides the Department with a QAP that contains, at a minimum, the elements listed in subsections (A)(1)(a) through (A)(1)(f). The Department may accept a QAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be sampled, the type of surface water, and the purpose of the sampling.
    a. An approval page that includes the date of approval and the signatures of the approving officials, including the project manager and project quality assurance manager;
    b. A project organization outline that identifies all key personnel, organizations, and laboratories involved in monitoring, including the specific roles and responsibilities of key personnel in carrying out the procedures identified in the QAP and SAP, if applicable;
    c. Sampling design and monitoring data quality objectives or a SAP that meets the requirements of subsection (A)(2) to ensure that:
        i. Samples are spatially and temporally representative of the surface water,
        ii. Samples are representative of water quality conditions at the time of sampling, and
        iii. The monitoring is reproducible;
    d. The following field sampling information to assure that samples meet data quality objectives:
        i. Sampling and field protocols for each parameter or parametric group, including the sampling methods, equipment and containers, sample preservation, holding times, and any analysis

proposed for completion in the field or outside of a laboratory;

ii. Field and laboratory methods approved under subsection (A)(5);

iii. Handling procedures to identify samples and custody protocols used when samples are brought from the field to the laboratory for analysis;

iv. Quality control protocols that describe the number and type of field quality control samples for the project that includes, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;

v. Procedures for testing, inspecting, and maintaining field equipment;

vi. Field instrument calibration procedures that describe how and when field sampling and analytical instruments will be calibrated;

vii. Field notes and records that describe the conditions that require documentation in the field, such as weather, stream flow, transect information, distance from water edge, water and sample depth, equipment calibration measurements, field observations of watershed activities, and bank conditions. Indicate the procedures implemented for maintaining field notes and records and the process used for attaching pertinent information to monitoring results to assist in data interpretation;

viii. Minimum training and any specialized training necessary to do the monitoring, that includes the proper use and calibration of field equipment used to collect data, sampling protocols, quality assurance/quality control procedures, and how training will be achieved;

e. Laboratory analysis methods and quality assurance/quality control procedures that assure that samples meet data quality objectives, including:

i. Analytical methods and equipment necessary for analysis of each parameter, including identification of approved laboratory methods described in subsection (A)(5), and laboratory detection limits for each parameter;

ii. The name of the designated laboratory, its license number, if licensed by the Arizona Department of Health Services, and the name of a laboratory contact person to assist the Department with quality assurance questions;

iii. Quality controls that describe the number and type of laboratory quality control samples for the project, including, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;

iv. Procedures for testing, inspecting, and maintaining laboratory equipment and facilities;

v. A schedule for calibrating laboratory instruments, a description of calibration methods, and a description of how calibration records are maintained; and

vi. Sample equipment decontamination procedures that outline specific methods for sample collection and preparation of equipment, identify the frequency of decontamination, and describe the procedures used to verify decontamination;

f. Data review, management, and use that includes the following:

i. A description of the data handling process from field to laboratory, from laboratory to data review and validation, and from validation to data storage and use. Include the role and responsibility of each person for each step of the process, type of database or other storage used, and how laboratory and field data qualifiers are related to the laboratory result;

ii. Reports that describe the intended frequency, content, and distribution of final analysis reports and project status reports;

iii. Data review, validation, and verification that describes the procedure used to validate and verify data, the procedures used if errors are detected, and how data are accepted, rejected, or qualified; and

iv. Reconciliation with data quality objectives that describes the process used to determine whether the data collected meets the project objectives, which may include discarding data, setting limits on data use, or revising data quality objectives.

2. Sampling and analysis plan.

a. A monitoring entity shall develop a SAP that contains, at a minimum, the following elements:

i. The experimental design of the project, the project goals and objectives, and evaluation criteria for data results;

ii. The background or historical perspective of the project;

iii. Identification of target conditions, including a discussion of whether any weather, seasonal variations, stream flow, lake level, or site access may affect the project and the consideration of these factors;

iv. The data quality objectives for measurement of data that describe in quantitative and qualitative terms how the data meet the project objectives of precision, accuracy, completeness, comparability, and representativeness;

v. The types of samples scheduled for collection;

vi. The sampling frequency;

vii. The sampling periods;

viii. The sampling locations and rationale for the site selection, how site locations are benchmarked, including scaled maps indicating approximate location of sites; and

ix. A list of the field equipment, including tolerance range and any other manufacturer's specifications relating to accuracy and precision.

b. The Department may accept a SAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be samples, the type of surface water, and the purpose of the sampling.

3. The monitoring entity may include any of the following in the QAP or SAP:

a. The name, title, and role of each person and organization involved in the project, identifying specific roles and responsibilities for carrying out the procedures identified in the QAP and SAP;
b. A distribution list of each individual and organization receiving a copy of the approved QAP and SAP;
c. A table of contents;
d. A health and safety plan;
e. The inspection and acceptance requirements for supplies;
f. The data acquisition that describes types of data not obtained through this monitoring activity, but used in the project;
g. The audits and response actions that describe how field, laboratory, and data management activities and sampling personnel are evaluated to ensure data quality, including a description of how the project will correct any problems identified during these assessments; and
h. The waste disposal methods that identify wastes generated in sampling and methods for disposal of those wastes.

4. Exceptions. The Department may determine that the following data are also credible and relevant to an impaired water identification or TMDL decision when data were collected, provided the conditions in subsections (A)(5), (A)(6), and (B) are met, and where the data were collected in the surface water or segment being evaluated for impairment:
a. The data were collected before July 12, 2002 and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2);
b. The data were collected after July 12, 2002 as part of an ongoing monitoring effort by a governmental agency and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2); or
c. The instream water quality data were or are collected under the terms of a NPDES or AZPDES permit or a compliance order issued by the Department or EPA, a consent decree signed by the Department or EPA, or a sampling program approved by the Department or EPA under WQARF or CERCLA, and the Department determines that the data yield results of comparable reliability to data collected under subsections (A)(1) and (A)(2).

5. Data collection, preservation, and analytical procedures. The monitoring entity shall collect, preserve, and analyze data using methods of sample collection, preservation, and analysis established under A.A.C. R9-14-610.
6. Laboratory. The monitoring entity shall ensure that chemical and toxicological samples are analyzed in a state-licensed laboratory, a laboratory exempted by the Arizona Department of Health Services for specific analyses, or a federal or academic laboratory that can demonstrate proper quality assurance/quality control procedures substantially equal to those required by the Arizona Department of Health Services, and shall ensure that the laboratory uses approved methods identified in A.A.C. R9-14-610.

B. Documentation for data submission. The monitoring entity shall provide the Department with the following information either before or with data submission:
1. A copy of the QAP or SAP, or both, revisions to a previously submitted QAP or SAP, and any other information necessary for the Department to evaluate the data under subsection (A)(4);
2. The applicable dates of the QAP and SAP, including any revisions;
3. Written assurance that the methods and procedures specified in the QAP and SAP were followed;
4. The name of the laboratory used for sample analyses and its certification number, if the laboratory is licensed by the Arizona Department of Health Services;
5. The quality assurance/quality control documentation, including the analytical methods used by the laboratory, method number, detection limits, and any blank, duplicate, and spike sample information necessary to properly interpret the data, if different from that stated in the QAP or SAP;
6. The data reporting unit of measure;
7. Any field notes, laboratory comments, or laboratory notations concerning a deviation from standard procedures, quality control, or quality assurance that affects data reliability, data interpretation, or data validity; and
8. Any other information, such as complete field notes, photographs, climate, or other information related to flow, field conditions, or documented sources of pollutants in the watershed, if requested by the Department for interpreting or validating data.

C. Recordkeeping. The monitoring entity shall maintain all records, including sample results, for the duration of the listing cycle. If a surface water or segment is added to the Planning List or to the 303(d) List, the Department shall coordinate with the monitoring entity to ensure that records are kept for the duration of the listing.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-603. General Data Interpretation Requirements

A. The Department shall use the following data conventions to interpret data for impaired water identifications and TMDL decisions:
1. Data reported below laboratory detection limits.
a. When the analytical result is reported as <X, where X is the laboratory detection limit for the analyte and the laboratory detection limit is less than or equal to the surface water quality standard, consider the result as meeting the water quality standard:
i. Use these statistically derived values in trend analysis, descriptive statistics or modeling if there is sufficient data to support the statistical estimation of values reported as less than the laboratory detection limit; or
ii. Use one-half of the value of the laboratory detection limit in trend analysis, descriptive statistics, or modeling, if there is insufficient data to support the statistical estimation of values reported as less than the laboratory detection limit.
b. When the sample value is less than or equal to the laboratory detection limit but the laboratory detection limit is greater than the surface water quality standard, shall not use the result for impaired water identifications or TMDL decisions;

2. Identify the field equipment specifications used for each listing cycle or TMDL developed. A field sample measurement within the manufacturer's specification for accuracy meets surface water quality standards;
3. Resolve a data conflict by considering the factors identified under the weight-of-evidence determination in R18-11-605(B);
4. When multiple samples from a surface water or segment are not spatially or temporally independent, or when lake samples are from multiple depths, use the following resultant value to represent the specific dataset:
   a. The appropriate measure of central tendency for the dataset for:
      i. A pollutant listed in the surface water quality standards 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
      ii. A chronic water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2;
      iii. A surface water quality standard for a pollutant that is expressed as an annual or geometric mean;
      iv. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
      v. The surface water quality standard for radiochemicals in R18-11-109(G); or
      vi. Except for chromium, all single sample maximum water quality standards in R18-11-112.
   b. The maximum value of the dataset for:
      i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and acute water quality standard in R18-11-112;
      ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1;
      iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A); or
      iv. The 90th percentile water quality standard for nitrogen and phosphorus in R18-11-109(F) and R18-11-112.
   c. The worst case measurement of the dataset for:
      i. Surface water quality standard for dissolved oxygen under R18-11-109(E). For purposes of this subsection, worst case measurement means the minimum value for dissolved oxygen;
      ii. Surface water quality standard for pH under R18-11-109(B). For purposes of this subsection, "worst case measurement" means both the minimum and maximum value for pH.

B. The Department shall not use the following data for placing a surface water or segment on the Planning List, the 303(d) List, or in making a TMDL decision.
1. Any measurement outside the range of possible physical or chemical measurements for the pollutant or measurement equipment,
2. Uncorrected data transcription errors or laboratory errors, and
3. An outlier identified through statistical procedures, where further evaluation determines that the outlier represents a valid measure of water quality but should be excluded from the dataset.

C. The Department may employ fundamental statistical tests if appropriate for the collected data and type of surface water when evaluating a surface water or segment for impairment or in making a TMDL decision. The statistical tests include descriptive statistics, frequency distribution, analysis of variance, correlation analysis, regression analysis, significance testing, and time series analysis.

D. The Department may employ modeling when evaluating a surface water or segment for impairment or in making a TMDL decision, if the method is appropriate for the type of waterbody and the quantity and quality of available data meet the requirements of R18-11-602. Modeling methods include:
1. Better Assessment Science Integrating Source and Nonpoint Sources (BASINS),
2. Fundamental statistics, including regression analysis,
3. Hydrologic Simulation Program-Fortran (HSPF),
4. Spreadsheet modeling, and
5. Hydrologic Engineering Center (HEC) programs developed by the Army Corps of Engineers.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-604. Types of Surface Waters Placed on the Planning List and 303(d) List

A. The Department shall evaluate, at least every five years, Arizona's surface waters by considering all readily available data.
1. The Department shall place a surface water or segment on:
   a. The Planning List if it meets any of the criteria described in subsection (D), or
   b. The 303(d) List if it meets the criteria for listing described in subsection (E).
2. The Department shall remove a surface water or segment from the Planning List based on the requirements in R18-11-605(E)(1) or from the 303(d) List, based on the requirements in R18-11-605(E)(2).
3. The Department may move surface waters or segments between the Planning List and the 303(d) List based on the criteria established in R18-11-604 and R18-11-605.

B. When placing a surface water or segment on the Planning List or the 303(d) List, the Department shall list the stream reach, derived from EPA's Reach File System or National Hydrography Dataset, or the entire lake, unless the data indicate that only a segment of the stream reach or lake is impaired or not attaining its designated use, in which case, the Department shall describe only that segment for listing.

C. Exceptions. The Department shall not place a surface water or segment on either the Planning List or the 303(d) List if the non-attainment of a surface water quality standard is due to one of the following:
1. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
2. The data were collected within a mixing zone or under a variance or nutrient waiver established in a NPDES or AZPDES permit for the specific parameter and the result does not exceed the alternate discharge limitation established in the permit. The Department may use data collected within these areas for modeling or allocating loads in a TMDL decision; or

3. An activity exempted under R18-11-117, R18-11-118, or a condition exempted under R18-11-119.

D. Planning List.

1. The Department shall:
   a. Use the Planning List to prioritize surface waters for monitoring and evaluation as part of the Department's watershed management approach;
   b. Provide the Planning List to EPA; and
   c. Evaluate each surface water and segment on the Planning List for impairment based on the criteria in R18-11-605(D) to determine the source of the impairment.
2. The Department shall place a surface water or segment on the Planning List based the criteria in R18-11-605(C). The Department may also include a surface water or segment on the Planning List when:
   a. A TMDL is completed for the pollutant and approved by EPA;
   b. The surface water or segment is on the 1998 303(d) List but the dataset used for the listing:
      i. Does not meet the credible data requirements of R18-11-602, or
      ii. Contains insufficient samples to meet the data requirements under R18-11-605(D);
   c. Some monitoring data exist but there are insufficient data to determine whether the surface water or segment is impaired or not attaining, including:
      i. A numeric surface water quality standard is exceeded, but there are not enough samples or sampling events to fulfill the requirements of R18-11-605(D);
      ii. Evidence exists of a narrative standard violation, but the amount of evidence is insufficient, based on narrative implementation procedures and the requirements of R18-11-605(D)(3);
      iii. Existing monitoring data do not meet credible data requirements in R18-11-602; or
      iv. A numeric surface water quality standard is exceeded, but there are not enough sample results above the laboratory detection limit to support statistical analysis as established in R18-11-603(A)(1).
   d. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act, but insufficient current or original monitoring data exist to determine whether the surface water or segment will meet current surface water quality standards;
   e. Trend analysis using credible and scientifically defensible data indicate that surface water quality standards may be exceeded by the next assessment cycle;
   f. The exceedance of surface water quality standards is due to pollution, but not a pollutant;
   g. Existing data were analyzed using methods with laboratory detection limits above the numeric surface water quality standard but analytical methods with lower laboratory detection limits are available;
   h. The surface water or segment is expected to attain its designated use by the next assessment as a result of existing or proposed technology-based effluent limitations or other pollution control requirements under local, state, or federal authority. The appropriate entity shall provide the Department with the following documentation to support placement on the Planning List:
      i. Verification that discharge controls are required and enforceable;
      ii. Controls are specific to the surface water or segment, and pollutant of concern;
      iii. Controls are in place or scheduled for implementation; and
      iv. There are assurances that the controls are sufficient to bring about attainment of water quality standards by the next 303(d) List submission; or
   i. The surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are no federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.

E. 303(d) List. The Department shall:

1. Place a surface water or segment on the 303(d) List if the Department determines:
   a. Based on R18-11-605(D), that the surface water or segment is impaired due to a pollutant and that a TMDL decision is necessary; or
   b. That the surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.
2. Provide public notice of the 303(d) List according to the requirements of A.R.S. § 49-232 and submit the 303(d) List according to section 303(d) of the Clean Water Act.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-605. Evaluating A Surface Water or Segment For Listing and Delisting

A. The Department shall compile and evaluate all reasonably current, credible, and scientifically defensible data to determine whether a surface water or segment is impaired or not attaining.

B. Weight-of-evidence approach.

1. The Department shall consider the following concepts when evaluating data:
   a. Data or information collected during critical conditions may be considered separately from the complete dataset, when the data show that the surface water or segment is impaired or not attaining its designated use during those critical conditions, but attaining its uses during other periods. Critical conditions may include stream flow, seasonal periods, weather conditions, or anthropogenic activities;
   b. Whether the data indicate that the impairment is due to persistent, seasonal, or recurring conditions. If the data do not represent persistent, recurring, or seasonal conditions, the Department may place the surface water or segment on the Planning List;
   c. Higher quality data over lower quality data when making a listing decision. Data quality is established by the reliability, precision, accuracy, and represen-

tativeness of the data, based on factors identified in R18-11-602(A) and (B), including monitoring methods, analytical methods, quality control procedures, and the documented field and laboratory quality control information submitted with the data. The Department shall consider the following factors when determining higher quality data:

i. The age of the measurements. Newer measurements are weighted heavier than older measurements, unless the older measurements are more representative of critical flow conditions;

ii. Whether the data provide a direct measure of an impact on a designated use. Direct measurements are weighted heavier than measurements of an indicator or surrogate parameter; or

iii. The amount or frequency of the measurements. More frequent data collection are weighted heavier than nominal datasets.

2. The Department shall evaluate the following factors to determine if the water quality evidence supports a finding that the surface water or segment is impaired or not attaining:

a. An exceedance of a numeric surface water quality standard based on the criteria in subsections (C)(1), (C)(2), (D)(1), and (D)(2);

b. An exceedance of a narrative surface water quality standard based on the criteria in subsections (C)(3) and (D)(3);

c. Additional information that determines whether a water quality standard is exceeded due to a pollutant, suspected pollutant, or naturally occurring condition:

i. Soil type, geology, hydrology, flow regime, biological community, geomorphology, climate, natural process, and anthropogenic influence in the watershed;

ii. The characteristics of the pollutant, such as its solubility in water, bioaccumulation potential, sediment sorption potential, or degradation characteristics, to assist in determining which data more accurately indicate the pollutant's presence and potential for causing impairment; and

iii. Available evidence of direct or toxic impacts on aquatic life, wildlife, or human health, such as fish kills and beach closures, where there is sufficient evidence that these impacts occurred due to water quality conditions in the surface water.

d. Other available water quality information, such as NPDES or AZPDES water quality discharge data, as applicable.

e. If the Department determines that a surface water or segment does not merit listing under numeric water quality standards based on criteria in subsections (C)(1), (C)(2), (D)(1), or (D)(2) for a pollutant, but there is evidence of a narrative standard exceedance in that surface water or segment under subsection (D)(3) as a result of the presence of the same pollutant, the Department shall list the surface water or segment as impaired only when the evidence indicates that the numeric water quality standard is insufficient to protect the designated use of the surface water or segment and the Department justifies the listing based on any of the following:

i. The narrative standard data provide a more direct indication of impairment as supported by professionally prepared and peer-reviewed publications;

ii. Sufficient evidence of impairment exists due to synergistic effects of pollutant combinations or site-specific environmental factors; or

iii. The pollutant is bioaccumulative, relatively insoluble in water, or has other characteristics that indicate it is occurring in the specific surface water or segment at levels below the laboratory detection limits, but at levels sufficient to result in an impairment.

3. The Department may consider a single line of water quality evidence when the evidence is sufficient to demonstrate that the surface water or segment is impaired or not attaining.

C. Planning List.

1. When evaluating a surface water or segment for placement on the Planning List.

a. Consider at least ten spatially or temporally independent samples collected over three or more temporally independent sampling events; and

b. Determine numeric water quality standards exceedances. The Department shall:

i. Place a surface water or segment on the Planning List following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 1, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 80 percent confidence level using a binomial distribution for a given sample size; or

ii. For sample datasets exceeding those shown in Table 1, calculate the number of exceedances using the following equation: $(X \geq x \mid n, p)$ where n = number of samples; p = exceedance probability of 0.1; x = smallest number of exceedances required for listing with "n" samples; and confidence level ≥ 80 percent.

Table 1. Minimum Number of Samples Exceeding the Numeric Standard

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
10	15	3	173	181	22	349	357	41
16	23	4	182	190	23	358	367	42
24	31	5	191	199	24	368	376	43

32	39	6	200	208	25	377	385	44
40	47	7	209	218	26	386	395	45
48	56	8	219	227	27	396	404	46
57	65	9	228	236	28	405	414	47
66	73	10	237	245	29	415	423	48
74	82	11	246	255	30	424	432	49
83	91	12	256	264	31	433	442	50
92	100	13	265	273	32	443	451	51
101	109	14	274	282	33	452	461	52
110	118	15	283	292	34	462	470	53
119	126	16	293	301	35	471	480	54
127	136	17	302	310	36	481	489	55
137	145	18	311	320	37	490	499	56
146	154	19	321	329	38	500		57
155	163	20	330	338	39			
164	172	21	339	348	40			

2. When there are less than ten samples, the Department shall place a surface water or segment on the Planning List following subsection (B), if three or more temporally independent samples exceed the following surface water quality standards:
   a. The surface water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
   b. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
   c. The surface water quality standard for radiochemicals in R18-11-109(G);
   d. The surface water quality standard for dissolved oxygen under R18-11-109(E);
   e. The surface water quality standard for pH under R18-11-109(B); or
   f. The following surface water quality standards in R18-11-112:
      i. Single sample maximum standards for nitrogen and phosphorus,
      ii. All metals except chromium, or
      iii. Turbidity.
3. The Department shall place a surface water or segment on the Planning List if information in subsections (B)(2)(c), (B)(2)(d), and (B)(2)(e) indicates that a narrative water quality standard violation exists, but no narrative implementation procedure required under A.R.S. § 49-232(F) exists to support use of the information for listing.

D. 303(d) List.
1. When evaluating a surface water or segment for placement on the 303(d) List.
   a. Consider at least 20 spatially or temporally independent samples collected over three or more temporally independent sampling events; and
   b. Determine numeric water quality standards exceedances. The Department shall:
      i. Place a surface water or segment on the 303(d) List, following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 2, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 90 percent confidence level using a binomial distribution, for a given sample size; or
      ii. For sample datasets exceeding those shown in Table 2, calculate the number of exceedances using the following equation: $(X \geq x | n, p)$ where n = number of samples; p = exceedance probability of 0.1; x = smallest number of exceedances required for listing with "n" samples; and confidence level ≥ 90 percent.

Table 2. Minimum Number of Samples Exceeding the Numeric Standard

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
20	25	5	174	182	24	344	352	43
26	32	6	183	191	25	353	361	44
33	40	7	192	199	26	362	370	45
41	47	8	200	208	27	371	379	46
48	55	9	209	217	28	380	388	47
56	63	10	218	226	29	389	397	48
64	71	11	227	235	30	398	406	49
72	79	12	236	244	31	407	415	50

80	88	13	245	253	32	416	424	51
89	96	14	254	262	33	425	434	52
97	104	15	263	270	34	435	443	53
105	113	16	271	279	35	444	452	54
114	121	17	280	288	36	453	461	55
122	130	18	289	297	37	462	470	56
131	138	19	298	306	38	471	479	57
139	147	20	307	315	39	480	489	58
148	156	21	316	324	40	490	498	59
157	164	22	325	333	41	499	500	60
165	173	23	334	343	42			

2. The Department shall place a surface water or segment on the 303(d) List, following subsection (B) without the required number of samples or numeric water quality standard exceedances under subsection (D)(1), if either the following conditions occur:
   a. More than one temporally independent sample in any consecutive three-year period exceeds the surface water quality standard in:
      i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and the acute water quality standards in R18-11-112;
      ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1; or
      iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A).
   b. More than one exceedance of an annual mean, 90th percentile, aquatic and wildlife chronic water quality standard, or a bacteria 30-day geometric mean water quality standard occurs, as specified in R18-11-109, R18-11-110, R18-11-112, or 18 A.A.C. 11, Article 1, Appendix A, Table 2.
3. Narrative water quality standards exceedances. The Department shall place a surface water or segment on the Planning List if the listing requirements are met under A.R.S. § 49-232(F).

E. Removing a surface water, segment, or pollutant from the Planning List or the 303(d) List.
1. Planning List. The Department shall remove a surface water, segment, or pollutant from the Planning List when:
   a. Monitoring activities indicate that:
      i. There is sufficient credible data to determine that the surface water or segment is impaired under subsection (D), in which case the Department shall place the surface water or segment on the 303(d) List. This includes surface waters with an EPA approved TMDL when the Department determines that the TMDL strategy is insufficient for the surface water or segment to attain water quality standards; or
      ii. There is sufficient credible data to determine that the surface water or segment is attaining all designated uses and standards.
   b. All pollutants for the surface water or segment are delisted.
2. 303(d) List. The Department shall:
   a. Remove a pollutant from a surface water or segment from the 303(d) List based on one or more of the following criteria:
      i. The Department developed, and EPA approved, a TMDL for the pollutant;
      ii. The data used for previously listing the surface water or segment under R18-11-605(D) is superseded by more recent credible and scientifically defensible data meeting the requirements of R18-11-602, showing that the surface water or segment meets the applicable numeric or narrative surface water quality standard. When evaluating data to remove a pollutant from the 303(d) List, the monitoring entity shall collect the more recent data under similar hydrologic or climatic conditions as occurred when the samples were taken that indicated impairment, if those conditions still exist;
      iii. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act;
      iv. The surface water or segment no longer meets the criteria for impairment for the specific narrative water quality standard based on a change in narrative water quality standard implementation procedures;
      v. A re-evaluation of the data indicate that the surface water or segment does not meet the criteria for impairment because of a deficiency in the original analysis; or
      vi. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
   b. Remove a surface water, segment, or pollutant from the 303(d) List, based on criteria that are no more stringent than the listing criteria under subsection (D);
   c. Remove a surface water or segment from the 303(d) List if all pollutants for the surface water or segment are removed from the list;
   d. Remove a surface water, segment, or pollutant, from the 303(d) List and place it on the Planning List, if:
      i. The surface water, segment or pollutant was on the 1998 303(d) List and the dataset used in the original listing does not meet the credible data requirements under R18-11-602, or contains insufficient samples to meet the data requirements under subsection (D); or

ii. The monitoring data indicate that the impairment is due to pollution, but not a pollutant.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-606. TMDL Priority Criteria for 303(d) Listed Surface Waters or Segments

A. In addition to the factors specified in A.R.S. § 49-233(C), the Department shall consider the following when prioritizing an impaired water for development of TMDLs:
1. A change in a water quality standard;
2. The date the surface water or segment was added to the 303(d) List;
3. The presence in a surface water or segment of species listed as threatened or endangered under section 4 of the Endangered Species Act;
4. The complexity of the TMDL;
5. State, federal, and tribal policies and priorities; and
6. The efficiencies of coordinating TMDL development with the Department's surface water monitoring program, the watershed monitoring rotation, or with remedial programs.

B. The Department shall prioritize an impaired surface water or segment for TMDL development based on the factors specified in A.R.S. § 49-233(C) and subsection (A) as follows:
1. Consider an impaired surface water or segment a high priority if:
   a. The listed pollutant poses a substantial threat to the health and safety of humans, aquatic life, or wildlife based on:
      i. The number and type of designated uses impaired;
      ii. The type and extent of risk from the impairment to human health, aquatic life, or wildlife;
      iii. The pollutant causing the impairment, or
      iv. The severity, magnitude, and duration the surface water quality standard was exceeded;
   b. A new or modified individual NPDES or AZPDES permit is sought for a new or modified discharge to the impaired water;
   c. The listed surface water or segment is listed as a unique water in A.A.C. R18-11-112 or is part of an area classified as a "wilderness area," "wild and scenic river," or other federal or state special protection of the water resource;
   d. The listed surface water or segment contains a species listed as threatened or endangered under the federal Endangered Species Act and the presence of the pollutant in the surface water or segment is likely to jeopardize the listed species;
   e. A delay in conducting the TMDL could jeopardize the Department's ability to gather sufficient credible data necessary to develop the TMDL;
   f. There is significant public interest and support for the development of a TMDL;
   g. The surface water or segment has important recreational and economic significance to the public; or
   h. The pollutant is listed for eight years or more.
2. Consider an impaired surface water or segment a medium priority if:
   a. The surface water or segment fails to meet more than one designated use;
   b. The pollutant exceeds more than one surface water quality standard;
   c. A surface water quality standard exceedance is correlated to seasonal conditions caused by natural events, such as storms, weather patterns, or lake turnover;
   d. It will take more than two years for proposed actions in the watershed to result in the surface water attaining applicable water quality standards;
   e. The type of pollutant and other factors relating to the surface water or segment make the TMDL complex; or
   f. The administrative needs of the Department, including TMDL schedule commitments with EPA, permitting requirements, or basin priorities that require completion of the TMDL.
3. Consider an impaired surface water or segment a low priority if:
   a. The Department has formally submitted a proposal to delist the surface water, segment, or pollutant to EPA based on R18-11-605(E)(2). If the Department makes the submission outside the listing process cycle, the change in priority ranking will not be effective until EPA approves the submittal;
   b. The Department has modified, or formally proposed for modification, the designated use or applicable surface water quality standard, resulting in an impaired water no longer being impaired, but the modification has not been approved by EPA;
   c. The surface water or segment is expected to attain surface water quality standards due to any of the following:
      i. Recently instituted treatment levels or best management practices in the drainage area,
      ii. Discharges or activities related to the impairment have ceased, or
      iii. Actions have been taken and controls are in place or scheduled for implementation that will likely to bring the surface water back into compliance;
   d. The surface water or segment is ephemeral or intermittent. The Department shall re-prioritize the surface water or segment if the presence of the pollutant in the listed water poses a threat to the health and safety of humans, aquatic life, or wildlife using the water, or the pollutant is contributing to the impairment of a downstream perennial surface water or segment;
   e. The pollutant poses a low ecological and human health risk;
   f. Insufficient data exist to determine the source of the pollutant load;
   g. The uncertainty of timely coordination with national and international entities concerning international waters;
   h. Naturally occurring conditions are a major contributor to the impairment; and
   i. No documentation or effective analytical tools exist to develop a TMDL for the surface water or segment with reasonable accuracy.

C. The Department will target surface waters with high priority factors in subsections (B)(1)(a) through (B)(1)(d) for initiation of TMDLs within two years following EPA approval of the 303(d) List.

D. The Department may shift priority ranking of a surface water or segment for any of the following reasons:
1. A change in federal, state, or tribal policies or priorities that affect resources to complete a TMDL;
2. Resource efficiencies for coordinating TMDL development with other monitoring activities, including the Department's ambient monitoring program that monitors watersheds on a five-year rotational basis;
3. Resource efficiencies for coordinating TMDL development with Department remedial or compliance programs;
4. New information is obtained that will revise whether the surface water or segment is a high priority based on factors in subsection (B); and
5. Reduction or increase in staff or budget involved in the TMDL development.

E. The Department may complete a TMDL initiated before July 12, 2002 for a surface water or segment that was listed as impaired on the 1998 303(d) List but does not qualify for listing under the criteria in R18-11-605, if:
1. The TMDL investigation establishes that the water quality standard is not being met and the allocation of loads is expected to bring the surface water into compliance with standards,
2. The Department estimates that more than 50 percent of the cost of completing the TMDL has been spent,
3. There is community involvement and interest in completing the TMDL, or
4. The TMDL is included within an EPA-approved state workplan initiated before July 12, 2002.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through regulating the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

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

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and not more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Use any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department shall establish by rule a fee as a condition of licensure, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, articles 8 and 9 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203 except that state agencies are exempt from paying the fees.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.

2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.

3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:

(a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.

(b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.

(c) Maintenance but not construction of drainage ditches.

(d) Construction and maintenance of irrigation ditches.

(e) Maintenance of structures such as dams, dikes and levees.

4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.

5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.

6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.

8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.

9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection B shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State agencies are exempt from all fees imposed pursuant to this chapter.

10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before adopting these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.

13. Consider evidence gathered by the Arizona navigable stream adjudication commission established by section 37-1121 when deciding whether a permit is required to discharge pursuant to article 3.1 of this chapter.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant to assist the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection B, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 9 of this section.

D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

49-221. Water quality standards in general; protected surface waters list

A. The director shall:

1. Adopt, by rule, water quality standards for all WOTUS and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses. For non-WOTUS protected surface waters, the director shall apply surface water quality standards established as of January 1, 2021, until specifically changed by the director pursuant to paragraph 2 of this subsection. Rules regarding the following shall not be adopted or applied as water quality standards for non-WOTUS protected surface waters:

(a) Antidegradation.

(b) Antidegradation criteria.

(c) Outstanding Arizona waters.

2. Adopt, by rule, water quality standards for non-WOTUS protected surface waters, by December 31, 2022, consistent with paragraph 1 of this subsection and as determined necessary in the rulemaking process. In adopting those standards, the director shall consider the unique characteristics of this state's surface waters and the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

C. In setting standards pursuant to subsection A or B of this section, the director shall consider the following:

1. The protection of the public health and the environment.

2. The uses that have been made, are being made or with reasonable probability may be made of these waters.

3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.

4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.

5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.

6. Any unique physical, biological or chemical properties of the waters.

D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards that the director deems appropriate.

E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards, the director shall consider the following:

1. The protection of public health and the environment.

2. The uses that are being made or may be made of the reclaimed water.

3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration pursuant to title 3, chapter 3, article 4.1 of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

1. "Agricultural water":

(a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.

(b) Includes all of the following:

(i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.

(ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.

2. "Covered activity" means growing, harvesting, packing or holding produce. Covered activity includes processing produce to the extent that the activity is within the meaning of farm as defined in section 3-525.

3. "Harvesting" has the same meaning prescribed in section 3-525.

4. "Holding" has the same meaning prescribed in section 3-525.

5. "Packing" has the same meaning prescribed in section 3-525.

6. "Produce" has the same meaning prescribed in section 3-525.

G. The director shall maintain and publish a protected surface waters list. The department shall publish the initial list on the department's website and in the Arizona administrative register within thirty days after September 29, 2021. Not later than December 31, 2022, the department shall adopt by rule the protected surface waters list, including procedures for determining economic, social and environmental costs and benefits. Publication of the list in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 and may be appealed by any party that provides evidence of an actual adverse effect that the party appealing the decision would suffer as a result of the director's decision. All of the following apply to the protected surface water list:

1. The protected surface waters list shall include:

(a) All WOTUS.

(b) Any perennial, intermittent and ephemeral reaches and any impoundments of the following rivers, not including tributaries or reaches of waters wholly within tribal jurisdiction or reaches of waters outside of the United States:

(i) The Bill Williams river, from the confluence of the Big Sandy and Santa Maria rivers at 113°31'38.617"w, 34°18'22.373"n, to its confluence with the Colorado river at 114°8'9.854"w, 34°18'9.33"n.

(ii) The Colorado river, from the Arizona-Utah border at 111°32'35.741"w, 36°58'51.698"n, to the Arizona-Mexico border at 114°43'12.564"w, 32°43'6.218"n.

(iii) The Gila river, from the Arizona-New Mexico border at 109°2'52.8"w, 32°41'11.2015"n, to the confluence with the Colorado river at 114°33'28.145"w, 32°43'14.408"n.

(iv) The Little Colorado river, from the confluence of the east and west forks of the Little Colorado river at 109°28'7.131"w, 33°59'39.852"n, to its confluence with the Colorado river at 111°49'4.693"w, 36°12'10.243"n.

(v) The Salt river, from the confluence of the Black and White rivers at 110°13'39.5"w, 33°44'6.082"n, to the confluence with the Gila river at 112°18'5.704"w, 33°22'42.978"n.

(vi) The San Pedro river, from the Arizona-Mexico border at 110°9'1.704"w, 31°20'2.387"n, to the confluence with the Gila river at 110°47'0.905"w, 32°59'5.671"n.

(vii) The Santa Cruz river, from its origins in the Canelo Hills of southeastern Arizona at 110°37'3.968"w, 31°27'39.21"n, to its confluence with the Gila river at 111°33'26.02"w, 32°41'39.058"n.

(viii) The Verde river, from Sullivan lake at 112°28'10.588"w, 34°52'11.136"n, to its confluence with the Salt river at 111°39'48.32"w, 33°33'20.538"n.

(c) Any non-WOTUS waters of the state that are added under paragraphs 3 and 4 of this subsection.

2. Notwithstanding paragraph 1 of this subsection, the protected surface waters list shall not contain any of the following non-WOTUS waters:

(a) Canals in the Yuma project and ditches, canals, pipes, impoundments and other facilities that are operated by districts organized under title 48, chapters 18, 19, 20, 21 and 22 and that are not used to directly deliver water for human consumption, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner and operator of the ditch or canal until the owner and operator withdraws its request.

(b) Irrigated areas, including fields flooded for agricultural production.

(c) Ornamental and urban ponds and lakes such as those owned by homeowners' associations and golf courses, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner of the ornamental or urban pond or lake until the owner withdraws its request.

(d) Swimming pools and other bodies of water that are regulated pursuant to section 49-104, subsection B.

(e) Livestock and wildlife water tanks and aquaculture tanks that are not constructed within a protected surface water.

(f) Stormwater control features.

(g) Groundwater recharge, water reuse and wastewater recycling structures, including underground storage facilities and groundwater savings facilities permitted under title 45, chapter 3.1 and detention and infiltration basins, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner of the groundwater recharge, water reuse or wastewater recycling structure until the owner withdraws its request.

(h) Water-filled depressions created as part of mining or construction activities or pits excavated to obtain fill, sand or gravel.

(i) All waste treatment systems components, including constructed wetlands, lagoons and treatment ponds, such as settling or cooling ponds, designed to either convey or retain, concentrate, settle, reduce or remove pollutants, either actively or passively, from wastewater before discharge or to eliminate discharge.

(j) Groundwater.

(k) Ephemeral waters except for those prescribed in paragraph 1, subdivision (b) of this subsection.

(l) Lakes and ponds owned and managed by the United States department of defense and other surface waters located on and that do not leave United States department of defense property, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the United States department of defense until it withdraws its request.

3. Unless listed in paragraph 2 of this subsection, the director shall add the following non-WOTUS surface waters to the protected surface waters list:

(a) All lakes, ponds and reservoirs that are public waters used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water.

(b) Perennial waters or intermittent waters of the state that are used as a drinking water source, including ditches and canals.

(c) Perennial or intermittent tributaries to the Bill Williams river, the Colorado river, the Gila river, the Little Colorado river, the Salt river, the San Pedro river, the Santa Cruz river and the Verde river.

(d) Perennial or intermittent public waters used for recreational or commercial fish consumption.

(e) Perennial or intermittent public waters used for water-based recreation such as swimming, wading, boating and other types of recreation in and on the water.

(f) Perennial or intermittent wetlands adjacent to waters on the protected surface waters list.

(g) Perennial or intermittent waters of the state that cross into another state, the Republic of Mexico or the reservation of a federally recognized tribe.

4. The director may add additional non-WOTUS surface waters to the protected surface waters list if all of the following apply:

(a) The water is not required to be listed under paragraph 1 or 3 of this subsection.

(b) The water is not excluded under paragraph 2 of this subsection.

(c) The economic, environmental and social benefits of adding the water outweigh the economic, environmental and social costs of excluding the water from the list.

5. The director shall remove any erroneously listed, non-WOTUS waters from the protected surface waters list when the water is excluded under paragraph 2 of this subsection and shall not regulate discharges to those waters in the interim.

6. The director shall remove non-WOTUS waters from the protected surface waters list when the water is not required to be listed under paragraph 3 of this subsection and the economic, environmental and social benefits of removing the water outweigh the economic, environmental and social costs of retaining the water on the list.

7. The director, on an emergency basis, may add a water to the protected surface waters list if the director discovers an imminent and substantial danger to public health or welfare or the environment, if the water would otherwise qualify to be added under paragraph 3 of this subsection. Notwithstanding any other law, the emergency addition shall take effect immediately on the director's determination that describes the imminent and substantial danger in writing. Within thirty days after the director's determination, the department shall publish a notice of that determination in the Arizona administrative register and on the department's website. Waters added under this subsection shall be incorporated into the protected surface waters list during the next rulemaking that follows the addition.

49-223. Aquifer water quality standards

A. Primary drinking water maximum contaminant levels established by the administrator before August 13, 1986 are adopted as drinking water aquifer water quality standards. The director may only adopt additional aquifer water quality standards by rule. Within one year after the administrator establishes additional primary drinking water maximum contaminant levels, the director shall open a rule making docket pursuant to section 41-1021 for adoption of those maximum contaminant levels as drinking water aquifer water quality standards. If substantial opposition is demonstrated in the rule making docket regarding a particular constituent, the director may adopt for that constituent the maximum contaminant level as a drinking water aquifer water quality standard upon making a finding that this level is appropriate for adoption in Arizona as an aquifer water quality standard. In making this finding, the director shall consider whether the assumptions about technologies, costs, sampling and analytical methodologies and public health risk reduction used by the administrator in developing and implementing the maximum contaminant level are appropriate for establishing a drinking water aquifer water quality standard. For purposes of this subsection "substantial opposition" means information submitted to the director that explains with reasonable specificity why the maximum contaminant level is not appropriate as an aquifer water quality standard.

B. The director may adopt by rule numeric drinking water aquifer water quality standards for pollutants for which the administrator has not established primary drinking water maximum contaminant levels or for which a maximum contaminant level has been established but the director has determined it to be inappropriate as an aquifer water quality standard pursuant to subsection A of this section. These standards shall be based on the protection of human health. In establishing numeric drinking water aquifer water quality standards, the director shall rely on technical protocols appropriate for the development of aquifer water quality standards and shall base the standards on credible medical and toxicological evidence that has been subjected to peer review.

C. Any person may petition the director to adopt a numeric drinking water aquifer quality standard for any pollutant for which no drinking water aquifer quality standard exists. The director shall grant the petition and institute rule making proceedings adopting a numeric standard as provided under subsection B of this section within one hundred eighty days if the petition shows that the pollutant is a toxic pollutant, that the pollutant has been, or may in the future be, detected in any of the state's drinking water aquifers, and that there exists technical information on which a numeric standard might reasonably be based. Within one year of the commencement of the rule making proceeding, the director shall either adopt a numeric standard or make and publish a finding that, pursuant to subsection B of this section, the development of a numeric standard is not possible. The decision to not adopt a numeric standard shall, for purposes of judicial review, be treated in the same manner as a rule adopted pursuant to title 41, chapter 6.

D. For purposes of assessing compliance with each aquifer water quality standard adopted pursuant to this section, the director shall for purposes of articles 3 and 4 of this chapter, and may for purposes of other provisions of this title, identify sampling and analytical protocols appropriate for detecting and measuring the pollutant in the aquifers in the state.

E. Within one year from the reclassification of an aquifer to a non-drinking water status, pursuant to section 49-224, the director shall adopt water quality standards for that aquifer. For any pollutants which were not the basis for the reclassification, the applicable standard shall be identical with the standard for those pollutants adopted pursuant to subsections A and B of this section. For any pollutants which were the basis for reclassification, the standard shall be sufficient to achieve the purpose for which the aquifer was reclassified but shall minimize unnecessary degradation of the aquifer by taking into consideration the potential long-term uses of the aquifer and the short-term and long-term benefits of the activities resulting in discharges into the aquifer.

F. The director shall adopt water quality standards for an aquifer for which a petition has been submitted pursuant to section 49-224, subsection D sufficient to achieve the non-drinking water use for which that aquifer was classified, taking into consideration the potential long-term uses of that aquifer and the short-term and long-term benefits of the discharging activities creating that aquifer.

G. In any action pursuant to this title, aquifer water quality protection provisions, including monitoring requirements, may be imposed only for pollutants for which aquifer water quality standards have been established that are likely to be present in a discharge. Indicator parameters and quality assurance parameters appropriate for such pollutants also may be specified.

49-224. Aquifer identification, classification and reclassification

A. Not later than June 30, 1987 the director shall, by rule, identify and define the boundaries of all aquifers in this state utilizing, to the maximum extent possible, data available from the department of water resources.

B. All aquifers in this state identified and defined under subsection A of this section and any other aquifers subsequently discovered, identified and defined shall be classified for drinking water protected use unless the classification is changed in the manner provided in subsection C of this section.

C. The director, after consulting with the appropriate groundwater users advisory council established pursuant to title 45, chapter 2, article 2 if the aquifer is in an active management area, and a public hearing held pursuant to section 49-208, may change the classification of an aquifer or part of an aquifer for a protected use other than drinking water on making all of the following findings:

1. The identified aquifer or part of an aquifer is or will be so hydrologically isolated from other aquifers or other parts of the same aquifer that there is no reasonable probability that poorer quality water from the identified aquifer or part of an aquifer will cause or contribute to a violation of aquifer water quality standards in other aquifers or parts of the same aquifer.

2. Water from the identified aquifer or part of an aquifer is not being used as drinking water.

3. The short-term and long-term benefits to the public that would result from the degradation of the quality of the water in the identified aquifer or part of an aquifer below standards established pursuant to section 49-223, subsections A and B would significantly outweigh the short-term and long-term costs to the public of such degradation. Benefits and costs to be considered include economic, social and environmental.

D. Owners or operators of facilities whose discharges are solely responsible for creating an aquifer may petition the director for a classification of the aquifer for a non-drinking water use. The director may, by rule, classify that aquifer for a non-drinking water use upon making the findings prescribed in subsection C, paragraphs 1 and 2 of this section.

E. The director shall provide for public participation in proceedings under this section pursuant to section 49-208 and shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification.

Gmail

Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

ADEQ - AWQS Rulemaking - Inquiry Response

Jon Rezabek <rezabek.jon@azdeq.gov> Tue, May 6, 2025 at 6:33 AM
To: GRRC - ADOA <grrc@azdoa.gov>, Simon Larscheidt <simon.larscheidt@azdoa.gov>, Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

GRRC,

Concerning Items D1 through 5 in the Council Meeting agenda for 5/6/25, Council Member Thorwald had a number of inquiries on these items during the 4/29/25 Study Session.
ADEQ has developed the following response to one of the inquiries, which was, roughly:

Q: *How does a facility that is or is planning on potentially "discharging" a pollutant know whether their activity is subject to Aquifer Protection Program (APP) regulation?*

A: An APP applicability analysis starts with the assumption that "*...any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director ... [u]nless otherwise provided by this article..." --* A.R.S. § 49-241(A).

From that assumption, a potential discharging activity may fall out of APP applicability based on an examination of the definitions of the operative words in A.R.S. § 49-241(A), including:

- "Discharge" is defined at A.R.S. § 49-201(12) as, *"...[f]or purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.*

- "Facility" is defined at A.R.S. § 49-201(19) as,*"...any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge."*

- "Pollutant" is defined at A.R.S. § 49-201(35) as,*"...fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances."*

Furthermore, analysis of A.R.S. § 49-241, Subsection B may be necessary to determine applicability of the activity. In summary, this subsection delineates:

- a list of 10 categorical discharging facilities, automatically required to attain APP permit coverage to operate, unless
- the activity falls under one of the statutory exemptions to APP at A.R.S. § 49-250(B), or
- the director determines that a facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone.

  "[u]nless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article (1) Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons. (2) Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations. (3) Injection wells. (4) Land treatment facilities. (5) Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine. (6) Mine tailings piles and ponds. (7) Mine leaching operations. (8) Underground water storage facilities. (9) Sewage treatment facilities, including on-site wastewater treatment facilities. (10) Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage."

Additionally, A.R.S. 49-250(A) allows the the director to exempt classes or categories of facilities from APP requirements

by rule under certain circumstances. This list of "Class Exemptions" can be found at A.A.C. R18-9-103.

Besides undergoing the above analysis, which ADEQ welcomes preliminary questions on, the rule allows for a potential applicant to formally request a "Determination of Applicability" (DOA) under A.A.C. R18-9-106. An ADEQ APP - DOA form is attached to this email for review.

Thank you,

Jon Rezabek
Legal Specialist
Arizona Department of Environmental Quality

1110 W. Washington St., #160
Phoenix, AZ 85007

O: 602-771-8219
AZDEQ.gov

DOA Review Request Form_05 2024.doc
241K

AQUIFER PROTECTION PERMIT DETERMINATION OF APPLICABILITY (DOA)

INSTRUCTIONS

This form enables the staff of the ADEQ Groundwater Protection Value Stream to determine the applicability of A.R.S. §§ 49-241 through 49-252 to an operation or an activity that may result in a discharge regulated under Articles 1, 2, and 3 of the Arizona Administrative Code (A.A.C.). Please answer all questions and where applicable, provide sufficient detail for the conceptual or existing facility or activity to explain your answers. Attach additional reference sheets along with any design plans, site plans, maps, etc., that may assist us in this review.

GENERAL APPLICATION PROCESS

1) Applicant submits the DOA application including any attachments.
2) Applicant satisfies any deficiencies identified during the review process.
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4) ADEQ sends the final bill.
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FEES

The Department shall assess and collect an hourly rate fee for the number of review hours required to provide a water quality protection service, billed monthly and up to the maximum fee. A.A.C. R18-14-102 &103. Fee rates and maximum fees are available at: https://azdeq.gov/GroundwaterIndPermitsFees

APPLICANT

The DOA application form must be signed by the applicant; i.e. a "person who is engaging or who proposes to engage in the operation or activity" (A.A.C. R18-9-106(B)(2)). ADEQ will not accept a DOA application form signed by a third party, such as the client's representative or consultant.

HOW LONG DOES THE APPLICATION PROCESS TAKE?

The time frame specified by A.A.C. R18-9-106 is 45 days.

WITHDRAWING YOUR APPLICATION

An application may be withdrawn by the applicant at any time during the application process in accordance with A.A.C. R18-1-517. You may withdraw your application by submitting a written request to the reviewer assigned to your project. A final bill will be assessed at the time of withdrawal.

WHERE DO I SUBMIT MY APPLICATION?

Submit your DOA application to:

Arizona Department of Environmental Quality
Water Quality Division
Groundwater Protection and Reuse Section
1110 West Washington Street
Phoenix, AZ 85007

WHERE DO I GET HELP?

Program guidance can be found on our website at: http://www.azdeq.gov/environ/water/permits/app.html. A copy of the rules and statutes relating to the DOA can also be found on this website. It is strongly recommended that you review the applicable rules and statutes to ensure that you provide a complete and accurate application. ADEQ recommends scheduling a pre-application meeting to go over the various details of the program (The Project Manager's first hour of the pre-application meeting is free). During the application process, you are encouraged to communicate with the project team to resolve any issues that may arise during the process.

2 Facility Name [A.A.C. R18-9-106.B.1]

Facility Name _____

☐ New ☐ Currently Operating

3 Facility Address and Location Information [A.A.C. R18-9-106.B.1]

Address _____

_____

City _____ State _____ Zip _____

County _____

Township _____ Range _____ Section _____ Qtr1 _____ Qtr2 _____ Qtr3 _____

Latitude _____ "N Longitude _____ " "W ☐ NAD27 ☐ NAD83

GENERAL INFORMATION

1 Applicant – Person signing the application [A.A.C. R18-9-106.B.2]

(Check One) ☐ Owner ☐ Operator ☐ Owner and Operator Email _____

Name _____ Phone _____

Title _____ Business _____

Mailing Address _____ City _____ State _____ Zip _____

4 Certification Statement [A.A.C. R18-9-A201(B)(7)]

I certify under penalty of law that this Aquifer Protection Permit application and all attachments were prepared under my direction or authorization and all information is, to the best of my knowledge, true, accurate and complete. I also certify that the APP discharging facilities described in this form is or will be designed, constructed, operated, and/or enclosed in accordance with the terms and conditions the Aquifer Protection Permit and applicable requirements of Arizona Revised Statutes Title 49, Chapter 2, and Arizona Administrative Code Title 18, Chapter 9 regarding aquifer protection permits. I am aware that there are significant penalties for submitting false information, including permit revocation as well as the possibility of fine and imprisonment for knowing violations.

Print Name _____

_____ _____

Signature Date

Pursuant to A.R.S. § 41-1030:

(1) ADEQ shall not base a licensing decision, in whole or in part, on a requirement or condition not specifically authorized by statute or rule. General authority in a statute does not authorize a requirement or condition unless a rule is made pursuant to it that specifically authorizes the requirement or condition.

(2) Prohibited licensing decisions may be challenged in a private civil action. Relief may be awarded to the prevailing party against ADEQ, including reasonable attorney fees, damages, and all fees associated with the license application.

(3) ADEQ employees may not intentionally or knowingly violate the requirement for specific licensing

The purpose of a Determination of Applicability application review is to evaluate if there are discharging facilities or any discharging activities regulated by the Aquifer Protection Permit requirements. The evaluation of the conceptual or existing facility/activity includes whether there are exemptions from the APP requirements or if there is a General APP that may be applicable. Please provide the following information:

1. List any potential categorical discharging facilities (see definition provided in the attachment to this form). Categorical facilities include surface impoundments, solid waste disposal facilities, sewage treatment facilities, and others.
    a. For each facility listed, indicate whether it has operated in the past, is currently operating, is not yet constructed, or is constructed but not yet operating.

2. List any activity that could potentially be considered a discharge (see definition provided in the attachment to this form). Examples of discharge include wastewater disposal on the ground surface, placement of non-inert material on the ground surface, or other activities that place pollutants on the ground surface in a manner that there is a reasonable probability that the pollutant will reach an aquifer.

a. For each activity listed, indicate whether it has occurred in the past, is currently occurring, or has not yet occurred.

3. Describe the potential categorical discharging facility and/or discharging activity.

4. Provide a site diagram that includes the potential categorical discharging facility and/or discharging activity. Include a North arrow and scale, and label all potential discharging facilities and discharge locations.

5. Provide a process flow diagram that shows the process that produces the potential discharge or materials that go to a discharging facility and/or discharging activity.

6. Provide a description of any exemption or general permit that you think may apply to the potential categorical discharging facility and/or activity. Include any documentation to support this conclusion, for example, laboratory data showing a material is inert, design documentation showing that a structure meets the tank exemption (see Additional Information Related to Tanks and Sumps), closure documentation (see Additional Information Related to Closed Facilities), etc. "Exemptions" and "General Permits" sections at the end of this document may be helpful in providing documentation that an exemption or general permit criteria are met.

7. List any environmental permits held for the operation, facility or activity. Provide the permit number and the name of the issuing entity.

ADDITIONAL INFORMATION RELATED TO TANKS AND SUMPS

a. Is the structure stationary?
b. Is the structure constructed of material compatible with the anticipated materials to be contained?
c. Is the structure constructed of concrete, steel, plastic, fiberglass or other non-earthen material?
d. Is the structure constructed of material that is resistant to wear caused by any equipment that will be placed in or enter the structure for purposes of repair or cleanout?
e. Does the structure provide substantial structural support?
f. Are all joints sealed and maintained so as not to leak?
g. Is the structure capable of fully containing the material that is to be held without overflow?

ADDITIONAL INFORMATION RELATED TO CLOSED FACILITIES

List each closed facility in the format provided (Attachment 1) and provide the following information in the "Justification/Documentation" section:

- all inflows and outflows to the facility
- the source of inflows and outflows (include a process flow diagram)
- dates discharge started and ended
- discharge description, characterization
- discharge location, volumes, frequency
- method of transfer into and out of facility
- date ADEQ approved clean closure of the facility
- description of any remedial or reclamation activity/action

For each closed facility listed in Attachment 1, indicate in the "Statute/Rule/Policy" section, which of the following criteria apply. Attach additional sheets and references as needed.

- Facility ceased operation before Jan. 1, 1986 (A.R.S. 49-201.7)
- As of August 13, 1986, facility was not engaged in any activity for which the facility was designed and that was previously operated with no intent to resume operation (A.R.S. 49-201.7)
- Facility's post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed (A.R.S. 49-201.7)
- Facility had new installations or modifications after January 1, 1986 to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sump and diversions (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications primary purpose is to manage, treat, or contain surface or subsurface flows (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications are NOT used to produce a marketed commodity (Substantive Policy Statement 3013.000)

ATTACHMENT 1			
SUMMARY OF CLOSED FACILITIES AND JUSTIFICATION			
Closed Facility	Date Closed	Statute/Rule/Policy	Justification/Documentation

DEFINITIONS

AQUIFER – (A.R.S. §49-201) means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.

AQUIFER PROTECTION PERMIT - means an individual or general permit issued under A.R.S. §§ 49-203, 49-241 through 252, and A.A.C. Title 18 Chapter 9, Articles 1, 2 and 3.

CATEGORICAL DISCHARGING FACILITY – means (A.R.S. §49-241.B)
1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
3. Injection wells.
4. Land treatment facilities.
5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
6. Mine tailings piles and ponds.
7. Mine leaching operations.
8. Underground water storage facilities.
9. Sewage treatment facilities, including on-site wastewater treatment facilities.
10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

CLOSED FACILITY – means (A.R.S. §49-201.7):

(a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation as provided by A.R.S. § 49-201.

(b) A facility that has been approved as a clean closure by the director as provided by A.R.S. § 49-201.

(c) A facility at which any post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed as provided by A.R.S. § 49-201.

(d) Any facility designed and operated to manage, treat or contain surface or subsurface flows at or from a closed facility (as defined in A.R.S. 49-201(7)(a)-(c)), to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sumps and diversions, even if such facilities were installed or modified after January 1, 1986, so long as the facility's primary purpose is to manage, treat, or contain surface or subsurface or subsurface flows and not for the production of a marketed commodity.

DISCHARGE – (A.R.S. §49-201) means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the Aquifer Protection Permit program prescribed by Title 49, Article 3, Chapter 2 of the Arizona Revised Statutes, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

DRYWELL - A.R.S. §49-331) means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended.

FACILITY – (A.R.S. §49-201) means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

INERT MATERIAL – (A.R.S. §49-201) means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

POLLUTANT - (A.R.S. §49-201) means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

SEWAGE TREATMENT FACILITY – (A.A.C. R18-9-101) means a plant or system for sewage treatment and disposal, except an on-site wastewater treatment facility, that consists of treatment works, disposal works, and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices.

SURFACE IMPOUNDMENT - (A.A.C. R18-9-101) means a pit, pond or lagoon, having a surface dimension that is equal to or greater than its depth, which is used for the storage, holding, settling, treatment or discharge of liquid pollutants or pollutants containing free liquids.

TANK – (A.R.S. §49-201) means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.

EXEMPTIONS

EXEMPTIONS – A.R.S. §49-250B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.
2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.
3. The noncommercial use of consumer products generally available to and used by the public.
4. Ponds used for watering livestock and wildlife.
5. Mining overburden returned to the excavation site including any common material which has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.
6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.
7. Discharge to a community sewer system.
8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.
9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.
10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.
11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.
12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.
13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.
14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.
15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.
16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.
17. Solid waste and special waste facilities when rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.
18. Facilities used in:
    (a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
    (b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.
    (c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions which have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.
20. Storage, treatment or disposal of inert material.
21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.
22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.
23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:
    (a) Fire fighting system testing and maintenance.
    (b) Potable water sources, including waterline flushings.
    (c) Irrigation drainage and lawn watering.
    (d) Routine external building wash down without detergents.
    (e) Pavement wash water where no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.
    (f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.
    (g) Foundation or footing drains in which flows are not contaminated with process materials.
    (h) Occupational safety and health administration or mining safety and health administration safety equipment.
24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.
25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply

Articles 1, 2, and 3 do not apply to:

1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

R18-9-103. Class Exemptions

Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94-580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10.

GENERAL PERMITS

General Aquifer Protection Permits (GPs) are permits by rule or statute. The rules are extensive and can be accessed on the Secretary of State's website at: http://www.azsos.gov/public_services/Title_18/18-09.htm Specific citations for general permits by rule are: Type 1: A.A.C. R18-9-B301, Type 2: A.A.C. R18-9-C301, Type 3: A.A.C. R18-9-D301, Type 4: A.A.C. R18-9-E301

The statutory general permits are:
49-245.01. Storm water general permit
A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.
2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water
A. A general permit is issued for the following discharges:
1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The vadose zone injection wells are registered pursuant to section 49-332.
(b) The discharge occurs only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration made to subdivision (a) of this paragraph.
(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.
(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.
(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.
(b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.
(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.

3. Point source discharges to waters of the United States from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit.
(b) The discharges occur only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

AQUIFER PROTECTION PERMIT DETERMINATION OF APPLICABILITY (DOA)

INSTRUCTIONS

This form enables the staff of the ADEQ Groundwater Protection Value Stream to determine the applicability of A.R.S. §§ 49-241 through 49-252 to an operation or an activity that may result in a discharge regulated under Articles 1, 2, and 3 of the Arizona Administrative Code (A.A.C.). Please answer all questions and where applicable, provide sufficient detail for the conceptual or existing facility or activity to explain your answers. Attach additional reference sheets along with any design plans, site plans, maps, etc., that may assist us in this review.

GENERAL APPLICATION PROCESS

1) Applicant submits the DOA application including any attachments.
2) Applicant satisfies any deficiencies identified during the review process.
3) ADEQ makes a Determination of Applicability.
4) ADEQ sends the final bill.
5) Applicant pays the bill.
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APPLICANT

The DOA application form must be signed by the applicant; i.e. a "person who is engaging or who proposes to engage in the operation or activity" (A.A.C. R18-9-106(B)(2)). ADEQ will not accept a DOA application form signed by a third party, such as the client's representative or consultant.

HOW LONG DOES THE APPLICATION PROCESS TAKE?

The time frame specified by A.A.C. R18-9-106 is 45 days.

WITHDRAWING YOUR APPLICATION

An application may be withdrawn by the applicant at any time during the application process in accordance with A.A.C. R18-1-517. You may withdraw your application by submitting a written request to the reviewer assigned to your project. A final bill will be assessed at the time of withdrawal.

WHERE DO I SUBMIT MY APPLICATION?

Submit your DOA application to:

Arizona Department of Environmental Quality
Water Quality Division
Groundwater Protection and Reuse Section
1110 West Washington Street
Phoenix, AZ 85007

WHERE DO I GET HELP?

Program guidance can be found on our website at: http://www.azdeq.gov/environ/water/permits/app.html. A copy of the rules and statutes relating to the DOA can also be found on this website. It is strongly recommended that you review the applicable rules and statutes to ensure that you provide a complete and accurate application. ADEQ recommends scheduling a pre-application meeting to go over the various details of the program (The Project Manager's first hour of the pre-application meeting is free). During the application process, you are encouraged to communicate with the project team to resolve any issues that may arise during the process.

2 Facility Name [A.A.C. R18-9-106.B.1]

Facility Name _____

☐ New ☐ Currently Operating

3 Facility Address and Location Information [A.A.C. R18-9-106.B.1]

Address _____

_____

City _____ State _____ Zip _____

County _____

Township _____ Range _____ Section _____ Qtr1 _____ Qtr2 _____ Qtr3 _____

Latitude _____ "N Longitude _____ " "W ☐ NAD27 ☐ NAD83

GENERAL INFORMATION

1 Applicant – Person signing the application [A.A.C. R18-9-106.B.2]

(Check One) ☐ Owner ☐ Operator ☐ Owner and Operator Email _____

Name _____ Phone _____

Title _____ Business _____

Mailing Address _____ City _____ State _____ Zip _____

4 Certification Statement [A.A.C. R18-9-A201(B)(7)]

I certify under penalty of law that this Aquifer Protection Permit application and all attachments were prepared under my direction or authorization and all information is, to the best of my knowledge, true, accurate and complete. I also certify that the APP discharging facilities described in this form is or will be designed, constructed, operated, and/or enclosed in accordance with the terms and conditions the Aquifer Protection Permit and applicable requirements of Arizona Revised Statutes Title 49, Chapter 2, and Arizona Administrative Code Title 18, Chapter 9 regarding aquifer protection permits. I am aware that there are significant penalties for submitting false information, including permit revocation as well as the possibility of fine and imprisonment for knowing violations.

Print Name _____

_____ _____

Signature Date

Pursuant to A.R.S. § 41-1030:

(1) ADEQ shall not base a licensing decision, in whole or in part, on a requirement or condition not specifically authorized by statute or rule. General authority in a statute does not authorize a requirement or condition unless a rule is made pursuant to it that specifically authorizes the requirement or condition.

(2) Prohibited licensing decisions may be challenged in a private civil action. Relief may be awarded to the prevailing party against ADEQ, including reasonable attorney fees, damages, and all fees associated with the license application.

(3) ADEQ employees may not intentionally or knowingly violate the requirement for specific licensing

The purpose of a Determination of Applicability application review is to evaluate if there are discharging facilities or any discharging activities regulated by the Aquifer Protection Permit requirements. The evaluation of the conceptual or existing facility/activity includes whether there are exemptions from the APP requirements or if there is a General APP that may be applicable. Please provide the following information:

1. List any potential categorical discharging facilities (see definition provided in the attachment to this form). Categorical facilities include surface impoundments, solid waste disposal facilities, sewage treatment facilities, and others.
    a. For each facility listed, indicate whether it has operated in the past, is currently operating, is not yet constructed, or is constructed but not yet operating.

2. List any activity that could potentially be considered a discharge (see definition provided in the attachment to this form). Examples of discharge include wastewater disposal on the ground surface, placement of non-inert material on the ground surface, or other activities that place pollutants on the ground surface in a manner that there is a reasonable probability that the pollutant will reach an aquifer.

a. For each activity listed, indicate whether it has occurred in the past, is currently occurring, or has not yet occurred.

3. Describe the potential categorical discharging facility and/or discharging activity.

4. Provide a site diagram that includes the potential categorical discharging facility and/or discharging activity. Include a North arrow and scale, and label all potential discharging facilities and discharge locations.

5. Provide a process flow diagram that shows the process that produces the potential discharge or materials that go to a discharging facility and/or discharging activity.

6. Provide a description of any exemption or general permit that you think may apply to the potential categorical discharging facility and/or activity. Include any documentation to support this conclusion, for example, laboratory data showing a material is inert, design documentation showing that a structure meets the tank exemption (see Additional Information Related to Tanks and Sumps), closure documentation (see Additional Information Related to Closed Facilities), etc. "Exemptions" and "General Permits" sections at the end of this document may be helpful in providing documentation that an exemption or general permit criteria are met.

7. List any environmental permits held for the operation, facility or activity. Provide the permit number and the name of the issuing entity.

ADDITIONAL INFORMATION RELATED TO TANKS AND SUMPS

a. Is the structure stationary?
b. Is the structure constructed of material compatible with the anticipated materials to be contained?
c. Is the structure constructed of concrete, steel, plastic, fiberglass or other non-earthen material?
d. Is the structure constructed of material that is resistant to wear caused by any equipment that will be placed in or enter the structure for purposes of repair or cleanout?
e. Does the structure provide substantial structural support?
f. Are all joints sealed and maintained so as not to leak?
g. Is the structure capable of fully containing the material that is to be held without overflow?

ADDITIONAL INFORMATION RELATED TO CLOSED FACILITIES

List each closed facility in the format provided (Attachment 1) and provide the following information in the "Justification/Documentation" section:

- all inflows and outflows to the facility
- the source of inflows and outflows (include a process flow diagram)
- dates discharge started and ended
- discharge description, characterization
- discharge location, volumes, frequency
- method of transfer into and out of facility
- date ADEQ approved clean closure of the facility
- description of any remedial or reclamation activity/action

For each closed facility listed in Attachment 1, indicate in the "Statute/Rule/Policy" section, which of the following criteria apply. Attach additional sheets and references as needed.

- Facility ceased operation before Jan. 1, 1986 (A.R.S. 49-201.7)
- As of August 13, 1986, facility was not engaged in any activity for which the facility was designed and that was previously operated with no intent to resume operation (A.R.S. 49-201.7)
- Facility's post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed (A.R.S. 49-201.7)
- Facility had new installations or modifications after January 1, 1986 to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sump and diversions (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications primary purpose is to manage, treat, or contain surface or subsurface flows (Substantive Policy Statement 3013.000)
- Facility's new installations or modifications are NOT used to produce a marketed commodity (Substantive Policy Statement 3013.000)

ATTACHMENT 1			
SUMMARY OF CLOSED FACILITIES AND JUSTIFICATION			
Closed Facility	Date Closed	Statute/Rule/Policy	Justification/Documentation

DEFINITIONS

AQUIFER – (A.R.S. §49-201) means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.

AQUIFER PROTECTION PERMIT - means an individual or general permit issued under A.R.S. §§ 49-203, 49-241 through 252, and A.A.C. Title 18 Chapter 9, Articles 1, 2 and 3.

CATEGORICAL DISCHARGING FACILITY – means (A.R.S. §49-241.B)
1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
3. Injection wells.
4. Land treatment facilities.
5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
6. Mine tailings piles and ponds.
7. Mine leaching operations.
8. Underground water storage facilities.
9. Sewage treatment facilities, including on-site wastewater treatment facilities.
10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

CLOSED FACILITY – means (A.R.S. §49-201.7):

(a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation as provided by A.R.S. § 49-201.

(b) A facility that has been approved as a clean closure by the director as provided by A.R.S. § 49-201.

(c) A facility at which any post-closure monitoring and maintenance plan, notifications and approvals required in a permit have been completed as provided by A.R.S. § 49-201.

(d) Any facility designed and operated to manage, treat or contain surface or subsurface flows at or from a closed facility (as defined in A.R.S. 49-201(7)(a)-(c)), to include liners, treatment systems, pump-back systems, storm water management systems, impoundments, sumps and diversions, even if such facilities were installed or modified after January 1, 1986, so long as the facility's primary purpose is to manage, treat, or contain surface or subsurface or subsurface flows and not for the production of a marketed commodity.

DISCHARGE – (A.R.S. §49-201) means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the Aquifer Protection Permit program prescribed by Title 49, Article 3, Chapter 2 of the Arizona Revised Statutes, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

DRYWELL - A.R.S. §49-331) means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended.

FACILITY – (A.R.S. §49-201) means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

INERT MATERIAL – (A.R.S. §49-201) means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

POLLUTANT - (A.R.S. §49-201) means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

SEWAGE TREATMENT FACILITY – (A.A.C. R18-9-101) means a plant or system for sewage treatment and disposal, except an on-site wastewater treatment facility, that consists of treatment works, disposal works, and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices.

SURFACE IMPOUNDMENT - (A.A.C. R18-9-101) means a pit, pond or lagoon, having a surface dimension that is equal to or greater than its depth, which is used for the storage, holding, settling, treatment or discharge of liquid pollutants or pollutants containing free liquids.

TANK – (A.R.S. §49-201) means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.

EXEMPTIONS

EXEMPTIONS – A.R.S. §49-250B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.
2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.
3. The noncommercial use of consumer products generally available to and used by the public.
4. Ponds used for watering livestock and wildlife.
5. Mining overburden returned to the excavation site including any common material which has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.
6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6 for beneficial use.
7. Discharge to a community sewer system.
8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.
9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.
10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act.
11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.
12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.
13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.
14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.
15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.
16. Discharges to a facility that is exempt pursuant to paragraph 6 if those discharges are regulated pursuant to 33 United States Code section 1342.
17. Solid waste and special waste facilities when rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.
18. Facilities used in:
    (a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
    (b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.
    (c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions which have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.
20. Storage, treatment or disposal of inert material.
21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.
22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.
23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:
    (a) Fire fighting system testing and maintenance.
    (b) Potable water sources, including waterline flushings.
    (c) Irrigation drainage and lawn watering.
    (d) Routine external building wash down without detergents.
    (e) Pavement wash water where no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.
    (f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.
    (g) Foundation or footing drains in which flows are not contaminated with process materials.
    (h) Occupational safety and health administration or mining safety and health administration safety equipment.
24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.
25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act.

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply

Articles 1, 2, and 3 do not apply to:

1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

R18-9-103. Class Exemptions

Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94-580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10.

GENERAL PERMITS

General Aquifer Protection Permits (GPs) are permits by rule or statute. The rules are extensive and can be accessed on the Secretary of State's website at: http://www.azsos.gov/public_services/Title_18/18-09.htm Specific citations for general permits by rule are: Type 1: A.A.C. R18-9-B301, Type 2: A.A.C. R18-9-C301, Type 3: A.A.C. R18-9-D301, Type 4: A.A.C. R18-9-E301

The statutory general permits are:
49-245.01. Storm water general permit
A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.
2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water
A. A general permit is issued for the following discharges:
1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The vadose zone injection wells are registered pursuant to section 49-332.
(b) The discharge occurs only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration made to subdivision (a) of this paragraph.
(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.
(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.
(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.
(b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.
(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.

3. Point source discharges to waters of the United States from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit.
(b) The discharges occur only in response to storm events.
(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

D-4.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 15, Article 2

Amend: R17-5-201; R17-5-202; R17-5-203; R17-5-204; R17-5-205; R17-5-206; R17-5-208; R17-5-209; R17-5-212

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 20, 2025

SUBJECT: **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 4

Amend: R17-5-201, R17-5-202, R17-5-203, R17-5-204, R17-5-205, R17-5-206, R17-5-208, R17-5-209. R17-5-212

Summary:

This regular rulemaking from the Department of Transportation (Department) seeks to amend nine (9) rules in Title 17, Chapter 5, Article 2 regarding Motor Carriers. The amendments are intended to improve clarity and effectiveness of the rules, and to update terminology. Specifically, the Department is proposing to incorporate by reference the 2023 editions of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). The incorporation of these regulations allows the state to be eligible for certain federal grants. The Department meets the requirements for incorporation under A.R.S. § 41-1028. The remaining amendments are intended to improve consistency in language between the rules and incorporated references, remove outdated vision requirements, and to clarify the hearing procedure.

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

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

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

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

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

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

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

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), engages in the rulemaking to incorporate by reference parts of the 2023 edition of the Code of Federal Regulations and sections of 88 FR 70897, October 13, 2023. The Federal Motor Carrier Safety Administration (FMCSA) requires that states adopt Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). The Department states that this also enables the state to be eligible for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions. The Department indicates that to remain compliant with federal mandates, FCMSA requires that each state adopt the FMCSRs and HMRs that are current within three years. For FY 2024, these grants total approximately $16 – 17 million annually and cover the costs of salaries, equipment, and other expenses for motor carrier and hazardous materials-related enforcement.

DPS administers and enforces the Federal Motor Carrier Safety Assistance Program throughout the State of Arizona under these rules. The primary cost bearers, according to the Department, are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, privately contracted consultant trainers of law enforcement personnel, Arizona motor carriers, Arizona commercial drivers license (CDL) applicants and holders, and CDL medical examiners.

DPS states that it inspected over 57,729 commercial motor vehicles in 2023. Of these inspections, 950 drivers and 1,147 vehicles were placed out of service after the inspections, meaning that the violations were so severe that the driver was prohibited from driving and the vehicle prohibited from being moved until the violations were corrected.

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

The Department indicates that in rulemaking, ADOT routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. However, each state is required under 49 CFR 384.301 to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor

vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a) as soon as practical, or an amount of up to 5 percent of the state's federal-aid highway funds appropriated under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. may be withheld from the state for noncompliance. The Department indicates that based on amounts traditionally received by ADOT, this amount could reach approximately $30 million depending on the actual appropriation. Therefore, to the extent permitted by federal law, ADOT has determined that these rules impose the least burden and costs to regulated persons.

6. What are the economic impacts on stakeholders?

The Department states that to maintain compliance with the provisions of these rules, motor carriers will likely incur minimal to moderate costs in possible federal registration fees, inspections fees, insurance and equipment. CDL applicants and holders incur minimal costs to apply for and maintain a CDL. CDL medical examiners, as defined under 49 CFR 390.5, may incur minimal costs to receive medical examiner certification from FMCSA and may incur new minimal costs to be able to electronically report medical examination reports or medical examiner's certificates. The Department states that these costs arise from the federal law rather than from this rulemaking.

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

The Department indicates that there were no changes between the proposed rulemaking and the final rulemaking.

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

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

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

ADOT indicates these rules incorporate by reference federal regulations that contain the requirements of obtaining a CLP, CDL, and endorsements, which are consistent with state statutes.

In addition, R17-5-208 provides for the issuance of an Intrastate Medical Waiver, and in keeping with state statutes, requires applicable drivers to have a CLP, CDL, and endorsements. ADOT indicates these items constitute general permits as defined by A.R.S. § 41-1001(12) since

the activities, practices, requirements, and restrictions authorized by them are substantially similar in nature for all holders. As such, ADOT is in compliance with A.R.S. § 41-1037.

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

The Department indicates there are some corresponding federal laws concerning Commercial Learner's Permits and Commercial Drivers Licenses, but that the rules are not more stringent than those corresponding federal laws. The Federal Regulations relevant to these rules are found at 49 CFR 40, 107, 171, 172, 173, 177, 178, 180, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399.

11. Conclusion

This regular rulemaking from the Department of Transportation (Department) seeks to amend nine (9) rules in Title 17, Chapter 5, Article 2 regarding Motor Carriers. the Department is proposing to incorporate by reference the 2023 editions of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). The remaining amendments are intended to improve consistency in language between the rules and incorporated references, remove outdated vision requirements, and to clarify the hearing procedure.

The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(B). The Department states that the immediate effective date is necessary in order to preserve the public peace, health, and safety, and to avoid violation of federal regulation. The Department has specifically indicated that the immediate effective date will ensure consistency with the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations. The Department states that an immediate effective date would avoid a violation of federal law or regulation of state which require the Department to administer driver licensing and medical evaluation activities, to comply with the Commercial Motor Vehicle Safety Act of 1986, and to adopt and administer a program for testing and ensuring fitness of commercial motor vehicle operators in accordance with federal standards in 49 CFR 384.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF TRANSPORTATION

206 S. 17th Ave
Phoenix, AZ 85007

KATIE HOBBS
GOVERNOR

JENNIFER TOTH
DIRECTOR

April 18, 2025

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 305
Phoenix, AZ 85007

Re: Department of Transportation, 17. A.A.C. 5, Article 2, Motor Carriers, Notice of Final Rulemaking

Dear Chairperson Jessica Klein:

The Arizona Department of Transportation submits the accompanying final rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-201(A)(1):

a. The rulemaking record closed on January 15, 2025, and no written public comments were received on these rules;
b. The rulemaking activity does not relate to a five-year review report;
c. The rulemaking does not establish a new fee;
d. The rulemaking does not increase an existing fee;
e. An immediate effective date is requested for these rules under A.R.S. § 41-1032;
f. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;
g. No new full-time employees are necessary to implement and enforce the rules;
h. Documents included in this final rule package are as follows:
    1. Signed cover letter;
    2. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
    3. Economic, Small Business and Consumer Impact Statement;
    4. General authorizing statutes and specific statutes, including relevant statutory definitions;
    5. Definitions of terms;
    6. Material incorporated by reference; and
    7. Request for, and approvals of initial and final rulemaking from the Governor's Office.

Sincerely,

Jennifer Toth
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

PREAMBLE

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

April 16, 2025

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R17-5-201	Amend
R17-5-202	Amend
R17-5-203	Amend
R17-5-204	Amend
R17-5-205	Amend
R17-5-206	Amend
R17-5-208	Amend
R17-5-209	Amend
R17-5-212	Amend

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

Authorizing statute: A.R.S. §§ 28-366, 28-962, 28-2169, and 28-5204

Implementing statute: A.R.S. §§ 28-3223, 28-5201, 28-5235, 28-5237, 28-5240, and 28-5241

4. The effective date of the rule:

Month X, 2025 (To be completed by the *Register* Editor with an immediate effective date.)

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

The Arizona Department of Transportation (ADOT) requests that this rulemaking be effective immediately on filing with the Office of the Secretary of State, as permitted under A.R.S. § 41-1032, to:

Preserve the public peace, health, and safety. These rules are made in connection with the required incorporation by reference of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) in 17 A.A.C. 5, Article 2, thus ensuring there is a consistency between ADOT regulations, state statutes, and federal regulations. These changes allow for a greater understanding by commercial driver license (CDL) applicants of what is required of them as it pertains to their physical qualifications and, when applicable, eligibility for a hazardous materials endorsement (HME). These regulations safeguard the public by making sure there are healthy and safe CDL holders; and

Avoid a violation of federal law or regulation or state law. ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the U.S. Department of Transportation and the Environmental Protection Agency when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)) and adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383.

The updated incorporation by reference of the FMCSRs and HMRs in 17 A.A.C. 5, Article 2, allows the Arizona Department of Public Safety (DPS) to be eligible to apply for an estimated $16 – $17 million in total federal funding from the Federal Motor Carrier Safety Administration (FMCSA).

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

Not applicable

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 3539, Issue Date: November 22, 2024, Issue Number: 47, File number: R24-252

Notice of Proposed Rulemaking: 30 A.A.R. 3505, Issue Date: November 22, 2024, Issue Number: 47, File number: R24-245

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

Name: Candace Olson
Title: Senior Rules Analyst
Office: Government Relations and Rules
Address: Department of Transportation
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007
Telephone: (480) 267-6610
Email: COlson2@azdot.gov
Website: https://azdot.gov/about/government-relations

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

ADOT, in partnership with DPS, engages in this rulemaking to incorporate by reference parts of the 2023 edition of the *Code of Federal Regulations* and sections of 88 FR 70897, October 13, 2023. FMCSA requires that states adopt FMCSRs and HMRs. This also enables the state to be eligible for federal enforcement grants. Both ADOT and DPS

rely on these federal monies to fund numerous enforcement positions.

In addition to incorporating by reference the 2023 edition of the FMCSRs and HMRs, ADOT is amending the following Sections:

- R17-5-201 and R17-5-208 are being amended to remove verbiage related to monocular vision, including the vision examination report due to the vision standards changing in 49 CFR 391, which now permits individuals who do not satisfy, with the worse eye, either the existing distant visual acuity standard with corrective lenses or the field of vision standard, or both, to be physically qualified. This new standard eliminated the need for the vision waiver. In addition, a definition for "Department" is being added to R17-5-201 for better clarity.
- R17-5-204 is being amended to update the citation and to specify "FMCSA" to maintain consistency with the change made to the federal regulations.

FMCSA revised the emergency exemption rules to narrow the scope of safety regulations from which relief is automatically provided for motor carriers and drivers providing direct assistance when an emergency has been declared in 88 FR 70897, October 13, 2023. To ensure there is clarity to the emergency process and the exemptions allowed, ADOT is incorporating by reference the changes to Part 390 that was published in the *Federal Register*. R17-5-203 is being amended to ensure the language is consistent with the changes made in 88 FR 70897, October 13, 2023, and with the state's process.

R17-5-205 is being amended by adding "surety" to "bond" to be consistent with ADOT verbiage.

R17-5-206 is being amended by adding A.R.S. § 28-5241 to be consistent with the 2023 legislative change that delineated and clarified the civil and criminal penalties and placed the criminal penalties into A.R.S. § 28-5241.

R17-5-212 is being amended for better clarity and better detailing of the process.

In addition, minor clarifying and technical changes have been made to ensure consistent and clearer language and conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

ADOT did not review or rely on any study relevant to the rules.

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

Not applicable

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

DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State

of Arizona under these rules. The primary cost bearers in relation to these rules are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, privately contracted consultant trainers of law enforcement personnel, Arizona motor carriers, Arizona CDL applicants and holders, and CDL medical examiners.

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. This rulemaking will have a substantial economic impact on the agency. ADOT incurred a substantial cost to implement the new drug and alcohol clearinghouse process and anticipates that there will be an additional moderate to substantial cost to implement the new electronic medical examiner's certificate verification system, to train, and to communicate the changes. ADOT experienced a minimal decrease in costs due to the removal of the vision waiver.

DPS incurs moderate to substantial costs (more than $10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs. For FY 2024, DPS can apply for an estimated $16,000,000 - $17,000,000 in total federal funding from FMCSA.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to motor carrier and hazardous materials provision enforcement or incorporate motor carrier and hazardous materials enforcement together with other duties. Accordingly, local law enforcement electing to engage in motor carrier and hazardous materials provision enforcement could stand to benefit substantially in cost defrayal through receipt of MCSAP fund allocation by application to DPS. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance.

To maintain compliance with the provisions of these rules, motor carriers bear minimal to moderate costs (under $100,000) in possible federal registration fees, inspection fees, insurance, and equipment. CDL applicants and holders incur minimal costs to apply for and maintain a CDL. CDL medical examiners, as defined under 49 CFR 390.5, may incur minimal costs to receive medical examiner certification from FMCSA and may incur new minimal costs to be able to electronically report medical examination reports or medical examiner's certificates. However, costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. If a motor carrier is found to be noncompliant with the provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from $1,000 to $25,000 per citation and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement. As of September 2024, there are 115,130 CDL holders and 3,454 commercial learner's permit (CLP) holders.

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

Not applicable

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

ADOT did not receive any public or stakeholder comments regarding this rulemaking.

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

There are no other matters prescribed by statute applicable to ADOT or to any specific rule or class of rules.

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

These rules incorporate by reference federal regulations, which are consistent with state statutes, that detail when a CLP, CDL, and endorsements are required and how they are issued. In addition, R17-5-208 provides for the issuance of an Intrastate Medical Waiver, and in keeping with state statute, requires applicable drivers to have a CLP or CDL and endorsements. These are general permits since the activities and practices authorized by them are substantially similar in nature for all holders.

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

Federal regulations in 49 CFR 40, 107, 171, 172, 173, 177, 178, 180, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399 are applicable to these rules. R17-5-205(E)(2) amends 49 CFR 383.153(e) by removing the exception for a nondomiciled CLP or CDL holder who is domiciled in a foreign jurisdiction for providing the holder's social security number (SSN) on the application. Pursuant to Laws 2013, Chapter 128, the exemption for the SSN of nonresident CDL applicants was removed from A.R.S. § 28-3158, which also reclassified nonresident CDL as nondomiciled CDL. This change authorized ADOT to require all CLP and CDL holders to provide their SSNs. This amendment is consistent with other federal laws (42 U.S.C. 405 and 42 U.S.C. 666) that require states to obtain SSNs and the statutory requirement of A.R.S. § 28-3158.

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

No analysis was submitted to ADOT.

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

In R17-5-202:

1. 49 CFR 40, 379, 382, 383, 385, 390 (except 390.23, 390.25 and the definitions of "direct assistance" and "emergency" in 390.5 and 390.5T), 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2023; and
2. 49 CFR 390.23, 390.25, and the definitions of "direct assistance," "emergency," and "residential heating fuel" in 390.5 and 390.5T as published in 88 FR 70897, October 13, 2023

In R17-5-209: 49 CFR 107, 171, 172, 173, 177, 178, and 180, revised as of October 1, 2023

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

Not applicable

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

ARTICLE 2. MOTOR CARRIERS

Section

ARTICLE 2. MOTOR CARRIERS

R17-5-201. Definitions

In addition to the definitions provided under A.R.S. §§ 28-3001 and 28-5201, the following definitions apply to this Article unless otherwise specified:

"Audit" means any inspection of a transporter's motor vehicle, equipment, books, or records to determine compliance with this Article and A.R.S. Title 28, Chapter 14.

"Co-applicant" means an employer or potential employer.

"Danger to public safety" means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.

"Department" has the same meaning as defined in A.R.S. § 28-101.

"Director" means the Director of the Arizona Department of Transportation or the Director's designated agent.

"Executive Hearing Office" means the Arizona Department of Transportation's Executive Hearing Office.

"Medical waiver evaluation summary" means the form, provided by the Department, to be completed by either a board-qualified or board-certified orthopedic surgeon or physiatrist and mailed to the Department, at the address provided on the form, on behalf of an Arizona intrastate medical waiver applicant.

"Physiatrist" means a doctor of medicine specialized in physical medicine and rehabilitation.

"Transporter" means any person, driver, motor carrier, shipper, manufacturer, or motor vehicle, including any motor vehicle transporting a hazardous material, hazardous substance, or hazardous waste, subject to this Article and A.R.S. Title 28, Chapter 14.

"Violation" means any conduct, act, or failure to act required or prohibited under this Article and A.R.S. Title 28, Chapter 14.

~~"Vision examination report" means a form provided by the Department to be completed by an ophthalmologist or a licensed optometrist on behalf of a driver or driver applicant and mailed to the Department, at the address provided on the form, for use in determining whether or not a medical condition affects the driver's or driver applicant's ability to safely perform the functional skills involved with driving a motor vehicle.~~

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385, 390 (except 390.23, 390.25 and the definitions of "direct assistance" and "emergency" in 390.5 and 390.5T), 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, ~~2020~~ 2023, and no later amendments or editions, as amended under this Article. The Department incorporates by reference 49 CFR 390.23, 390.25, and the definitions of "direct assistance," "emergency," and "residential heating fuel" in 390.5 and 390.5T as published in 88 FR 70897, October 13, 2023, and no later amendments or editions, as amended under this Article. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at https://www.govinfo.gov and ordered online by visiting the U.S. Government Bookstore at

http://bookstore.gpo.gov. ~~The International Standard Book Numbers are 9780160958786 for 49 CFR 40 and 9780160958823 for 49 CFR 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399.~~

B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona and persons operating a commercial motor vehicle.

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

A. 49 CFR 390.3T, General applicability. Paragraph (a)(1) is amended to read:

Regulations incorporated in this subchapter are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.

B. 49 CFR 390.5T, Definitions. The definitions listed under 49 CFR 390.5T are amended as follows:

"Commercial Motor Vehicle" or "CMV" has the same meaning as defined in A.R.S. § 28-5201.

"Emergency relief" is deleted.

"Shipper" has the same meaning as defined in A.R.S. § 28-5201.

"Special agent" means an officer or agent of the Department, the Arizona Department of Public Safety, or a political subdivision, who is trained and certified by the Arizona Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.

"State" means a state of the United States or the District of Columbia.

"Tow truck," as used in the definition of emergency under 49 CFR 390.5T, has the same meaning as defined in A.A.C. R13-3-701.

C. 49 CFR 390.19T, Motor carrier, hazardous material safety permit applicant/holder, and intermodal equipment provider identification reports. Paragraph (a)(1) is amended to read:

A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV must file a Motor Carrier Identification Report, Form MCS-150.

D. 49 CFR 390.23, ~~Relief~~ Automatic relief from regulations. Paragraph (c) is amended to read:

Local emergencies. Sections 395.3 and 395.5 of this chapter shall not apply to a motor carrier or driver operating a commercial motor vehicle so long as the motor carrier or driver is providing direct assistance during an emergency declared by a Federal, State, or local government official having authority to declare an emergency or an emergency situation exists under A.R.S. § 28-5234(B) for the period of such assistance or five days from the date of the initial declaration of emergency, whichever is less. A motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, AZ 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.

1. ~~Paragraph (a)(2), Local emergencies, is amended by adding:~~

~~When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, AZ 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.~~

2. ~~Paragraph (a)(2)(i)(A) is amended to read:~~

   ~~An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or~~

E. 49 CFR 390.25, Extension or modification of relief from regulations - emergencies~~.~~. Paragraph (a) is amended by adding:

A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, AZ 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

A. 49 CFR 391.11, General qualifications of drivers. Paragraph (b)(1) is amended to read:

Is at least 21 years of age for interstate operation or is at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of a reportable quantity of hazardous substance, hazardous waste required to be manifested, or hazardous material in an amount requiring a vehicle to be placarded as prescribed under R17-5-209;

B. 49 CFR 391.51, General requirements for driver qualification files. Paragraph ~~(b)(8)~~ (b)(7) is amended to read:

A Skill Performance Evaluation Certificate ~~obtained from a Field Administrator, Division Administrator, or state Director~~ issued by FMCSA in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter; or a copy of the Arizona intrastate medical waiver, if a waiver is granted by the Director as prescribed under R17-5-208.

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

A. 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:

"Commercial motor vehicle" or "CMV" has the same meaning as defined in A.R.S. § 28-3001.

"Conviction" has the same meaning as defined in A.R.S. § 28-3001.

"Disqualification" has the same meaning as defined in A.R.S. § 28-3001.

"Motor vehicle" has the same meaning as defined in A.R.S. § 28-101.

"Out-of-service order" has the same meaning as defined in A.R.S. § 28-5241.

"School bus" has the same meaning as defined in A.R.S. § 28-101.

"Tank vehicle" has the same meaning as defined in A.R.S. § 28-3103.

B. 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.

C. 49 CFR 383.73, State procedures.

1. Paragraph (c)(4) is amended to read:

   If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.

2. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.
3. Paragraph (f)(2)(ii) is amended to read:

   The state must add the word "non-domiciled" to the face of the CLP or CDL, in accordance with § 383.153(c) or "limited-term" to the face of the CLP or CDL, in accordance with 6 CFR 37.21; and

D. 49 CFR 383.75, Third party testing. Paragraph (a)(8)(v) is amended to read:

Require the third party tester to initiate and maintain a surety bond in an amount pursuant to A.R.S. Title 28, Chapter 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a surety bond. A provider exempted under A.R.S. Title 28, Chapter 13, is responsible for all costs associated with all re-testing of applicants due to examination fraud as determined by the Department.

E. 49 CFR 383.153, Information on the CLP and CDL documents and applications. The introductory sentence in paragraph (e) is amended to read:

Before a CLP or CDL may be issued:

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

A. 49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:

Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.

B. 49 CFR 392.9b, Prohibited transportation.
1. Paragraph (a) is amended to read:

   Safety registration required. A commercial motor vehicle providing transportation in interstate commerce or in intrastate commerce must not be operated without a safety registration and an active USDOT Number.
2. Paragraph (b), Penalties, is amended to read:

   Penalties. If it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section, it may be subject to penalties in accordance with 49 U.S.C. 521 and A.R.S. §§ 28-5240 and 28-5241.

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs~~, or Monocular Vision~~

A. A person who is not physically qualified to drive a commercial motor vehicle in intrastate commerce due to loss of limb~~,~~ or limb impairment, ~~or monocular vision,~~ as provided under 49 CFR 391.41(b)(1)~~,~~ or (b)(2), ~~or (b)(10),~~ but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).

B. A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, shall complete and submit the applicable intrastate medical waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, with the following information as applicable:

1. Identify the applicant:
    a. Name and complete address of the driver applicant;
    b. Name and complete address of the motor carrier co-applicant;
    c. U.S. Department of Transportation motor carrier identification number, if known; and
    d. A description of the driver applicant's limb ~~or visual~~ impairment as applicable to the type of waiver being requested;
2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
    a. Average period of time the driver will be driving or on duty, per day;
    b. Type of commodities or cargo to be transported;
    c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
    d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
3. Describe the commercial motor vehicles the driver applicant intends to drive:
    a. Truck, truck tractor, or bus make, model, and year (if known);
    b. Drive train:
        i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
        ii. Auxiliary transmission (if any) and number of forward speeds; and
        iii. Rear axle (designate single speed, two-speed, or three-speed);
    c. Type of brake system;
    d. Steering, manual or power assisted;
    e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
    f. Number of semitrailers or full trailers to be towed at one time;
    g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
    h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;
4. Include a certification statement:
    a. The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
    b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
5. Contain signature of each applicant and date signed:
    a. The driver applicant's signature; and
    b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.

C. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (b)(2) shall be accompanied by:

1. A copy of the medical examination report form, MCSA-5875, and medical examiner's certificate, form MCSA-5876, completed pursuant to 49 CFR 391.43;
2. The Department's medical waiver evaluation summary completed by either a board-qualified or board-certified physiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:
   a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
      i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
      ii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
   b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
      i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
      ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
      iii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
3. A description of the driver applicant's prosthetic or orthotic device worn, if any; and
4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.

~~**D.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:~~

~~1. A copy of the medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;~~

~~2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;~~

~~3. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and~~

4. ~~A statement from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.~~

~~E.~~**D.** Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:

1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;
3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and
5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.

~~F.~~**E.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.

~~G.~~**F.** The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.

~~H.~~**G.** If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.

~~I.~~**H.** If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.

~~J.~~**I.** The intrastate medical waiver granted by the Director under subsection (A) shall identify:

1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.

~~K.~~**J.** A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:

1. A trailer road test administered by the motor carrier under subsection ~~(E)(3)~~ (D)(3) for each type of trailer, and
2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection ~~(E)(4)~~ (D)(4).

~~L.~~**K.** The intrastate medical waiver granted by the Director under subsection (A) is:

1. Valid for a period of not more than two years from the date of issuance;
2. Renewable 30 days prior to the expiration date; and
3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, stating the new employer's name and the type of equipment to be driven.

~~M. An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (D), shall prohibit the subject driver from transporting:~~

~~1. Passengers for hire; and~~

~~2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.~~

~~N.~~**L.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.

~~O.~~**M.** The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.

~~P. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (D), must be physically examined every year and shall submit the following to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100:~~

~~1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection (D)(2); and~~

~~2. A current medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43 within the past year.~~

~~Q.~~**N.** A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:

1. Name and complete address of the motor carrier currently employing the applicant;
2. Name and complete address of the subject driver;
3. Total miles driven under the current intrastate medical waiver;
4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
5. A current medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
6. ~~A current medical examination or evaluation as applicable to the medical condition:~~
   ~~a.~~ A current medical waiver evaluation summary, as prescribed under subsection (C)(2)~~, for a driver with a loss of limb or limb impairment~~; ~~or~~
   ~~b. A current vision examination report, as prescribed under subsection (D)(2), for a driver with monocular vision;~~

7. A copy of the subject driver's current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
8. Notification of any change in the type of tractor the driver will operate;
9. Subject driver's signature and date signed; and
10. Motor carrier co-applicant's signature and date signed (if applicable).

~~R.~~**O.** The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.

~~S.~~**P.** The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:

1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application,
2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.

~~T.~~**Q.** If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

A. Incorporation of federal regulations.

1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, ~~2020~~ 2023, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
   a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
   b. Subchapter C - Hazardous Materials Regulations; Parts:
      i. 171 - General information, regulations, and definitions;
      ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
      iii. 173 - Shippers - general requirements for shipments and packagings;
      iv. 177 - Carriage by public highway;
      v. 178 - Specifications for packagings; and
      vi. 180 - Continuing qualification and maintenance of packagings.
2. The material incorporated by reference under this subsection is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration,

Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at https://www.govinfo.gov and ordered online by visiting the U.S. Government Bookstore at http://bookstore.gpo.gov. ~~The International Standard Book Numbers are 9780160958793 for 49 CFR 107, 171, 172, 173, and 177 and 9780160958809 for 49 CFR 178 and 180.~~

B. Application and exceptions.

1. Application.
   a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined in A.R.S. § 28-5201.
   b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
2. Exceptions. An authorized emergency vehicle, as defined in A.R.S. § 28-101, is excepted from the provisions of this Section.

C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:

1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for "carrier," "hazmat employer," and "person," and adding a definition for "highway" as follows:

   "Carrier" means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material.

   "Hazmat employer" means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined in A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.

   "Highway" means a public highway as defined in A.R.S. § 28-5201.

   "Person" has the same meaning as defined in A.R.S. § 28-5201.
2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: "Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway."
3. Part 177, Carriage by public highway.
   a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase "by private, common, or contract carriers by motor vehicle" is amended to read, "by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway."

b. Section 177.802, Inspection. Section 177.802 is amended to read: "Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231."

R17-5-212. Motor Carrier Safety: Hearing Procedure

A. Scope.

1. This Section applies only to a motor carrier enforcement action under:
   a. R17-5-201 through R17-5-209; and
   b. A.R.S. Title 28, Chapter 14.
2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) and (C).

B. Initiation of proceedings; service.

1. The Director shall initiate a hearing under this Section by:
   a. ~~Signing and serving~~ Preparing a complaint in the form prescribed under subsection (C) ~~that cites~~ alleging the specific violations of a manufacturer, motor carrier, shipper, or driver ~~for an alleged violation~~; and
   b. ~~Submitting~~ Serving, by mail, the complaint on the violator, and submitting a copy of the complaint to the ~~Department's~~ Executive Hearing Office, along with a certificate of service indicating the date of service ~~a copy of the complaint and notification of the date the complaint was served~~.
2. The date of service is the date of mailing.

C. Complaint; order to show cause.

1. The complaint shall contain the following:
   a. The designation of the parties to the action, with the Department as the ~~designated~~ petitioner, and the violator as the respondent;
   b. The respondent's name and the basis of fact for the complaint, including a listing of ~~any~~ all alleged ~~violation~~ violations of statute or rule;
   c. The relief sought by the Department; ~~and~~
   d. The signature of the Director or their designee; and
   ~~d.~~c. A copy of the written violation notice issued by a law enforcement agency to the respondent, if applicable.
2. Upon receipt of a copy of a complaint in compliance with subsections (B) and (C)(1), the Executive Hearing Office shall issue an order to show cause for ~~a respondent~~ the parties to appear at an administrative hearing to ~~explain~~ allow the respondent to present evidence and give testimony as to why the requested relief should not be granted.
3. The Executive Hearing Office shall hold a hearing under this Section within the time-frame required by statute.

4. The parties may resolve a complaint before the hearing date.
   a. The parties shall file notice of settlement with the Executive Hearing Office, which will issue an order dismissing the pending action.
   b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

R17-5-201 - R17-5-206, R17-5-208, R17-5-209, and R17-5-212

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), engages in this rulemaking to incorporate by reference parts of the 2023 edition of the *Code of Federal Regulations* and sections of 88 FR 70897, October 13, 2023. The Federal Motor Carrier Safety Administration (FMCSA) requires that states adopt Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). This also enables the state to be eligible for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions.

In addition to incorporating by reference the 2023 edition of the FMCSRs and HMRs, ADOT is amending the following Sections:

- R17-5-201 and R17-5-208 are being amended to remove verbiage related to monocular vision, including the vision examination report due to the vision standards changing in 49 CFR 391, which now permits individuals who do not satisfy, with the worse eye, either the existing distant visual acuity standard with corrective lenses or the field of vision standard, or both, to be physically qualified. This new standard eliminated the need for the vision waiver. In addition, a definition for "Department" is being added to R17-5-201 for better clarity.
- R17-5-204 is being amended to update the citation and to specify "FMCSA" to maintain consistency with the change made to the federal regulations.

FMCSA revised the emergency exemption rules to narrow the scope of safety regulations from which relief is automatically provided for motor carriers and drivers providing direct assistance when an emergency has been declared in 88 FR 70897, October 13, 2023. To ensure there is clarity to the emergency process and the exemptions allowed, ADOT is incorporating by reference the changes to Part 390 that was published in the *Federal Register*. R17-5-203 is being amended to ensure the language is consistent with the changes made in 88 FR 70897, October 13, 2023, and with the state's process.

R17-5-205 is being amended by adding "surety" to "bond" to be consistent with ADOT verbiage.

R17-5-206 is being amended by adding A.R.S. § 28-5241 to be consistent with the 2023 legislative change that delineated and clarified the civil and criminal penalties and placed the criminal penalties into A.R.S. § 28-5241.

R17-5-212 is being amended for better clarity and better detailing of the process.

In addition, minor clarifying and technical changes have been made to ensure consistent and clearer language and conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

To preserve the public peace, health, and safety, ADOT and DPS officers inspect commercial trucks and buses under these rules. In addition, commercial driver license (CDL) applicants and holders are governed under state statutes and these rules. It is necessary to update the rules on a regular basis to include the most recent guidelines generally accepted by the motor carrier industry and law enforcement agencies. This ensures that all motor carriers are held to the same regulatory standards and ADOT and DPS officers are able to more expediently place commercial motor vehicles out of service when finding noncompliance issues severe enough to warrant concern for public safety.

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

DPS administers and enforces the federal Motor Carrier Safety Assistance Program (MCSAP) throughout the state under these rules. To remain in compliance with federal mandates, FMCSA requires that each state adopt the FMCSRs and HMRs that are current within three years.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. DPS administers the federal grants received for enforcing the FMCSRs and HMRs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to other state, county, and municipal enforcement agencies upon application to underwrite local enforcement costs. For FY 2024, these grants total approximately $16 -17 million annually and cover the costs of salaries, equipment, and other expenses for motor carrier- and hazardous materials-related enforcement.

A requirement of the grants is to adopt federal regulations into state law. Failure to do so jeopardizes possible future grant funding opportunities. The possibility exists of either the withholding of, or reduction in, federal funding for the state if these rules are not codified as quickly as possible. A loss or reduction of federal funding would also have a safety impact on Arizona motorists if large trucks and buses are not able to be inspected as often as they are now. Notwithstanding the withholding of funds as described above, FMCSA could prohibit ADOT's CDL Program from issuing, renewing, transferring,

or upgrading CDLs in this state if they determine that Arizona is not substantially in compliance with 49 U.S.C. 31311(a).

c. **The estimated change in frequency of the targeted conduct expected from the rule change:**
DPS inspected over 57,729 commercial motor vehicles in 2023. Of these inspections, 950 drivers and 1,147 vehicles were placed out of service after the inspection, meaning that the violations were so severe that the driver was prohibited from driving and the vehicle was prohibited from being moved until the violations were corrected. With continued efforts to enforce the FMCSRs and HMRs incorporated by these rules, ADOT and DPS anticipate the out-of-service rates for both drivers and vehicles will make highway travel safer.

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

DPS administers and enforces MCSAP throughout the State of Arizona under these rules. The primary cost bearers in relation to these rules are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, privately contracted consultant trainers of law enforcement personnel, Arizona motor carriers, Arizona CDL applicants and holders, and CDL medical examiners.

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. This rulemaking will have a substantial economic impact on the agency. ADOT incurred a substantial cost to implement the new drug and alcohol clearinghouse process and anticipates that there will be an additional moderate to substantial cost to implement the new electronic medical examiner's certificate verification system, to train, and to communicate the changes. ADOT experienced a minimal decrease in costs due to the removal of the vision waiver.

DPS incurs moderate to substantial costs annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs. For FY 2024, DPS can apply for an estimated $16,000,000 - $17,000,000 in total federal funding from FMCSA.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to motor carrier and hazardous materials provision enforcement or incorporate motor carrier and hazardous materials enforcement together with other duties. Accordingly, local law enforcement electing to engage in motor carrier and hazardous materials provision enforcement could stand to benefit substantially in cost defrayal through receipt of MCSAP fund allocation by application to DPS. Minimal administrative

costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance.

To maintain compliance with the provisions of these rules, motor carriers will likely incur minimal to moderate costs in possible federal registration fees, inspection fees, insurance, and equipment. CDL applicants and holders incur minimal costs to apply for and maintain a CDL. CDL medical examiners, as defined under 49 CFR 390.5 may incur minimal costs to receive medical examiner certification from FMCSA and may incur new minimal costs to be able to electronically report medical examination reports or medical examiner's certificates. However, costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. If a motor carrier is found to be noncompliant with the provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from $1,000 to $25,000 per citation and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement. As of September 2024, there are 115,130 CDL holders and 3,454 commercial learner's permit (CLP) holders.

3. **Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:**

Name: Candace Olson

Address: Government Relations and Rules
Department of Transportation
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007

Telephone: (480) 267-6610

E-mail: COlson2@azdot.gov

B. Economic, small business and consumer impact statement:

1. **Identification of the proposed rulemaking:**

See paragraph (A)(1) above.

2. **Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:**

Persons to bear costs	**Persons directly benefiting**
ADOT	ADOT
DPS	DPS
Counties and municipal law enforcement agencies electing to locally enforce FMCSRs and HMRs	Counties and municipal law enforcement agencies electing to locally enforce FMCSRs and HMRs

Persons to bear costs	Persons directly benefiting
Independent consultant trainers of law enforcement personnel	Independent consultant trainers of law enforcement personnel
Arizona motor carriers	Arizona motor carriers
Arizona CDL applicants and holders	Arizona CDL applicants and holders
CDL Medical examiners	Arizona motorists
Applicable covered farm vehicle owners/operators	General public

3. Analysis of costs and benefits occurring in this state:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than $10,000

Moderate $10,000 to $99,999

Substantial $100,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. This rulemaking will have a substantial economic impact on the agency. ADOT incurred a substantial cost to implement the new drug and alcohol clearinghouse. It cost $119,745.50 to develop, program, and test the new requirement, with additional costs for training and communicating the changes. ADOT anticipates that there will be an additional moderate to substantial cost to implement the new electronic medical examiner's certificate verification system. It is estimated that it will cost $96,000 to develop, program, and test the new electronic medical examiner's certificate verification system with additional costs for training and communicating the changes. ADOT experienced a minimal decrease in costs due to the removal of the vision waiver. ADOT does not expect this rulemaking to create a significant increase or decrease in benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the FMCSRs and HMRs the agency currently has in place. ADOT should benefit by having to spend less resources on providing individual clarification of the rules to regulated people.

DPS incurs moderate to substantial costs annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. This rulemaking ensures DPS is eligible for MCSAP funding that FMCSA extends annually for state law enforcement of motor carrier safety and hazardous materials programs. For FY 2024, these grants total approximately $16 -17 million annually and cover the costs of salaries, equipment, and other expenses for motor carrier- and hazardous materials-related enforcement.

This rulemaking will ensure compliance with federal regulations and not subject the state to any sanctions and allows ADOT's CDL Program to continue issuing, renewing, transferring, or upgrading CDLs in Arizona, which the federal government could prohibit if they determine that Arizona is not substantially in compliance with 49 U.S.C. 31311(a).

ADOT is not required to notify the Joint Legislative Budget Committee under A.R.S. § 41-1055(B)(3)(a), since no new full-time employees are necessary to enforce and implement these rules.

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

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to commercial vehicle enforcement or incorporate commercial vehicle enforcement together with other duties. Accordingly, local law enforcement electing to engage in commercial vehicle enforcement could stand to benefit substantially from cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies.

Political subdivisions will benefit from an increase in the number of eligible commercial motor vehicle operators and from being able to retain experienced CDL holders.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

Business entities bear minimal to moderate costs to remain in compliance with the rules. Motor carriers will likely incur costs in the form of federal registration fees, equipment, maintenance, insurance, and inspection fees. Owners of applicable covered farm vehicles will need to comply with USDOT safety registration, which does not have a fee, but may have minimal costs for the required markings. CDL medical examiners, as defined under 49 CFR 390.5, may incur minimal costs to receive medical examiner certification from FMCSA and may incur new minimal costs to be able to electronically report medical examination reports or medical examiner's certificates. Overall, these costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking.

If a motor carrier is found to be noncompliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from $1,000 to $25,000 per finding and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, reduction in paperwork, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement. Also, motor carriers should benefit from the clarity of the emergency process and exemptions allowed.

Businesses may also see a decrease in costs for their drivers who have monocular vision and no longer need to obtain a medical waiver, though this also may lead to less business for the ophthalmologists or optometrists who performed the applicable medical evaluations. The change in vision standards may also lead to more CDL applicants needing the services of the CDL medical examiners. The change to the medical examiner's certificates could lead to a reduction in paperwork for some business entities.

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

   ADOT anticipates a minimal impact on private and public employment as a result of this rulemaking. Employers may benefit from being able to retain experienced CDL holders and being able to hire from a larger pool of applicants, especially from potential individuals with monocular vision who felt the medical waiver process cumbersome and chose not to have a CDL at that time and are now eligible without the need for a medical waiver. In addition, the change to the medical examiner's certificate process may allow for less employees being suspended for submitting incomplete medical examiner's certificates.

5. **Statement of the probable impact of the proposed rulemaking on small businesses:**

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

      The small businesses subject to these rules, as defined under A.R.S. § 41-1001, are independent motor carriers, CDL drivers already subject to the FMCSRs and HMRs, owners/operators of covered farm vehicles, and CDL medical examiners required to perform the necessary medical evaluations.

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

      Uniform safety and compliance costs for small businesses are the same as discussed under paragraph (B)(3)(c) above. For the most part, ADOT anticipates no new significant economic impact on qualified persons and business entities because of this rulemaking, though the CDL medical examiners may incur some new costs due to the change in the medical examination reports and medical examiner's certificate process. There is not a fee for the required USDOT safety registration. There may be minimal costs for the required USDOT safety registration markings.

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

      The rules provide a more expedient application process for individuals seeking a medical variance from certain physical qualifications and procedures typically required of interstate commercial motor vehicle operators under 49 CFR 391.41(b)(1) or (b)(2), if the individual is otherwise qualified to operate a commercial motor vehicle in intrastate commerce.

      ADOT is clarifying its rules regarding its hearing process.

      Since the uniform procedures and sanctions under these rules are required by federal and state mandates, ADOT is unable to further reduce any impact on small businesses. See paragraph (B)(7) below.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

Overall, costs should be minimal for private persons and consumers. CDL applicants and holders incur costs to apply for and maintain a CDL. As of September 2024, there are 115,130 CDL holders and 3,454 CLP holders. Monocular-vision CDL drivers will benefit by no longer needing to obtain and maintain a medical waiver and pay any additional costs for the additional medical evaluations. The ophthalmologists and optometrists who performed the additional medical evaluations may have a decrease in profit. Drivers of hazardous materials incur costs for the particular packaging, markings, and placarding needed.

These rules support the public interest and the interests of concerned parties by ensuring that all FMCSRs and HMRs and requirements of motor carriers are uniformly applied and enforced. The public benefits when all motor carriers remain in compliance with these rules as they ensure increased safety, lower financial responsibility premiums, provide an opportunity for increasing profit margins through better customer service, and facilitate more expedient administrative processing by law enforcement.

6. Statement of the probable effect on state revenues:

DPS will be eligible to apply for an estimated $16 – 17 million in MCSAP funding that may be used for commercial motor vehicle safety programs such as:

- Motor carrier safety programs in accordance with 49 CFR 350.203;
- Size and weight enforcement programs in accordance with 49 CFR 350.227(b)(1);
- Criminal activity enforcement programs in accordance with 49 CFR 350.227(b)(2);and
- Traffic safety programs in accordance with 49 CFR 350.227(c).

This rulemaking ensures that an amount of up to 5 percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. will not be withheld for noncompliance. Based on amounts traditionally received by ADOT, this amount could reach approximately $30 million depending on the actual appropriation.

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

In rulemaking, ADOT routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. However, each state is required under 49 CFR 384.301 to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a) as soon as practical, or an amount of up to 5 percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. may be withheld from the state for noncompliance. Based on amounts traditionally received by ADOT, this amount could reach

approximately $30 million depending on the actual appropriation. Therefore, to the extent permitted by federal law, ADOT has determined that these rules impose the least burden and costs to regulated persons.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

None

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

Definitions of Terms

A.A.C. R13-3-701. Definitions

A. The definitions in A.R.S. §§ 28-101 and 41-1701 apply to this Chapter.

B. In this Chapter:

1. "Alter" means adding, modifying, or removing any equipment or component after a tow truck has received a permit decal from the Department, in a manner that may affect the operation of the tow truck, compliance with A.R.S. § 28-1108 and this Chapter, or the health, safety, or welfare of any individual.
2. "Bed assembly" means the part of a tow truck that is located behind the cab, is attached to the frame, and is used to mount a boom assembly, hoist, winch, or equipment for transporting vehicles.
3. "Boom assembly" means a device, consisting of sheaves, one or more winches, and wire rope, that is attached to a tow truck and used to lift or tow another vehicle.
4. "Collision" means an incident involving one or more moving vehicles resulting in damage to a vehicle or its load that requires the completion of a written report of accident under A.R.S. § 28-667(A).
5. "Collision recovery" means initial towing or removing a vehicle involved in a collision from the collision scene.
6. "Denial" means refusal to satisfy a request.
7. "Department" means the Arizona Department of Public Safety.
8. "Director" means the Director of the Arizona Department of Public Safety or the Director's designee.
9. "Emergency brake" means the electrical, mechanical, hydraulic, or air brake components used to slow or stop a vehicle after a failure of the service brake system.
10. "Flatbed" means an open platform that is located behind the cab and attached to the frame of a truck.
11. "G.V.W.R." means Gross Vehicle Weight Rating, the value specified by the manufacturer as the fully assembled weight of a single motor vehicle.
12. "Hook" means a steel hook attached to an end of a wire rope or chain.
13. "Parking brake system" means the electrical, mechanical, hydraulic, or air brake components used to hold the tow truck or com-bination under any condition of loading to prevent movement when parked.
14. "Permit decal" means the non-transferable decal that a tow truck company is required to obtain from the Department before operating a tow truck for the purpose of towing a vehicle.
15. "Person" means the same as in A.R.S. § 1-215.

16. “Power-assisted service brake system” means a service-brake system that is equipped with a booster to supply additional power to the service-brake system by means of air, vacuum, electric, or hydraulic pressure.
17. “Power-operated winch” means a winch that is operated by electrical, mechanical, or hydraulic power.
18. “Service-brake system” means the electrical, mechanical, hydraulic, or air brake components used to slow or stop a vehicle in motion.
19. “Snatch block” means a metal case that encloses one or more pulleys and can be opened to receive a wire rope and redirect energy from a winch.
20. “State” means the state of Arizona.
21. “Steering wheel clamp” means a device used to secure in a fixed position the steering wheel of a vehicle being towed.
22. “Suspension” is the temporary withdrawal of the tow truck permit decal because the Department determines the tow truck or tow truck agent is not in compliance with one or more requirements of this Chapter.
23. “Tow bar” means a device attached to the rear of a tow truck to secure a towed vehicle to the tow truck by chains, straps, or hooks.
24. “Tow plate” means a solid metal support attached to the rear of a tow truck to secure a towed vehicle to the tow truck by chains, straps, or hooks.
25. “Tow sling” means two or more flexible straps attached to the wire rope or boom assembly of a tow truck to hoist a towed vehicle by chains, straps, or hooks.
26. “Tow truck” means a motor vehicle designed, manufactured, or altered to tow or transport one or more vehicles. The following are tow trucks:
    a. A truck with a flatbed equipped with a winch;
    b. A truck drawing a semi-trailer or trailer equipped with a winch;
    c. A motor vehicle that has a boom assembly or hoist permanently attached to its bed or frame;
    d. A motor vehicle that has a tow sling, tow plate, tow bar, under-lift, or wheel-lift attached to the rear of the vehicle; and
    e. A truck-tractor drawing a semi-trailer equipped with a winch.
27. “Tow truck agent” means an individual who operates a tow truck on behalf of a tow truck company, and includes owners, individuals employed by the tow truck company, and independent contractors.
28. “Tow truck company” means a person that owns, leases, or operates a tow truck that travels on a street or highway to transport a vehicle, including, but not limited to a vehicle that is damaged, disabled, unattended, repossessed, or abandoned.
29. “Truck-tractor protection valve” means a device that supplies air to the service brake system of a trailer to release the service brakes while the trailer is being towed by a truck- tractor, or to activate the service brakes if the supply of air from the truck-tractor to the trailer is disconnected or depleted.

30. “Under-lift” means an electrical, mechanical, or hydraulic device attached to the rear of a tow truck used to lift the front or rear of a vehicle by its axles or frame.
31. “Vehicle” means the same as in A.R.S. § 28-101.
32. “Wheel lift” means an electrical, hydraulic, or mechanical device attached to the rear of a tow truck used to lift the front or rear of a vehicle by its tires or wheels.
33. “Winch” means a device used for winding or unwinding wire rope.
34. “Wire rope” means flexible steel or synthetic strands that are twisted or braided together and may surround a hemp or wire core.
35. “Work lamp” means a lighting system that is mounted on a tow truck capable of illuminating an area to the rear of the tow truck.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). At the Department’s request, the A.R.S. citation was corrected in subsection (B)(1) as Laws 2015, Ch. 265 transferred duties relating to towing services; Office file number M16-202 (Supp. 16-3). Amended by final expedited rulemaking at 25 A.A.R. 844, effective March 19, 2019 (Supp. 19-1).

A.R.S. § 28-101. Definitions

In this title, unless the context otherwise requires:

1. “Alcohol” means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.

2. “Alcohol concentration” if expressed as a percentage means either:

(a) The number of grams of alcohol per one hundred milliliters of blood.

(b) The number of grams of alcohol per two hundred ten liters of breath.

3. “All-terrain vehicle” means either of the following:

(a) A motor vehicle that satisfies all of the following:

(i) Is designed primarily for recreational nonhighway all-terrain travel.

(ii) Is fifty or fewer inches in width.

(iii) Has an unladen weight of one thousand two hundred pounds or less.

(iv) Travels on three or more nonhighway tires.

(v) Is operated on a public highway.

(b) A recreational off-highway vehicle that satisfies all of the following:

(i) Is designed primarily for recreational nonhighway all-terrain travel.

(ii) Is eighty or fewer inches in width.

(iii) Has an unladen weight of two thousand five hundred pounds or less.

(iv) Travels on four or more nonhighway tires.

(v) Has a steering wheel for steering control.

(vi) Has a rollover protective structure.

(vii) Has an occupant retention system.

4. “Authorized emergency vehicle” means any of the following:

(a) A fire department vehicle.

(b) A police vehicle.

(c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.

(d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. “Autocycle” means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.

6. “Automated driving system” means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.

7. “Automotive recycler” means a person that is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and that removes parts for resale from six or more vehicles in a calendar year.

8. “Autonomous vehicle” means a motor vehicle that is equipped with an automated driving system.

9. “Aviation fuel” means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.

10. “Bicycle” means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:

(a) Two tandem wheels, either of which is more than sixteen inches in diameter.

(b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.

11. “Board” means the transportation board.

12. “Bus” means a motor vehicle designed for carrying sixteen or more passengers, including the driver.

13. “Business district” means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

14. “Certificate of ownership” means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.

15. “Certificate of title” means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.

16. “Combination of vehicles” means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
17. “Controlled substance” means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
18. “Conviction” means:
(a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
(b) An unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court.
(c) A plea of guilty or no contest accepted by the court.
(d) The payment of a fine or court costs.
19. “County highway” means a public road that is constructed and maintained by a county.
20. “Dealer” means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.
21. “Department” means the department of transportation acting directly or through its duly authorized officers and agents.
22. “Digital network or software application” has the same meaning prescribed in section 28-9551.
23. “Director” means the director of the department of transportation.
24. “Drive” means to operate or be in actual physical control of a motor vehicle.
25. “Driver” means a person who drives or is in actual physical control of a vehicle.
26. “Driver license” means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
27. “Dynamic driving task”:
(a) Means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic.
(b) Includes:
(i) Lateral vehicle motion control by steering.
(ii) Longitudinal motion control by acceleration and deceleration.
(iii) Monitoring the driving environment by object and event detection, recognition, classification and response preparation.
(iv) Object and event response execution.
(v) Maneuver planning.
(vi) Enhancing conspicuity by lighting, signaling and gesturing.
(c) Does not include strategic functions such as trip scheduling and selecting destinations and waypoints.
28. “Electric bicycle” means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:

(a) “Class 1 electric bicycle” means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(b) “Class 2 electric bicycle” means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(c) “Class 3 electric bicycle” means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.

29. “Electric miniature scooter” means a device that:

(a) Weighs less than thirty pounds.

(b) Has two or three wheels.

(c) Has handlebars.

(d) Has a floorboard on which a person may stand while riding.

(e) Is powered by an electric motor or human power, or both.

(f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.

30. “Electric personal assistive mobility device” means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.

31. “Electric standup scooter”:

(a) Means a device that:

(i) Weighs less than seventy-five pounds.

(ii) Has two or three wheels.

(iii) Has handlebars.

(iv) Has a floorboard on which a person may stand while riding.

(v) Is powered by an electric motor or human power, or both.

(vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

(b) Does not include an electric miniature scooter.

32. “Evidence” includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

(b) An electronic or digital license plate authorized pursuant to section 28-364.

33. “Farm” means any lands primarily used for agriculture production.

34. “Farm tractor” means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

35. “Foreign vehicle” means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

36. “Fully autonomous vehicle” means an autonomous vehicle that is equipped with an automated driving system designed to function as a level four or five system under SAE J3016 and that may be designed to function either:

(a) Solely by use of the automated driving system.

(b) By a human driver when the automated driving system is not engaged.

37. “Golf cart” means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.

38. “Hazardous material” means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department’s safety rules prescribed pursuant to chapter 14 of this title.

39. “Human driver” means a natural person in the vehicle who performs in real time all or part of the dynamic driving task or who achieves a minimal risk condition for the vehicle.

40. “Implement of husbandry” means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:

(a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, “incidentally operated or moved on a highway” means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

41. “Limousine” means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

42. “Livery vehicle” means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

43. “Local authority” means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

44. “Manufacturer” means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

45. “Minimal risk condition”:

(a) Means a condition to which a human driver or an automated driving system may bring a vehicle in order to reduce the risk of a crash when a given trip cannot or should not be completed.

(b) Includes bringing the vehicle to a complete stop.

46. “Moped” means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

47. “Motorcycle” means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

48. “Motor driven cycle” means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.

49. “Motorized quadricycle” means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

50. “Motor vehicle”:

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

51. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

52. "Neighborhood electric shuttle":

(a) Means a self-propelled electrically powered motor vehicle to which all of the following apply:

(i) The vehicle is emission free.

(ii) The vehicle has at least four wheels in contact with the ground.

(iii) The vehicle is capable of transporting at least eight passengers, including the driver.

(iv) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(v) The vehicle is a vehicle for hire as defined in section 28-9501 and operates under a vehicle for hire company permit issued pursuant to section 28-9503.

(vi) The vehicle complies with the definition and standards for low-speed vehicles set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

(b) Includes a vehicle that meets the standards prescribed in subdivision (a) of this paragraph and that has been modified after market and not by the manufacturer to transport up to fifteen passengers, including the driver.

53. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low-speed vehicles, unless excepted or exempted under federal law, set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

54. "Neighborhood occupantless electric vehicle" means a neighborhood electric vehicle that is not designed, intended or marketed for human occupancy.

55. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.

56. “Off-road recreational motor vehicle” means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

57. “Operational design domain”:

(a) Means operating conditions under which a given automated driving system is specifically designed to function.

(b) Includes roadway types, speed range, environmental conditions, such as weather or time of day, and other domain constraints.

58. “Operator” means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

59. “Owner” means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

60. “Pedestrian” means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, “motorized wheelchair” means a self-propelled wheelchair that is used by a person for mobility.

61. “Personal delivery device”:

(a) Means a device that is both of the following:

(i) Manufactured for transporting cargo and goods in an area described in section 28-1225.

(ii) Equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.

(b) Does not include a personal mobile cargo carrying device.

62. “Personal mobile cargo carrying device” means an electronically powered device that:

(a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.

(b) Weighs less than eighty pounds, excluding cargo.

(c) Operates at a maximum speed of twelve miles per hour.

(d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.

(e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.

63. “Power sweeper” means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

64. “Public transit” means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

65. “Reconstructed vehicle” means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, “essential parts” means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

66. “Residence district” means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

67. “Right-of-way” when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

68. “SAE J3016” means surface transportation recommended practice J3016 taxonomy and definitions for terms related to driving automation systems for on-road motor vehicles published by SAE international in June 2018.

69. “School bus” means a motor vehicle that is designed for carrying more than ten passengers and that is either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

70. “Scrap metal dealer” has the same meaning prescribed in section 44-1641.

71. “Scrap vehicle” has the same meaning prescribed in section 44-1641.

72. “Semitrailer” means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, “pole trailer” has the same meaning prescribed in section 28-601.

73. “Single-axle tow dolly” means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.

74. “State” means a state of the United States and the District of Columbia.

75. “State highway” means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

76. “State route” means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

77. “Street” or “highway” means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

78. “Taxi” means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

79. “Title transfer form” means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.

80. “Traffic survival school” means a school that is licensed pursuant to chapter 8, article 7.1 of this title and that offers educational sessions that are designed to improve the safety and habits of drivers and that are approved by the department.

81. “Trailer” means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, “pole trailer” has the same meaning prescribed in section 28-601.

82. “Transportation network company” has the same meaning prescribed in section 28-9551.

83. “Transportation network company vehicle” has the same meaning prescribed in section 28-9551.

84. “Transportation network service” has the same meaning prescribed in section 28-9551.

85. “Truck” means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

86. “Truck tractor” means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

87. “Vehicle”:

(a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.

(b) Does not include:

(i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.

(ii) Devices used exclusively on stationary rails or tracks.

(iii) Personal delivery devices.

(iv) Scrap vehicles.

(v) Personal mobile cargo carrying devices.

88. “Vehicle transporter” means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Cancellation" means the annulment or termination of a driver license because of an error or defect or because the licensee is no longer entitled to the license.

2. "Commercial driver license" means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles.

3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is used in commerce to transport passengers or property and that includes any of the following:

(a) A motor vehicle or combination of motor vehicles that has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) A motor vehicle that has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) A bus.

(d) A motor vehicle or combination of motor vehicles that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

4. "Conviction" has the same meaning prescribed in section 28-101 and also means a final conviction or judgment, including an order of a juvenile court finding that a juvenile has violated a provision of this title or has committed a delinquent act that if committed by an adult constitutes any of the following:

(a) Criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1.

(b) A felony offense in the commission of which a motor vehicle was used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814.

(c) A forfeiture of bail or collateral deposited to secure a defendant's appearance in court that has not been vacated.

5. "Disqualification" means a prohibition from obtaining a commercial driver license or driving a commercial motor vehicle.

6. "Employer" means a person, including the United States, a state or a political subdivision of a state, that owns or leases a commercial motor vehicle or that assigns a person to operate a commercial motor vehicle.

7. "Endorsement" means an authorization that is added to an individual's driver license and that is required to permit the individual to operate certain types of vehicles.

8. "Foreign" means outside the United States.

9. “Gross vehicle weight rating” means the weight that is assigned by the vehicle manufacturer to a vehicle and that represents the maximum recommended total weight including the vehicle and the load for the vehicle.
10. “Judgment” means a final judgment and any of the following:
(a) The finding by a court that an individual is responsible for a civil traffic violation.
(b) An individual’s admission of responsibility for a civil traffic violation.
(c) The voluntary or involuntary forfeiture of deposit in connection with a civil traffic violation.
(d) A default judgment entered by a court pursuant to section 28-1596.
11. “License class” means, for the purpose of determining the appropriate class of driver license required for the type of motor vehicle or vehicle combination a driver intends to operate or is operating, the class of driver license prescribed in section 28-3101.
12. “Nondomiciled commercial driver license” means a commercial driver license issued to an individual domiciled in a foreign country or to an individual domiciled in another state if that state is prohibited from issuing commercial driver licenses.
13. “Original applicant” means any of the following:
(a) An applicant who has never been licensed or cannot provide evidence of licensing.
(b) An applicant who is applying for a higher class of driver license than the license currently held by the applicant.
(c) An applicant who has a license from a foreign country.
14. “Revocation” means that the driver license and driver’s privilege to drive a motor vehicle on the public highways of this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted on by the department after one year from the date of revocation.
15. “State of domicile” means the state or jurisdiction where a person has the person’s true, fixed and permanent home and principal residence and to which the person has the intention of returning after an absence.
16. “Suspension” means that the driver license and driver’s privilege to drive a motor vehicle on the public highways of this state are temporarily withdrawn during the period of the suspension.
17. “Vehicle combination” means a motor vehicle and a vehicle in excess of ten thousand pounds gross vehicle weight that it tows, if the combined gross vehicle weight rating is more than twenty-six thousand pounds.

A.R.S. § 28-3103. Driver license endorsements

A. A driver license applicant shall obtain the following endorsements to the applicant’s driver license and shall submit to an examination appropriate to the type of endorsement if the applicant operates one or more of the following vehicles:
1. A motorcycle endorsement for operation of a motorcycle if the applicant qualifies for a class M license and if the applicant qualifies for or has a class A, B, C, D or G license.
2. A hazardous materials endorsement on a class A, B or C license for operation of a vehicle that transports hazardous materials, wastes or substances in a quantity and under circumstances that require the placarding or marking of the transport vehicle as required by the department’s safety rules prescribed pursuant to chapter 14 of

this title. The department or an outside source authorized by the department and approved by the transportation security administration may:

(a) Conduct background checks in accordance with the transportation security administration procedures.

(b) Require that all hazardous materials endorsement applicants submit fingerprints.

3. A double-triple trailer endorsement on a class A license for operation of a vehicle towing double or triple trailers.

4. A passenger vehicle endorsement on a class A, B or C license for operation of a bus designed to transport sixteen or more passengers, including the driver, or a school bus.

5. A tank vehicle endorsement on a class A, B or C license for operation of a tank vehicle. For the purposes of this paragraph, "tank vehicle" means a commercial motor vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or chassis, including a cargo tank and a portable tank and excluding a portable tank having a rated capacity under one thousand gallons.

6. A school bus endorsement on a class A, B or C license for operation of a school bus. Applicants shall successfully complete both a written knowledge test and a driving skills test to obtain a school bus endorsement.

B. When applying for a commercial driver license endorsement pursuant to article 5 of this chapter, the applicant shall successfully complete the skills portion of the examination in a motor vehicle or vehicle combination applicable to the endorsement.

C. On notification by the transportation security administration that an individual's authorization to hold a hazardous materials endorsement has been terminated, the department shall immediately cancel the hazardous materials endorsement on the driver's commercial driver license.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

Material Incorporated by Reference

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

In this Section, the Department incorporates by reference:

1. The following parts, with noted exceptions, of the *Code of Federal Regulations*, revised as of October 1, 2023:
   49 CFR 40, 379, 382, 383, 385, 390 (except 390.23, 390.25 and the definitions of "direct assistance" and "emergency" in 390.5 and 390.5T), 391, 392, 393, 395, 396, 397, and 399;
2. The following sections as published in 88 FR 70897, October 13, 2023:
   49 CFR 390.23, 390.25, and the definitions of "direct assistance," "emergency," and "residential heating fuel" in 390.5 and 390.5T

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

In this Section, the Department incorporates by reference the following parts of the *Code of Federal Regulations*, revised as of October 1, 2023:

49 CFR 107, 171, 172, 173, 177, 178, and 180

D-5.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 4, Articles 5 & 7

Amend: R17-4-508; R17-4-702; R17-4-705; R17-4-707

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 20, 2025

SUBJECT: **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 4, Articles 5 & 7

Amend: R17-4-508, R17-4-702, R17-4-705, R17-4-707

Summary:

This regular rulemaking from the Department of Transportation (Department) seeks to amend four (4) rules in Title 17, Chapter 4 regarding Titles, Registration, and Driver's Licenses. The amendments are intended to improve clarity and effectiveness of the rules, and to update terminology. Specifically, the Department is seeking to incorporate by reference the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMCRs), to add a new electronic process for medical examiner certificates for CLP and CDL applicants and holders, and to make general improvements by using consistent language. The incorporation of reference to 49 C.F.R. 1572 meets the requirements for incorporation found at A.R.S. § 41-1028.

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

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

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

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

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

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

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

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), engages in the rulemaking to incorporate by reference parts of the 2023 edition of the Code of Federal Regulations in 17 A.A.C. 5, Article 2. Both ADOT and DPS rely on these federal monies that require the adoption of Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Material regulations (HMRs). The incorporation of these parts of the Code of Federal Regulations impacts ADOT's rules concerning commercial driver licenses (CDL) physical qualifications and hazardous materials endorsements (HMEs). ADOT engages in this rulemaking to ensure its rules are consistent and current with federal regulation and ADOT's process.

The Department states that it amends A.A.C. R17-4-508 to conform to the new electronic process for the medical examiner's certificates, which includes the medical examiner's certificates of commercial learner's permit (CLP) and CDL applicants and holders being electronically submitted to the Federal Motor Carrier Safety Administration (FMCSA) and then transmitted by FMCSA to the states. For calendar year 2023, ADOT's Medical Review Program received 69,266 medical examiner's certificates. Additionally, ADOT is clarifying the time-frame in which ADOT must be notified when a physical condition develops or worsens and removing the vision test as one of the required tests of an expired CLS holder.

The Department states that this rulemaking would reduce regulatory burdens; inconsistencies; ensure the state to be in compliance with federal and state requirements and continue to be eligible for federal funding, which total approximately $16 - $17 million annually; allows ADOT's CDL Program to continue issuing, renewing, transferring, or upgrading CDLs in Arizona; and allow ADOT to ensure the most current and generally accepted federal standards used by industry and law enforcement personnel to promote safe operation of both interstate and intrastate commercial motor vehicles, including the physical fitness of the drivers and security threat assessment, are being implemented and in keeping with state statutes.

The Department indicates that as of September 2024, there are 115,130 CDL holders, 3,454 CLP holders, 1,395 CDL holders with HME, and 16,278 CDL holders with dual endorsement of tank and hazardous materials. Also, there are 20,523 valid CDL and CLP holders who have successfully completed the required TSA HME Security Threat Assessment. There are two applicants who did not successfully complete the required TSA

HME Security Threat Assessment. The Department states that the fee for the U.S. Transportation Security Administration (TSA) HME Security threat Assessment as of January 1, 2025, has decreased to $85.25 from the previous $86.50. The fee for the HME is $10 (A.R.S. § 28-3002).

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

The Department indicates that in rulemaking, ADOT routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. However, each state is required under 49 CFR 384.301 to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a) as soon as practical, or an amount of up to 5 percent of the state's federal-aid highway funds appropriated under each of section 104(b)(1), (b)(3), and (b)(4) OF 23 U.S.C. may be withheld from the state for noncompliance. The Department indicates that based on amounts traditionally received by ADOT, this amount could reach approximately $30 million depending on the actual appropriation. Therefore, to the extent permitted by federal law, ADOT has determined that these rules impose the least burden and costs to regulated persons.

6. What are the economic impacts on stakeholders?

The Department anticipates that the economic impact of these rules is minimal for the CLP, CDL, and HME applicants and holders and does not expect this rulemaking to create a significant increase in costs for them. Potentially, the stakeholders may minimally decrease their costs from the electronic medical examiner's certificate verification system. The Department states there are no new fees associated with this rulemaking and costs imposed for the HME have not increased.

ADOT anticipates there may be a substantial economic impact on the agency with an estimated $96,000 to develop, program and test the new electronic medical examiner's certificate verification system and additional costs to train and communicate the change. ADOT does not expect an economic impact from the update to the incorporation by reference of 49 CFR 1572.

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

The Department indicates that there were no changes between the proposed rulemaking and the final rulemaking.

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

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

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

The Department indicates that while these rules concern requirements for CDL, CPL, and HME general permit applicants, these rules do not require issuance of those permits.

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

The Department indicates there are some corresponding federal laws concerning Commercial Learner's Permits and Commercial Drivers Licenses, but that the rules are not more stringent than those corresponding federal laws. The Federal Regulations relevant to these rules are found at 49 CFR 40, 107, 171, 172, 173, 177, 178, 180, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399.

11. Conclusion

This regular rulemaking from the Department of Transportation (Department) seeks to amend four (4) rules in Title 17, Chapter 4 regarding Titles, Registration, and Driver's Licenses. The Department is amending the rules to update the incorporation by reference to 49 CFR 1572 Regulations (HMCRs), to add a new electronic process for medical examiner certificates for CLP and CDL applicants and holders, and to make minor amendments to ensure consistency with rulewriting standards.

The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(B). The Department states that the immediate effective date is necessary in order to preserve the public peace, health, and safety, and to avoid violation of federal regulation. The Department has specifically indicated that the immediate effective date will ensure consistency with the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations. The Department has also indicated that the incorporation by references will allow the Department of Public Safety (DPS) to be eligible for $16-17 million in federal funding.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF TRANSPORTATION

206 S. 17th Ave
Phoenix, AZ 85007

KATIE HOBBS
GOVERNOR

JENNIFER TOTH
DIRECTOR

April 18, 2025

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 305
Phoenix, AZ 85007

Re: Department of Transportation, 17. A.A.C. 4, Articles 5, Safety, and 7, Hazardous Materials Endorsement, Notice of Final Rulemaking

Dear Chairperson Jessica Klein:

The Arizona Department of Transportation submits the accompanying final rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-201(A)(1):

a. The rulemaking record closed on January 15, 2025, and no written public comments were received on these rules;
b. The rulemaking activity does not relate to a five-year review report;
c. The rulemaking does not establish a new fee;
d. The rulemaking does not increase an existing fee;
e. An immediate effective date is requested for these rules under A.R.S. § 41-1032;
f. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;
g. No new full-time employees are necessary to implement and enforce the rules;
h. Documents included in this final rule package are as follows:
    1. Signed cover letter;
    2. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
    3. Economic, Small Business and Consumer Impact Statement;
    4. General authorizing statutes and specific statutes, including relevant statutory definitions;
    5. Definitions of terms;
    6. Material incorporated by reference; and
    7. Request for, and approvals of initial and final rulemaking from the Governor's Office.

Sincerely,

Jennifer Toth
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

PREAMBLE

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

April 16, 2025

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R17-4-508	Amend
R17-4-702	Amend
R17-4-705	Amend
R17-4-707	Amend

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

Authorizing statute: A.R.S. §§ 28-366 and 28-5204

Implementing statute: A.R.S. §§ 28-3103, 28-3159(A)(3), and 28-3223

4. The effective date of the rule:

Month X, 2025 (To be completed by the *Register* Editor with an immediate effective date.)

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

The Arizona Department of Transportation (ADOT) requests that this rulemaking be effective immediately on filing with the Office of the Secretary of State, as permitted under A.R.S. § 41-1032, to:

Preserve the public peace, health, and safety. These rules are made in connection with the required incorporation by reference of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) in 17 A.A.C. 5, Article 2, thus ensuring there is a consistency between ADOT regulations, state statutes, and federal regulations. These changes allow for a greater understanding by commercial driver license (CDL) applicants of what is required of them as it pertains to their physical qualifications and, when applicable, eligibility for a hazardous materials endorsement (HME). These regulations safeguard the public by making sure there are healthy and safe CDL holders; and

Avoid a violation of federal law or regulation or state law. ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the U.S. Department of Transportation and the Environmental Protection Agency when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)) and adopt and

administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383.

The updated incorporation by reference of the FMCSRs and HMRs in 17 A.A.C. 5, Article 2, allows the Arizona Department of Public Safety (DPS) to be eligible to apply for an estimated $16 – $17 million in total federal funding from the Federal Motor Carrier Safety Administration (FMCSA).

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

Not applicable

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 3538, Issue Date: November 22, 2024, Issue Number: 47, File number: R24-251

Notice of Proposed Rulemaking: 30 A.A.R. 3502, Issue Date: November 22, 2024, Issue Number: 47, File number: R24-244

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

Name: Candace Olson
Title: Senior Rules Analyst
Office: Government Relations and Rules
Address: Department of Transportation
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007
Telephone: (480) 267-6610
Email: COlson2@azdot.gov
Website: https://azdot.gov/about/government-relations

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

ADOT, in partnership with DPS, is engaged in rulemaking to incorporate by reference parts of the 2023 edition of the *Code of Federal Regulations* in 17 A.A.C. 5, Article 2. Both ADOT and DPS rely on federal monies that require the adoption of FMCSRs and HMRs. The incorporation of these parts of the *Code of Federal Regulations* impacts ADOT's rules concerning CDL physical qualifications and HMEs. ADOT engages in this rulemaking to ensure its rules are consistent and current with federal regulations and ADOT's process.

ADOT amends R17-4-508 to conform to the new electronic process for the medical examiner's certificates, which includes the medical examiner's certificates of commercial learner's permit (CLP) and CDL applicants and holders being electronically submitted to FMCSA and then transmitted by FMCSA to the states. Additionally, ADOT is clarifying the time-frame in which ADOT must be notified when a physical condition develops or worsens and

removing the vision test as one of the required tests of an expired CDL holder.

ADOT updates R17-4-702 to incorporate by reference the 2023 edition of 49 CFR 1572.

In addition, minor clarifying and technical changes have been made to ensure consistent and clearer language and conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

ADOT did not review or rely on any study relevant to the rules.

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

Not applicable

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

ADOT anticipates that the economic impact of these rules is minimal for the CLP, CDL, and HME applicants and holders and does not expect this rulemaking to create a significant increase in costs for them. Potentially, the stakeholders may minimally decrease their costs from the electronic medical examiner's certificate verification system. There are no new fees associated with this rulemaking and costs imposed for the HME have not increased. The fee for the U.S. Transportation Security Administration (TSA) HME Security Threat Assessment as of January 1, 2025, has decreased to $85.25 from the previous $86.50. The fee for the HME is $10 (A.R.S. § 28-3002).

ADOT anticipates that there may be a substantial economic impact on the agency with an estimated cost of $96,000 to develop, program, and test the new electronic medical examiner's certificate verification system and additional costs to train and communicate the change. ADOT does not expect an economic impact from the update to the incorporation by reference of 49 CFR 1572.

The benefits of this rulemaking include keeping the state consistent with federal regulations, which also allows the state to be eligible for federal funds and providing clarity and reduction of confusion for an agency, business, or person. DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona. For FY 2024, DPS can apply for an estimated $16,000,000 to $17,000,000 in total federal funding from FMCSA. Stakeholders may also have a major benefit from switching from having to provide ADOT with a paper medical examiner's certificate to the electronic process through FMCSA. In some instances, CDL applicants may still need to submit a paper version when applying for the Arizona CDL Intrastate Medical Waiver.

As of September 2024, there are 115,130 CDL holders, 3,454 CLP holders, 1,395 CDL holders with an HME, and 16,278 CDL holders with dual endorsement of tank and hazardous materials. Also, there are 20,523 valid CDL and CLP holders who have successfully completed the required TSA HME Security Threat Assessment. There are two

applicants who did not successfully complete the required TSA HME Security Threat Assessment.

For calendar year 2023, ADOT's Medical Review Program received 69,266 medical examiner's certificates.

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

Not applicable

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

ADOT did not receive any public or stakeholder comments regarding this rulemaking.

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

There are no other matters prescribed by statute applicable to ADOT or to any specific rule or class of rules.

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

These rules concern certain requirements for applicants of a CLP, CDL, or HME. A CLP, CDL, and HME are general permits since the activities and practices authorized by them are substantially similar in nature for all holders. These rules though do not require the issuance of the CLP, CDL, or HME; that requirement is under 17 A.A.C. 5, Article 2 and state statute.

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

Federal regulations in 49 CFR 383, 390, 391, and 1572 are applicable to these rules. These rules are in accordance with those federal regulations and are not more stringent.

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

No analysis was submitted to ADOT.

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

In R17-4-702: 49 CFR 1572, revised as of October 1, 2023

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

Not applicable

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 17. TRANSPORTATION
CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 5. SAFETY

Section

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

Section

ARTICLE 5. SAFETY

R17-4-508. Commercial Driver License Physical Qualifications

A. ~~Requirements.~~ A commercial driver license applicant must meet the commercial driver license physical qualifications and have a U.S. Department of Transportation medical examiner's certificate, form MCSA-5876, completed, which the Department must be able to verify from the electronic information provided by the Federal Motor Carrier Safety Administration.

1. ~~A commercial driver license applicant shall submit a U.S. Department of Transportation medical examiner's certificate, available online from the Federal Motor Carrier Safety Administration at https://www.fmcsa.dot.gov, completed as prescribed under 49 CFR 391.43 to the Department.~~
   a. ~~Except as provided in subsection (A)(1)(c), the medical examiner's certificate must be completed by a medical examiner who is listed on the current National Registry of Certified Medical Examiners. A search of certified medical examiners is available on the Federal Motor Carrier Safety Administration's website.~~
   b. The medical examiner's certificate must be completed upon or prior to the applicant's initial application ~~and upon~~ or ~~prior to~~ expiration of the applicant's current medical examiner's certificate.
   c. ~~An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.41(b)(10).~~
2. ~~As prescribed under 49 CFR 391.41(a)(2), a licensee who possesses a commercial driver license shall keep an original or photo graphic copy of the licensee's current medical examiner's certificate required under subsection (A)(1) available for law enforcement inspection upon request for no more than 15 days after the date it was issued as valid proof of medical certification.~~
3.2. A licensee who possesses a commercial driver license shall notify the Department within 10 days of a physical condition that develops or worsens causing noncompliance with the commercial driver license physical qualifications ~~as soon as the licensee's medical condition allows~~.

B. Commercial driver license suspension and revocation notification procedure. To notify a licensee of any commercial driver license suspension and revocation under subsection (C), the Department shall simultaneously mail two notices within 15 days after a medical examiner's certificate's due date ~~or actual submission date~~ to the licensee's address of record that:

1. Suspends the licensee's commercial driver license beginning on the notice's date; and
2. Revokes the licensee's commercial driver license 15 days after the date of the suspension notice issued under subsection (B)(1).

C. Noncompliance actions.

1. Initial application denial. If an applicant's initial medical examiner's certificate required under subsection ~~(A)(1)~~ (A) shows that the applicant does not comply with the commercial driver license physical qualifications, the Department shall immediately mail the commercial driver license denial notification to the applicant's address of record.

2. Medical examiner's certificate renewal suspension and revocation. If a renewing commercial driver licensee ~~submits:~~

   ~~a.~~ ~~No~~ does not complete a medical examiner's certificate required under subsection ~~(A)(1)~~ (A) or ~~a form indicating noncompliance with commercial driver license physical qualifications~~ the Federal Motor Carrier Safety Administration indicates the licensee is noncompliant with the commercial driver license physical qualifications, the Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).

   ~~b. An incomplete medical examiner's certificate required under subsection (A)(1), the Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Department within 45 days after the date of the Department's letter. The Department shall follow the suspension and revocation notification procedure pre scribed under subsection (B) if the licensee fails to return the requested information in the time frame prescribed in this subsection.~~

D. A commercial driver license that remains revoked for longer than 12 months expires. The holder of an expired commercial driver license may obtain a new commercial driver license by successfully completing all commercial driver license ~~original application~~ written~~, vision,~~ and skills testing and by ~~submitting~~ completing the medical examiner's certificate prescribed under subsection ~~(A)(1)~~ (A).

E. Administrative hearing. A person who is denied a commercial driver license or whose commercial driver license is suspended or revoked under this Section may request a hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

R17-4-702. Scope

This Article applies to commercial drivers who are applying for an original, renewal, or transfer of an HME, in accordance with 49 CFR 1572. The Department incorporates by reference 49 CFR 1572, revised as of October 1, ~~2020~~ 2023, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at https://www.govinfo.gov and ordered online by visiting the U.S. Government Bookstore at http://bookstore.gpo.gov. ~~The International Standard Book Number is 9780160958861.~~

R17-4-705. Required Testing

A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.

B. A transfer applicant shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223~~,~~ and pay any applicable fee under R17-4-706.

R17-4-707. 60-Day Notice to Apply

A. The Department shall notify an existing HME holder that a new Security Threat Assessment shall be successfully passed ~~in order~~ to retain the HME 60 days prior to the expiration of the Security Threat Assessment and the corresponding HME.

B. Upon expiration of the Department's 60 Day Notice to Apply, the Department shall cancel the Arizona driver license privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

R17-4-508, R17-4-702, R17-4-705, and R17-4-707

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), is engaged in rulemaking to incorporate by reference parts of the 2023 edition of the *Code of Federal Regulations* in 17 A.A.C. 5, Article 2. Both ADOT and DPS rely on federal monies that require the adoption of Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). The incorporation of these parts of the *Code of Federal Regulations* impacts ADOT's rules concerning commercial driver license (CDL) physical qualifications and hazardous materials endorsements (HMEs). ADOT engages in this rulemaking to ensure its rules are consistent and current with federal regulations and ADOT's process.

ADOT amends A.A.C. R17-4-508 to conform to the new electronic process for the medical examiner's certificates, which includes the medical examiner's certificates of commercial learner's permit (CLP) and CDL applicants and holders being electronically submitted to the Federal Motor Carrier Safety Administration (FMCSA) and then transmitted by FMCSA to the states. Additionally, ADOT is clarifying the time-frame in which ADOT must be notified when a physical condition develops or worsens and removing the vision test as one of the required tests of an expired CDL holder.

ADOT updates A.A.C. R17-4-702 to incorporate by reference the 2023 edition of 49 CFR 1572.

In addition, minor clarifying and technical changes have been made to ensure consistent and clearer language and conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

These rules are made in connection with the required incorporation by reference of the FMCSRs and HMRs in 17 A.A.C. 5, Article 2, thus ensuring there is a consistency between ADOT regulations, state statutes, and federal regulations. These changes allow for a greater understanding by CDL applicants of what is required of them as it pertains to their physical qualifications and, when applicable, eligibility for an HME. These regulations safeguard the public by making sure there are healthy and safe CDL holders. In addition, the updated incorporation by reference of the FMCSRs and HMRs in 17 A.A.C. 5,

Article 2, allows DPS to be eligible to apply for an estimated $16 - 17 million in total federal funding from FMCSA.

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

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the U.S. Department of Transportation and the Environmental Protection Agency when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)) and adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383. If these rule amendments are not adopted, ADOT would not be in compliance with federal and state law, which could expose the agency to a loss of funds; inconsistencies between state regulations; and FMCSA could prohibit ADOT's CDL Program from issuing, renewing, transferring, or upgrading CDLs in this state if they determine that Arizona is not substantially in compliance with 49 U.S.C. 31311(a).

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

This rulemaking would reduce regulatory burdens; inconsistencies; ensure the state to be in compliance with federal and state requirements and continue to be eligible for federal funding, which total approximately $16 - $17 million annually; allow ADOT's CDL Program to continue issuing, renewing, transferring, or upgrading CDLs in Arizona; and allow ADOT to ensure the most current and generally accepted federal standards used by industry and law enforcement personnel to promote safe operation of both interstate and intrastate commercial motor vehicles, including the physical fitness of the drivers and security threat assessment, are being implemented and in keeping with state statutes.

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

ADOT anticipates that the economic impact of these rules is minimal for the CLP, CDL, and HME applicants and holders and does not expect this rulemaking to create a significant increase in costs for them. Potentially, the stakeholders may minimally decrease their costs from the electronic medical examiner's certificate verification system. There are no new fees associated with this rulemaking and costs imposed for the HME have not increased. The fee for the U.S. Transportation Security Administration (TSA) HME Security Threat Assessment as of January 1, 2025, has decreased to $85.25 from the previous $86.50. The fee for the HME is $10 (A.R.S. § 28-3002).

ADOT anticipates that there will be a substantial economic impact on the agency with an estimated cost of $96,000 to develop, program, and test the new electronic medical examiner's certificate verification system

and additional costs to train and communicate the change. ADOT does not expect an economic impact from the update to the incorporation by reference of 49 CFR 1572.

The benefits of this rulemaking include keeping the state consistent with federal regulations, which also allows the state to be eligible for federal funds and providing clarity and reduction of confusion for an agency, business, or person. DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona. For FY 2024, DPS can apply for an estimated $16,000,000 to $17,000,000 in total federal funding from FMCSA. Stakeholders may also have a major benefit from switching from having to provide ADOT with a paper medical examiner's certificate to the electronic process through FMCSA. In some instances, CDL applicants may still need to submit a paper version when applying for the Arizona CDL Intrastate Medical Waiver.

As of September 2024, there are 115,130 CDL holders, 3,454 CLP holders, 1,395 CDL holders with a HME, and 16,278 CDL holders with dual endorsement of tank and hazardous materials. Also, there are 20,523 valid CDL and CLP holders who have successfully completed the required TSA HME Security Threat Assessment. There are two applicants who did not successfully complete the required TSA HME Security Threat Assessment.

For calendar year 2023, ADOT's Medical Review Program received 69,266 medical examiner's certificates.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: Candace Olson
Address: Government Relations and Rules
Department of Transportation
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007
Telephone: (480) 267-6610
E-mail: COlson2@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

Persons to bear costs	**Persons directly benefiting**
ADOT	ADOT
CDL applicants and holders	CDL applicants and holders

Persons to bear costs	Persons directly benefiting
Employers who opt to pay for the CDL medical examinations or HME Security Threat Assessments	Certified medical examiners listed on the National Registry
Hazardous materials industries	General motoring public
State CDL programs	TSA

3. Analysis of costs and benefits occurring in this state:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than $1,000

Moderate $1,000 to $9,999

Substantial $10,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

ADOT anticipates that there will be a substantial economic impact on the agency with an estimated cost of $96,000 to develop, program, and test the new electronic medical examiner's certificate verification system and additional costs to train and communicate the change. Annually, ADOT incurs substantial costs to review, monitor, and maintain CDL medical evaluation forms. However, the CDL medical screening process fulfills ADOT's statutory obligations and protects the public. In time there could be a decrease in costs with the removal of the paper process of the medical examiner's certificates and the process for when incomplete certificates are received.

ADOT does not expect an economic impact from the update to the incorporation by reference of 49 CFR 1572 to the 2023 edition. There are no changes from the last edition incorporated by reference by ADOT to the 2023 edition and as such there should not be a significant increase or decrease in costs or benefits.

There are no additional administrative costs to ADOT associated with this rulemaking since ADOT already has a CDL medical review and HME process in place.

The benefits of this rulemaking include keeping the state consistent with federal regulations, which also allows the state to be eligible for federal funds and providing clarity and reduction of confusion for an agency, business, or person. ADOT should also benefit by having to spend less resources on providing individual clarification of the rules to regulated persons. DPS administers and enforces MCSAP throughout the State of Arizona. For FY 2024, DPS can apply for an estimated $16,000,000 to $17,000,000 in total federal funding from FMCSA.

For calendar year 2023, ADOT's Medical Review Program received 69,266 medical examiner's certificates.

ADOT is not required to notify the Joint Legislative Budget Committee under A.R.S. § 41-1055(B)(3)(a), since no new full-time employees are necessary to enforce and implement these rules.

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

ADOT anticipates that political subdivisions of this State may incur minimal to substantial costs only when the agency either pays for or provides the medical evaluations required under 49 CFR 391.43 to their employees who hold a CDL or pays for their employee's TSA HME Security Threat Assessment. The actual cost is difficult to quantify as the amount is dependent upon cost for the medical evaluation and the number of agency employees subject to these requirements. The fee for the TSA HME Security Threat Assessment is set at $85.25, which was recently decreased from $86.50. These costs are not new requirements, and the agencies may already have a budget in place for them.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

There are no new fees or costs for businesses associated with this rulemaking. CDL applicants, permittees, licensees, and any applicable employers are currently paying the costs for the required medical evaluations and for the TSA HME Security Threat Assessment. Starting January 1, 2025, the TSA HME Security Threat Assessment fee decreased to $85.25. Costs could potentially decrease with the removal of the need to present to ADOT the paper medical examiner's certificate and the potential burden and confusion when an incomplete paper medical examiner's certificate is presented to ADOT.

The biggest benefit for the businesses is the switching from having to provide ADOT with a paper medical examiner's certificate to the electronic process through FMCSA. In some instances, CDL applicants may still need to submit a paper version when applying for the Arizona CDL Intrastate Medical Waiver. Additionally, the benefits of this rulemaking include increased public safety; clarity; conciseness; reduction of possible confusion for an agency, business, or person; and a reduction of a regulatory burden from some of the streamlining and technical changes.

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

ADOT anticipates a minimal impact on private and public employment as a result of this rulemaking. Employers may benefit from being able to hire from a slightly larger pool of eligible CDL holders. CDL applicants and holders may benefit from a streamlined and clearer understanding of their requirements.

5. **Statement of the probable impact of the proposed rulemaking on small businesses:**

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

   The small businesses subject to these rules, as defined under A.R.S. § 41-1001, are independent motor carriers, CDL applicants and holders already subject to FMCSRs and HMRs, and the medical examiners listed on the National Registry of Certified Medical Examiners.

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

   General administrative costs for small businesses are the same as discussed under paragraph (B)(3)(c) above. Overall, ADOT anticipates no new economic impact on qualified persons and business entities because of this rulemaking. These costs are not new requirements, and the agencies may already have a budget in place for them.

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

   The costs associated with this rulemaking are uniform regardless of business size. ADOT expanded the availability of offices that may perform CDL transactions which may allow small businesses to spend less if they assist their drivers in obtaining and maintaining their CDLs since the CDL holders may have fewer expenses involved with the expanded capability of going to an office much closer to their location.

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

   As of September 2024, there are 115,130 CDL holders, 3,454 CLP holders, 1,395 CDL holders with a HME, and 16,278 CDL holders with dual endorsement of tank and hazardous materials. Also, there are 20,523 valid CDL and CLP holders who have successfully completed the required TSA HME Security Threat Assessment. There are two applicants who did not successfully complete the required TSA HME Security Threat Assessment.

   Costs for private persons and consumers are the same as discussed under paragraph (B)(3)(c) above. Overall, ADOT anticipates no new economic impact on qualified people because of this rulemaking. The costs for the medical evaluations and TSA HME Security Threat Assessments are not new requirements and there was a decrease in the TSA HME Security Threat Assessment fee. Plus, it is possible that the electronic medical examiner's certificate verification system will decrease costs slightly for the people.

   The rules support the public interest and the interests of concerned parties by ensuring that all FMCSRs and HMRs and requirements of motor carriers are uniformly applied and enforced. The public benefits when all motor carriers remain in compliance with these rules include increased public safety, clarity, concise, and reduction of possible confusion for a business or person. ADOT expanded the availability of offices that may perform CDL transactions which may allow CDL holders to have fewer expenses involved with the expanded capability of going to an office much closer to their location.

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

   Since this rulemaking is in association with the required incorporation by reference update of the *Code of Federal Regulations* in 17 A.A.C. 5, Article 2, DPS will be eligible to apply for an estimated $16 million - $17 million in MCSAP funding that may be used for commercial motor vehicle safety programs such as:

   - Motor carrier safety programs in accordance with 49 CFR 350.203;
   - Size and weight enforcement programs in accordance with 49 CFR 350.227(b)(1);
   - Criminal activity enforcement programs in accordance with 49 CFR 350.227(b)(2); and
   - Traffic safety programs in accordance with 49 CFR 350.227(c).

   This rulemaking ensures that an amount of up to 5 percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. will not be withheld for noncompliance.

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

   In rulemaking, ADOT routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. However, each state is required under 49 CFR 384.301 to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a) as soon as practical, or an amount of up to 5 percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. may be withheld from the state for noncompliance. Based on amounts traditionally received by ADOT, this amount could reach approximately $30 million depending on the actual appropriation. Therefore, to the extent permitted by federal law, ADOT has determined that these rules impose the least burden and costs to regulated persons.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

None

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ADMINISTRATIVE RULES DIVISION

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of
July 1, 2022 through September 30, 2022

Questions about these rules? Contact:

Department:	Department of Transportation Rules and Policy Development
Address:	206 S. 17th Ave., Mail Drop 180A Phoenix, AZ 85007
Website:	https://azdot.gov/about/government-relations
Name:	Candace Olson, Rules Analyst
Telephone:	(480) 267-6610
Email:	COlson2@azdot.gov

The release of this Chapter in Supp. 22-3 replaces Supp. 21-4, 1-39 pages.
Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

Authority: A.R.S. §§ 28-366 and 28-5204

Supp. 22-3

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ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Section R17-4-101, made by final rulemaking at 25 A.A.R. 1885, effective July 2, 2019 (Supp. 19-3).

ARTICLE 2. VEHICLE TITLE

ARTICLE 3. VEHICLE REGISTRATION

Article 3, consisting of Sections R17-4-301 through R17-4-349, transferred to Title 17, Chapter 1, Article 3, Sections R17-1-301 through R17-1-349 (Supp. 92-4).

ARTICLE 4. DRIVER LICENSES

ARTICLE 5. SAFETY

ARTICLE 6. EXPIRED

Editor's Note: Sections R17-4-606, R17-4-607 and its Appendix A and Appendices A and B were repealed under a Notice of Proposed Summary Rulemaking in Supp. 96-1. R17-4-612 was amended under the same Notice of Proposed Summary Rulemaking at 2 A.A.R. 1486. The Office did not receive a Notice of Final Summary Rulemaking on these Sections (Editor's Note added Supp. 10-2).

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

ARTICLE 8. MOTOR VEHICLE RECORDS

ARTICLE 9. RESERVED

ARTICLE 1. GENERAL PROVISIONS

R17-4-101. Definitions

In addition to the definitions prescribed under A.R.S. § 28-101, A.R.S. § 28-3001, and 6 CFR 37.3, the following terms apply to this Chapter, unless otherwise specified:

"Non-operating identification license" means a credential issued by the Department for identification purposes only, as prescribed under A.R.S. § 28-3165, which does not grant authority to operate a motor vehicle and is not intended to be accepted by federal agencies for an official purpose defined under 6 CFR 37.3.

"Travel-compliant driver license" has the same meaning as the term REAL ID Driver's License defined under 6 CFR 37.3, which is a driver license issued by the Department as prescribed under A.R.S. § 28-3175 in compliance with A.R.S. Title 28, Chapter 8, and the federal standards provided under 6 CFR 37 for state issuance of secure credentials intended to be accepted by federal agencies for official purposes.

"Travel-compliant identification license" has the same meaning as the term REAL ID Identification Card as defined under 6 CFR 37.3, which is a non-operating identification license issued by the Department as prescribed under A.R.S. § 28-3175 in compliance with A.R.S. Title 28, Chapter 8, and the federal standards provided under 6 CFR 37 for state issuance of secure credentials acceptable by federal agencies for official purposes.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

ARTICLE 2. VEHICLE TITLE

R17-4-201. Definitions

In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2001, and 28-3001, the following definitions apply to this Article, unless otherwise specified:

"Authorized ELT Participant" means a lending institution or finance company authorized by the Division to electronically release a lien or encumbrance.

"Date of lien" means the date identified by the lienholder as the date the loan was issued to the borrower.

"Division" means the Arizona Department of Transportation's Motor Vehicle Division.

"Encumbrance" means a lien recorded, by the Division, on a vehicle or mobile home record and the Arizona Certificate of Title.

"ELT" means Electronic Lien and Title.

"EPA standards" means the emission standards of the Environmental Protection Agency, as prescribed under 40 CFR 86.

"FMVSS" means the Federal Motor Vehicle Safety Standards as prescribed under 49 CFR 571.

"Joint tenancy with right of survivorship" means vehicle ownership by two or more persons and the deceased joint owner's interest in the vehicle is transferred to the surviving owners.

"Lienholder" means a person or entity retaining legal possession of a vehicle or mobile home until the debtor has satisfactorily repaid the loan for which the vehicle or mobile home is designated as collateral.

"Lienholder Number" means the computer-generated record number assigned by the Division to a lienholder.

"Low-speed vehicle" has the same meaning as prescribed under 49 CFR 571.3.

"MPV" means multipurpose passenger vehicle, which has the same meaning as prescribed under 49 CFR 571.3.

"MVD" means the Arizona Department of Transportation's Motor Vehicle Division.

"NHTSA" means National Highway Traffic Safety Administration of the United States Department of Transportation.

"Operation of law lien" means a lien resulting from the application of a state or federal statute.

"Primary lien" means the first of any multiple liens recorded on a vehicle or mobile home record.

"Registered importer" means a person registered by the NHTSA Administrator to import vehicles, as prescribed under 49 CFR 30141.

"Tenancy in common" means vehicle ownership by two or more people without the right of survivorship.

"Valid titling document" means one of the following documents showing a vehicle's compliance with FMVSS and EPA standards:

A NHTSA Declaration,

A manufacturer's letter, or

A U.S. federal compliance label printed in English.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-202. Certificate of Title Form

A. The Motor Vehicle Division (MVD) shall produce the Certificate of Title form on tamper-resistant and counterfeit-resistant paper.

B. MVD shall provide space on the Certificate of Title form for the following information:

1. Title information:
   a. Title number;
   b. Issue date;
   c. Previous title number; and
   d. State and date of previous title.
2. Vehicle information:
   a. Vehicle identification number (VIN);
   b. Vehicle make, model, year, and body style;
   c. Fuel type;
   d. Odometer information; and
   e. Vehicle mechanical or structural condition.
3. Lienholder information:
   a. Lienholder name and address;
   b. Lienholder customer or federal identification number; and
   c. Lien amount and lien date.
4. Vehicle owner's or owner's legal designee information:
   a. Name; and
   b. Mailing address.
5. Ownership change information:
   a. Sale date;

b. Purchaser's name and address;
c. Odometer mileage disclosure statement;
d. Seller's signature; and
e. Seller's signature certification.
6. Dealer reassignment information.
7. Other information as required by the Division for internal processing and recordkeeping.

Historical Note
New Section recodified from R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-203. Certificate of Title and Registration Application

A. In addition to the requirements of A.R.S. §§ 28-2051 and 28-2157, a person applying for an Arizona motor vehicle title certificate and registration shall complete a form supplied by the Motor Vehicle Division that contains the following information:
1. Vehicle information:
a. Tab number;
b. Initial registration month and year;
c. Vehicle make, model, year, and body style;
d. Mechanical or structural status indicating whether the vehicle is:
i. Dismantled,
ii. Reconstructed,
iii. Salvaged, or
iv. Specially constructed;
e. Gross vehicle weight;
f. Fuel type;
g. Odometer information;
h. Current title number and titling state.
2. An owner's or lessee's legal ownership status.
3. Lienholder information:
a. Lienholder names and addresses, and
b. Lien amount and date incurred.
4. If a mobile home, the physical site.
5. Co-ownership information:
a. A statement of whether any survivorship rights in the vehicle exist; and
b. A statement providing co-ownership legal status prescribed in R17-4-205(B).
6. Owner certification information verifying:
a. Ownership,
b. Inclusion of all liens and encumbrances, and
c. Seller-verified odometer reading.
7. Applicant signatures.
8. An acknowledgement that:
a. The applicant agrees or disagrees to the Division's release of the applicant's name on a commercial mailing list; and
b. The applicant has read a printed explanation of odometer reading codes.
9. Other information required by the Division for internal processing and recordkeeping.

B. An applicant may voluntarily provide the following information on the form:
1. Applicant's birth date;
2. Applicant's driver license number; and
3. Applicant's federal employer identification number, if the applicant is taking title as a sole proprietor, partnership, corporation, or other legal business entity.

Historical Note
New Section recodified from R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-204. Seller's Signature Acknowledgement

A seller shall ensure that a Notary Public or a Motor Vehicle Division (MVD) agent witnesses the seller sign the title transfer. The Notary Public or MVD agent shall sign the title transfer acknowledging witnessing the seller's signature. "Motor Vehicle Division agent" has the meaning prescribed in A.R.S. § 28-370.

Historical Note
Adopted effective November 10, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-204 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-202 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-205. Co-ownership and Vehicle Title

A. A title certificate application shall specify the form of co-ownership and names of a vehicle's co-owners as follows.
1. If co-ownership is a joint tenancy with right of survivorship in which all owners must sign to transfer or encumber the vehicle, the applicant shall provide the name of each owner separated by "and/or."
2. If co-ownership is a joint tenancy that allows one owner to transfer or encumber the vehicle title, the applicant shall provide:
a. The name of each co-owner separated by "or"; and
b. A form, signed by each co-owner authorizing title transfer or encumbrance on the signature of any co-owner.
3. If co-ownership is a tenancy in common, the applicant shall provide the name of each owner separated by "and."

B. Before a surviving joint tenant under subsection (A)(1) obtains a title certificate as owner or transfers or encumbers the vehicle title, the surviving joint tenant shall present to the Division a death certificate for each deceased joint tenant.

C. After the death of a tenant in common, the Division shall issue a new title certificate only as directed by:
1. A certified probate court order, or
2. A successor's affidavit under A.R.S. § 14-3971(B).

Historical Note
Adopted effective November 13, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-205 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-203 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

R17-4-206. Additional Titling Standards for Vehicles Not Manufactured in Compliance with United States Safety and Emission Standards; "Gray-market Vehicles"

A. Titling standards.
1. The Division shall issue a title to a foreign-manufactured vehicle imported to the United States if an applicant presents the following:
a. A valid titling document,

b. A completed MVD title and registration application as prescribed under R17-4-203,
c. A completed Vehicle Verification Form certifying that the vehicle passed the Division's physical inspection,
d. A document stating that the vehicle passed an Arizona emissions inspection under A.R.S. § 49-542, and
e. A certificate that the vehicle was converted to meet:
i. EPA standards, and
ii. FMVSS.

2. A foreign-manufactured vehicle imported to the United States is exempt from this subsection if it is older than 25 years from its manufacture date.
3. A foreign-manufactured vehicle imported to the United States that is between 21 and 25 years from the manufacture date is exempt from subsection (A)(1)(e)(i).
4. Titling standards for vehicles manufactured according to Canadian specifications.
a. The Division shall issue a title to a vehicle manufactured according to Canadian specifications if it:
i. Is not for resale;
ii. Has a GVWR of less than 10,000 pounds; and
iii. Is a passenger vehicle, motorcycle, or MPV.
b. Before titling a vehicle manufactured according to Canadian specifications, the owner shall submit to the Division manufacturer documentation verifying that the vehicle complies with FMVSS and EPA standards.
i. The Division shall waive the FMVSS and EPA labeling location requirements as prescribed in 49 CFR 571 and 40 CFR 86.
ii. If manufacturer documentation indicates that a vehicle's speedometer or headlights do not comply with FMVSS and EPA standards, the owner shall file additional documentation with the Division to verify completion of a modification that brings the vehicle into compliance.
c. A registered importer shall certify a vehicle manufactured according to Canadian specifications if:
i. The vehicle meets FMVSS standards except for occupant crash protection provisions prescribed under 49 CFR 571.208, or
ii. The owner did not submit manufacturer documentation as prescribed under subsection (A)(4)(b).

B. The Division shall require a registered importer's certification of a foreign-manufactured vehicle imported to the United States that:
1. Is not exempt under subsections (A)(2) or (A)(3), or
2. Does not qualify under subsection (A)(4).

Historical Note

Former Rule, General Order 55. Former Section R17-4-19 renumbered without change as Section R17-4-206 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-209 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

R17-4-207. Lien Filing

A. Lien filing. When filing a lien with the Division, a person shall submit a Title and Registration Application (available online at www.azdot.gov/mvd/FormsandPub/mvd.asp), the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28.
1. The Division shall record a statement of all liens and encumbrances on the vehicle or mobile home record upon receiving a lien filing that meets all requirements prescribed in this subsection.
2. The Division shall immediately return a lien filing, with a letter stating why the lien filing was returned, when the lien filing does not meet the requirements prescribed in this subsection.

B. Multiple liens. The Division will record up to three liens on any one vehicle or mobile home record. Additional liens are recorded through the County Recorder's office. Liens are valued in the order that they are filed and recorded on the vehicle or mobile home record. However, the Division considers the primary lien recorded on the vehicle or mobile home record to be above all other subsequent liens or encumbrances. In the absence of an operation of law lien, only the lienholder in the primary position may repossess a vehicle or mobile home.

C. Lien filing notice. The Division shall notify the lienholder of the recording of a lien.
1. The Division shall issue an Arizona Certificate of Title or, when the lienholder is an Authorized ELT Participant, transmit an electronic lien notification to the primary lienholder.
2. The Division shall issue a computer-generated Lienholder Record to each subsequent lienholder recorded on the vehicle or mobile home record. The Division shall not issue a duplicate Lienholder Record.

Historical Note

Former Rule, General Order 62. Former Section R17-4-24 renumbered without change as Section R17-4-207 (Supp. 87-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section recodified from R17-4-230 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-208. Lien Clearance

A. Lien clearance. The Division shall remove the lien from the vehicle or mobile home record indicated on the lien clearance and issue a new Arizona Certificate of Title upon receiving proof that the lien is satisfied and an application furnished by the Division, the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28. The Division considers the following instruments satisfactory proof that the lien or encumbrance recorded on a vehicle or mobile home record is satisfied:
1. The transmission of an electronic lien release from an ELT Participant,
2. A certificate of title acknowledged by the lienholder as prescribed under subsection (B)(1),
3. An original lien filing receipt acknowledged by the lienholder as prescribed under subsection (B)(1),

4. An original computer-generated Lienholder Record acknowledged by the lienholder as prescribed under subsection (B)(1),
5. A lender copy of the original lien instrument indicating the lien is paid in full acknowledged by the lienholder as prescribed under subsection (B)(1); or
6. Any document giving a complete description of the vehicle, as recorded on the Arizona Certificate of Title, indicating that the lien is either "paid in full" or "satisfied" acknowledged by the lienholder as prescribed under subsection (B)(1).

B. Lienholder satisfaction of lien requirements.

1. The Division shall not accept a satisfaction of lien when the authorized signature of the lienholder or authorized agent of the lienholder, appearing on the lien clearance instrument, is not acknowledged before a Notary Public or witnessed by an authorized Division employee.
2. The lienholder shall deliver the Arizona Certificate of Title to the next lienholder or, if there is not another lienholder, to the owner of the vehicle or mobile home within 15 business days after receiving payment in full satisfaction of the lien.
3. A lienholder that fails to deliver the certificate of title within 15 business days may be assessed a civil penalty, as prescribed under A.R.S. § 28-2134.

C. Lien release received in error. The Division will not reimburse any parties for any monetary damages that may occur when a lienholder issues a lien clearance to the Division in error.

D. Administrative hearing. A lienholder who is assessed a civil penalty, as prescribed under A.R.S. § 28-2134, may request a hearing in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

Historical Note

Former Rule, General Order 83. Former Section R17-4-35 renumbered without change as Section R17-4-208 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified from R17-4-231 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

R17-4-209. Recodified

Historical Note

Adopted as Section R17-4-81 and renumbered as Section R17-4-209 effective May 29, 1987 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2755, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-210. Repealed

Historical Note

Adopted effective July 30, 1992 (Supp. 92-3). Section R17-4-210 repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore the rule went back into effect November 26, 1998; Section repealed by summary rulemaking with an interim effective date of August 20, 1999, filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

Appendix A. Repealed

Historical Note

Adopted effective July 30, 1992 (Supp. 92-3). Appendix A repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore Appendix A went back into effect November 26, 1998; Appendix A repealed by summary rulemaking with an interim effective date of August 20, 1999; filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

R17-4-211. Reserved

R17-4-212. Reserved

R17-4-213. Reserved

R17-4-214. Reserved

R17-4-215. Reserved

R17-4-216. Recodified

Historical Note

Adopted effective October 21, 1997 (Supp. 97-4). Section recodified to R17-4-302 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-217. Recodified

Historical Note

Adopted effective September 12, 1997 (Supp. 97-3). Section recodified to R17-4-303 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-218. Recodified

Historical Note

Amended effective April 21, 1980 (Supp. 80-2). Former Section R17-4-54 renumbered without change as Section R17-4-218 (Supp. 87-2). R17-4-218 and Appendix A repealed; new Section adopted effective December 8, 1998 (Supp. 98-4). Section recodified to R17-4-304 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-219. Recodified

Historical Note

Former Rule, General Order 101. Former Section R17-4-42 renumbered without change as Section R17-4-219 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4602, effective November 14, 2000 (Supp. 00-4). Section recodified to R17-4-305 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-220. Repealed

Historical Note

Former Rule, General Order 103; Former Section R17-4-44 repealed, new Section R17-4-44 adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-44

renumbered without change as Section R17-4-220 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

R17-4-221. Repealed

Historical Note
Former Rule, General Order 75. Former Section R17-4-30 renumbered without change as Section R17-4-221 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

R17-4-222. Recodified

Historical Note
Adopted effective December 3, 1986 (Supp. 86-6). Former Section R17-4-80 renumbered without change as Section R17-4-222 (Supp. 87-2). Section recodified to R17-4-306 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-223. Repealed

Historical Note
Emergency rule adopted effective August 8, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Former emergency rule permanently adopted with changes effective December 31, 1991 (Supp. 91-4). Repealed effective July 18, 1994 (Supp. 94-3).

R17-4-224. Recodified

Historical Note
Adopted effective September 25, 1991 (Supp. 91-3). Section recodified to R17-4-307 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-225. Reserved

R17-4-226. Recodified

Historical Note
Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted with changes effective February 1, 1993 (Supp. 93-1). Amended effective January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Section repealed effective August 1, 1999 pursuant to subsection (C); new Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-502 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix A. Repealed

Historical Note
Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted effective February 1, 1993 (Supp. 93-3). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Appendix repealed effective August 1, 1999 pursuant to R17-4-226(C) (Supp. 00-2).

R17-4-226.01. Recodified

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-503 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-227. Recodified

Historical Note
Adopted effective June 16, 1992 (Supp. 92-2). Section recodified to R17-4-402 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-228. Reserved

R17-4-229. Reserved

R17-4-230. Recodified

Historical Note
Former Rule, General Order 47. Former Section R17-4-15 renumbered without change as Section R17-4-230 (Supp. 87-2). Section recodified to R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-231. Recodified

Historical Note
Former Rule, General Order 70. Former Section R17-4-28 renumbered without change as Section R17-4-231 (Supp. 87-2). Section recodified to R17-4-208 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-232. Reserved

R17-4-233. Reserved

R17-4-234. Reserved

R17-4-235. Reserved

R17-4-236. Reserved

R17-4-237. Repealed

Historical Note
Former Rule, General Order 50. Former Section R17-4-16 renumbered without change as Section R17-4-237 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-238. Repealed

Historical Note
Former Rule, General Order 51. Former Section R17-4-17 renumbered without change as Section R17-4-238 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-239. Repealed

Historical Note
Former Rule, General Order 60. Former Section R17-4-22 renumbered without change as Section R17-4-239 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-240. Recodified

Historical Note
Former Rule, General Order 65; Amended effective January 11, 1982 (Supp. 82-1). Former Section R17-4-25 renumbered without change as Section R17-4-240 (Supp. 87-2). Section recodified to R17-5-402 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-241. Recodified

Historical Note
Former Rule, General Order 76. Former Section R17-4-31 renumbered without change as Section R17-4-241 (Supp. 87-2). Section amended by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-404 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-242. Repealed

Historical Note
Former Rule, General Order 77. Former Section R17-4-32 renumbered without change as Section R17-4-242 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 869, effective January 22, 2001 (Supp. 01-1).

R17-4-243. Repealed

Historical Note
Former Rule, General Order 85. Former Section R17-4-36 renumbered without change as Section R17-4-243 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

R17-4-244. Reserved

R17-4-245. Recodified

Historical Note
Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-405 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-246. Recodified

Historical Note
Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-406 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-247. Reserved

R17-4-248. Reserved

R17-4-249. Reserved

R17-4-250. Repealed

Historical Note
Former Rule, General Order 111. Former Section R17-4-47 renumbered without change as Section R17-4-250 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

R17-4-251. Repealed

Historical Note
Former Rule, General Order 112. Former Section R17-4-48 renumbered without change as Section R17-4-251 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

R17-4-252. Recodified

Historical Note
Former Rule, General Order 82. Former Section R17-4-34 renumbered without change as Section R17-4-252 (Supp. 87-2). Section recodified to R17-4-308 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-253. Reserved

R17-4-254. Reserved

R17-4-255. Reserved

R17-4-256. Reserved

R17-4-257. Reserved

R17-4-258. Reserved

R17-4-259. Reserved

R17-4-260. Recodified

Historical Note
Former Rule, General Order 72. Former Section R17-4-29 renumbered without change as Section R17-4-260 (Supp. 87-2). Section recodified to R17-5-407 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-261. Reserved

R17-4-262. Reserved

R17-4-263. Reserved

R17-4-264. Reserved

R17-4-265. Repealed

Historical Note
Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 1, 1984 (Supp. 84-5). Former Section R17-4-72 renumbered without change as Section R17-4-265 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 2154, effective May 1, 2001 (Supp. 01-2).

ARTICLE 3. VEHICLE REGISTRATION

R17-4-301. Definitions

Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2231, and 28-5100, the following definitions apply to this Article, unless otherwise specified:

"Apportioned commercial vehicle" means a commercial vehicle that is subject to the proportional registration provisions prescribed under A.R.S. § 28-2233.

"Biennial" means once every two years.

"Business day" means a day other than a Sunday or holiday.

"Calendar quarter" means the following time periods established by the Division: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

"Day" means the 24-hour period from one midnight to the following midnight.

"Disabled person" means a recipient of public monies as a disabled individual under Title 16 of the Social Security Act.

"Division" means the Arizona Department of Transportation's Motor Vehicle Division.

"Division Director" means the Assistant Director for the Arizona Department of Transportation's Motor Vehicle Division or the Assistant Director's designee.

"Drop box" means a receptacle designated by the Division into which a person places vehicle registration forms and fees, and from which the Division retrieves these items daily.

"Effective date of registration" means the date the vehicle first becomes subject to registration fees in Arizona.

"Electronic delivery" means the transmission of registration and credit card information to the Division, by computer, through an authorized third party electronic service provider.

"Emergency Vehicle Permit" means a document issued by the Division's Enforcement Services Program to a private fire department for a single fire engine that authorizes the driver of a permitted vehicle to exercise the privileges prescribed under A.R.S. § 28-624.

"Expiration date" means the day, month, and year in which a vehicle registration expires.

"Fire Engine" means a motor vehicle containing fire-fighting equipment capable of extinguishing fires.

"IM147 Test" means the emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

"Included vehicle" means a vehicle subject to annual or biennial Arizona registration unless otherwise excluded from the staggered registration prescribed under A.R.S. § 28-2159 and R17-4-304.

"Initial registration" means the first registration of an included vehicle in Arizona.

"OBD" means the On-Board Diagnostics emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

"Off-highway vehicle" has the same meaning as prescribed under A.R.S. § 28-1171.

"Operator Requirements" means the requirements given in Chapter 2, Basic Driver/Operator Requirements, of the National Fire Protection Association Standard for Fire Apparatus Driver/Operator Professional Qualification (NFPA 1002), 1998 edition, which is incorporated by reference and on file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

"Private fire department" means a fire fighting business equipped to provide emergency fire-fighting devices for a private purpose that is neither a public service corporation nor a municipal entity.

"Private Fire Emergency Vehicle" means a fire engine operated by a private fire department for which an Emergency Vehicle Permit is issued.

"Registration" means the authorization, issued by the Division that allows a vehicle to use state highways.

"Registration fees" means the fees due to the Division at the time of registration and consisting of the general registration fees imposed under A.R.S. § 28-2003, the vehicle license tax imposed under A.R.S. § 28-5801, and the commercial registration and gross weight fees imposed under A.R.S. § 28-5433.

"Registration period" means the time-frame during which a vehicle registration is valid.

"Renewal registration" means the second and subsequent registration of an included vehicle.

Historical Note

Transferred to R17-1-301 (Supp. 92-4). New Section made by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

R17-4-302. Staggered Registration for Apportioned Commercial Vehicles

Apportioned commercial vehicle fleet registration periods. The Division shall assign a registration period to a newly registered apportioned commercial vehicle fleet. The fleet owner and the Director shall mutually agree to the registration period and expiration date.

1. The Division shall:
   a. Establish a registration period that expires on the last day of the calendar quarter selected by the fleet owner, not to exceed 12 months from the initial registration date.
   b. Apply the original fleet registration fees towards the registration fees required for a replaced vehicle when an owner replaces a vehicle within a fleet.
   c. Apply the original fleet registration fees towards the registration fees required for a transferred vehicle when an owner transfers a vehicle between fleets.
   d. Refund any excess credit of registration fees in accordance with the provisions prescribed under A.R.S. § 28-2356.
2. The owner of an apportioned commercial fleet vehicle shall:
   a. Ensure that all vehicles within a fleet have the same registration period.
   b. Ensure that the fleet vehicle is not operated with an expired vehicle registration.
   c. Maintain the assigned or selected registration period for at least three consecutive registration periods.
3. The Division shall not provide a grace period for late registration or late payment of fees.

Historical Note

Adopted effective August 1, 1988 (Supp. 88-3). Transferred to R17-1-302 (Supp. 92-4). New Section recodified from R17-4-216 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

R17-4-303. Biennial Registration

A. Biennial registration.
1. The Division may register any vehicle biennially, unless excluded.
2. The Division shall register a newly licensed or newly leased vehicle biennially, unless the owner chooses to register the vehicle on an annual basis.

B. Excluded vehicles. The owner of a vehicle that meets any one of the following criteria is excluded from the biennial registration program:
1. A vehicle required to have an IM147 or OBD test within 12 months after the date of registration.
2. A vehicle that requires an annual emissions test.
3. A vehicle subject to any one of the following types of registration:
   a. Allocated registration under A.R.S. § 28-2261,
   b. Apportioned registration under A.R.S. § 28-2261,
   c. Fleet registration under A.R.S. § 28-2202, or
   d. Interstate registration under A.R.S. § 28-2052.
4. A vehicle with an undersized mobile home plate registration.
5. A vehicle that requires the owner to certify eligibility for a registration fee exemption on an annual basis; such as the registration exemption available to an active duty mil-

itary member, a widow, widower, or disabled person other than a 100% disabled veteran.

Historical Note

Transferred to R17-1-303 (Supp. 92-4). New Section recodified from R17-4-217 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

R17-4-304. Staggered Registration for Included Vehicles

A. Included vehicles. The Division shall assign one of the following staggered expiration dates when issuing an initial registration to an included vehicle:
1. If a vehicle has an effective date of registration from the first day through the 15th day of the month:
   a. Annual registration expires on the 15th day of the month 12 months from the month the vehicle is subject to Arizona registration; or
   b. Biennial registration expires on the 15th day of the month 24 months from the month the vehicle is subject to Arizona registration.
2. If a vehicle has an effective date of registration from the 16th day through the last day of the month:
   a. Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or
   b. Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration.

B. Excluded vehicles. The staggered registration prescribed by this Section excludes the following vehicles:
1. A vehicle exempt from registration;
2. A vehicle subject to any one of the following types of registration:
   a. Allocated registration under A.R.S. § 28-2261,
   b. Apportioned registration under A.R.S. § 28-2261,
   c. Fleet registration under A.R.S. § 28-2202,
   d. Interstate registration under A.R.S. § 28-2052, or
   e. Seasonal agricultural registration under A.R.S. § 28-5436;
3. A vehicle subject to a one-time registration fee;
4. A government vehicle, a vehicle owned by an official representative of a foreign government, or an emergency vehicle owned by a nonprofit organization as provided under A.R.S. § 28-2511(A);
5. A noncommercial trailer that is not a travel trailer as defined by A.R.S. § 28-2003(B) and is less than 6000 pounds gross vehicle weight under A.R.S. §§ 28-2003(A)(7) and 28-5801(C);
6. A moped;
7. A motorized electric or gas powered bicycle or tricycle capable of reaching speeds of 20 to 25 miles per hour.

C. Proration of fees. The Division shall prorate registration fees under A.R.S. §§ 28-2159, 28-5807, and 28-5434.

D. Expiration dates. The Division shall utilize the following expiration dates, regardless of the effective date of the initial registration:
1. Annual registration: Expires 12 months from the expiration of the previous registration period; or
2. Biennial registration: Expires 24 months from the expiration of the previous registration period.

E. Application for registration. A person applying for an initial registration or renewal registration for an included vehicle shall submit the requirements prescribed under subsection (1) or (2):
1. If a person submits the registration to the Division or an Authorized Third-party Provider of registration functions in person or by mail:
   a. The application for registration or registration card, and
   b. Payment of registration fees.
2. If a person submits the registration to an Authorized Third-party Electronic Delivery Provider:
   a. Required registration information, and
   b. Credit card information.

F. Timely submission of registration. A person shall submit the renewal registration of an included vehicle not later than the day the prior registration period expires. If the prior registration period expires on a day other than an established business day, a person shall submit the renewal registration of an included vehicle not later than the first business day after the prior registration period expires.

G. Penalties. The penalties imposed under A.R.S. § 28-2162 for delinquent renewal registration of an included vehicle shall apply when either of the following occurs:
1. A person does not submit to the Division or an Authorized Third-party Provider of registration functions the items set forth in subsection (E)(1) so that the items are received by the due date; or
2. A person does not electronically submit to an Authorized Third-party Electronic Delivery Provider the items required under subsection (E)(2) so that the items are received by the due date.

H. Date of receipt. The date of receipt for the items required under subsection (E)(1) or (E)(2) shall be the following:
1. The date a person presents the items required under subsection (E)(1) to a Division facility or the facility of an Authorized Third-party Provider of registration functions in person;
2. The date an Authorized Third-party Electronic Delivery Provider receives by computer or telephone the items set forth in subsection (E)(2);
3. The date a private express mail carrier receives the package containing the items set forth in subsection (E)(1), as indicated on the shipping package;
4. The date of the last business day prior to the day the Division retrieves the items set forth at subsection (E)(1) from a designated Division drop box; or
5. The date of the United States Postal Service postmark stamped on the envelope containing the items set forth in subsection (E)(1), unless the vehicle is not in compliance with the motor vehicle emissions testing requirements.

I. Evidence of registration. The Division or Authorized Third-party Provider of registration functions shall assign and issue a number plate or plates to an included vehicle as evidence of registration.
1. The assigned number plate shall be attached and displayed on the rear of the assigned vehicle. When two plates are issued, the second plate may be attached to the front of the assigned vehicle.
2. Improper number plate display shall subject the owner and operator of the vehicle to the sanctions imposed under A.R.S. §§ 28-2531(B) and 28-2532.
3. Any registration tabs or stickers issued by the Division or Authorized Third-party Provider of registration functions shall be displayed on the appropriate number plate of the assigned vehicle.

Historical Note
Transferred to R17-1-304 (Supp. 92-4). New Section recodified from R17-4-218 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

R17-4-305. Temporary Registration Plate "TRP" Procedure

A. Definitions.
1. "Charitable Event TRP" means a TRP issued to a motor vehicle dealership or manufacturer for a charitable event as prescribed by A.R.S. § 28-4548.
2. "Deal Unwound" means the vehicle was returned to the dealership and the sale was not completed.
3. "Voided TRP" means a TRP that the issuer records as voided after issuing the TRP.

B. Issuing.
1. New and used motor vehicle dealers and title service companies that issue TRPs shall send an electronic record of the TRP to the Division before placing the TRP on the vehicle.
2. The TRP expiration date shall be 45 days from the issue date.
3. TRPs issued for charitable events are valid for the duration of the event not to exceed 45 days.
4. An issuer shall not issue more than one TRP per vehicle sale.
5. An issuer shall attach the TRP to the vehicle rear in the same manner and position as a permanent license plate prescribed under A.R.S. § 28-2354.

C. Voiding. An issuer shall void a TRP when:
1. The TRP is lost,
2. The TRP is damaged,
3. The dealer reports a deal unwound,
4. The issuer enters the wrong vehicle identification number, or
5. The issuer enters the wrong customer identification number.

Historical Note
Transferred to R17-1-305 (Supp. 92-4). New Section R17-4-305 recodified from R17-4-219 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5320, effective February 6, 2006 (Supp. 05-4).

R17-4-306. Nonresident Daily Commuter Fee

A nonresident daily commuter shall pay a fee of $8 for each motor vehicle exempt from registration under A.R.S. § 28-2294.

Historical Note
Former Rule, General Order 14. Former Section R17-4-05 renumbered without change as Section R17-4-306 (Supp. 87-2). Transferred to R17-1-306 (Supp. 92-4). New Section R17-4-306 recodified from R17-4-222 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 571, effective January 14, 2002 (Supp. 02-1).

R17-4-307. Motor Vehicle Registration and License Plate Reinstatement Fee

A. Under A.R.S. § 28-4151(A), the Division shall assess a $50 fee for reinstatement of a motor vehicle registration and license plate suspended under A.R.S. §§ 28-4148 and 28-4149.

B. Subsection (A) does not apply to a motor carrier subject to the financial responsibility requirements prescribed under A.R.S. Title 28, Chapter 9, Article 2.

Historical Note
Former Rule, General Order 5. Former Section R17-4-03 renumbered without change as Section R17-4-307 (Supp. 87-2). Transferred to R17-1-307 (Supp. 92-4). New Section R17-4-307 recodified from R17-4-224 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5439, effective November 14, 2001 (Supp. 01-4).

R17-4-308. Official Vehicle License Plates

A. The Motor Vehicle Division shall issue license plates without charge for official vehicles owned by any entity listed in A.R.S. § 28-2511(A).

B. A license plate issued under A.R.S. § 28-2511 has no expiration date.

C. An entity listed in A.R.S. § 28-2511(A) may transfer a license plate to another vehicle the entity owns.

D. A person who has custody of vehicles governed by A.R.S. § 28-2511 shall:
1. Complete title and registration procedures as prescribed under A.R.S. Title 28, Chapter 7;
2. Display each license plate as prescribed by A.R.S. § 28-2354; and
3. Maintain a record of each license plate transfer that includes:
   a. The date of the transfer;
   b. The year, make, and model of the vehicle, and
   c. The vehicle identification number (VIN) for each car involved in the transfer.

Historical Note
Former Rule, General Order 20. Former Section R17-4-06 renumbered without change as Section R17-4-308 (Supp. 87-2). Transferred to R17-1-308 (Supp. 92-4). New Section R17-4-308 recodified from R17-4-252 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 573, effective January 14, 2002 (Supp. 02-1).

R17-4-309. Private Fire Emergency Vehicle Permit

A. Private Fire Emergency Vehicle Permit. A Private Fire Emergency Vehicle Permit may be issued to a private fire department if all requirements provided under subsections (B) and (C) are met.
1. The Private Fire Emergency Vehicle Permit is valid until revoked or surrendered.
2. The Private Fire Emergency Vehicle Permit shall be carried at all times in the fire engine for which the permit is issued.
3. The Private Fire Emergency Vehicle Permit is not transferable.
4. The Private Fire Emergency Vehicle Permit shall remain the property of the Division and shall be surrendered to the Division when the fire engine is no longer being used to respond to an emergency.

B. Private Fire Emergency Vehicle Permit application. A person applying for a Private Fire Emergency Vehicle Permit shall submit the required documentation to the Division's Enforcement Services Program, P.O. Box 2100, Mail Drop 513M, Phoenix, Arizona 85007. The following documentation is required at the time of initial application:
1. Private Fire Emergency Vehicle Permit Application. Multiple fire engines may be listed on one application. The Private Fire Emergency Vehicle Permit Application is furnished by the Division and is available upon request from the Division's Enforcement Services Program; and

2. Proof of acceptable financial responsibility to cover any liability that may arise from the use of the Private Fire Emergency Vehicle Permit. Acceptable proof of financial responsibility is an insurance policy that:
   a. Is issued by an insurance company licensed to conduct business in Arizona by the Arizona Department of Insurance;
   b. Is written for a combined single-limit coverage of at least $5 million;
   c. Contains a provision stating that the state of Arizona shall be notified at least 30 days prior to any policy cancellation, nonrenewal, or change in provisions; and
   d. Contains a provision stating that the state of Arizona shall be notified immediately if the insurance company becomes insolvent.

C. Operational requirements.
1. A fire engine may be operated with the privileges prescribed under A.R.S. § 28-624, but shall be subject to all other applicable provisions prescribed under A.R.S. Title 28, A.A.C. Title 17, and any other applicable statutes or ordinances.
2. A fire engine shall only be driven by an operator who meets the Operator Requirements as defined under R17-4-301.
3. A fire engine with a Private Fire Emergency Vehicle Permit, shall meet the National Fire Protection Association's (NFPA) fire engine and fire apparatus standards in effect for the manufacture date of the emergency vehicle.
4. The private fire department is responsible for ensuring that the fire engine is not operated using the privileges prescribed under A.R.S. § 28-624 with an invalid Private Fire Emergency Vehicle Permit.

D. Denial. If an application for a Private Fire Emergency Vehicle Permit is denied, a notice of denial shall be sent to the applicant at the address of record. An applicant is allowed to reapply for a permit following denial, provided all requirements listed under this Section are met.

E. Revocation. If a Private Fire Emergency Vehicle Permit is revoked, a notice of the revocation shall be sent to the address of the applicant. An applicant is allowed to reapply for a permit following revocation, provided all requirements listed under this Section are met.
1. The emergency vehicle permit is immediately revoked upon a determination that:
   a. The permitted vehicle or the private fire department no longer meets the requirements for the permit; or
   b. The vehicle was operated in violation of the provisions of this rule, any other applicable rule, or statute.
2. The revocation shall be preceded by a notice of intent to revoke.
   a. The notice of intent to revoke shall be sent by first-class mail to the address of the applicant as shown on the permit application.
   b. The notice of intent to revoke shall inform the applicant of the right to an administrative hearing and the procedure for requesting a hearing.
3. The revocation shall become effective 25 days after the mailing date of the notice of intent to revoke unless a timely request for hearing is submitted.

F. Administrative hearing. The administrative hearing is held in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

Historical Note

Former Rule, General Order 31. Former Section R17-4-11 renumbered without change as Section R17-4-309 (Supp. 87-2). Transferred to R17-1-309 (Supp. 92-4). New Section recodified from R17-4-701 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

Appendix A. Repealed

Historical Note

Appendix A recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Appendix A repealed by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

R17-4-310. Personalized License Plates

A. Definitions.
1. "Division" means the Motor Vehicle Division of the Arizona Department of Transportation.
2. "Division Director" means the Assistant Division Director for the Motor Vehicle Division of the Arizona Department of Transportation.
3. "Personalized plate" means a license plate with a registration number chosen by a person rather than assigned by the Division.
4. "Plate number" means the combination of letters, numbers, and spaces on a vehicle license plate.

B. A person who wants to receive a personalized plate shall file an application with the Division on a form provided by the Division.
1. An applicant shall provide the following information on the form:
   a. Name of the vehicle's owner or lessee;
   b. Vehicle owner's or lessee's mailing address;
   c. Vehicle's make and year;
   d. Vehicle identification number;
   e. Vehicle's current plate number;
   f. Date the vehicle's current registration expires;
   g. Plate number to appear on the personalized plate;
   h. Meaning or message of the personalized plate; and
   i. Other information required by the Division.
2. If an applicant is purchasing the personalized plate as a gift for the vehicle's owner or lessee, the applicant shall also provide the applicant's name and mailing address.

C. The Division shall reject the application if the requested plate number:
1. Refers to or connotes breasts, genitalia, pubic area, buttocks, or relates to sexual or eliminatory functions;
2. Refers to or connotes the substance, paraphernalia, sale, use, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant;
3. Expresses contempt for or ridicule or superiority of a class of persons;
4. Duplicates another registration number;
5. Has connotations that are profane or obscene; or
6. Uses linguistics, numbers, phonetics, translations from foreign languages or upside-down or reverse reading to achieve a reference or connotation prohibited in subsection (C)(1) through (C)(3) or (C)(5).

D. Rejection of application.
1. If the Division does not issue personalized plates to an applicant, the Division shall inform the applicant by mail.

2. An applicant may make a written appeal by letter for a review of the rejection, within 10 days after the date of the Division's notice, to the following address:
Motor Vehicle Division
Special Plates Unit, Mail Drop 801Z
PO Box 2100
Phoenix, Arizona 85001-2100.

E. Revocation of personalized plates; appeal.
1. If the Division determines that a personalized plate should not have been issued because it contains a plate number prohibited under subsection (C), the Division shall require the plate holder to surrender the plates to the division within 30 days after the date of the Division's mailed notice, unless the plate holder requests an appeal under subsection (D)(2).
2. A person who has been directed to surrender a personalized plate may submit a written appeal by letter as prescribed under subsection (D)(2).
3. Refund of personalized plate fees on revocation.
   a. The Division shall refund the amount of the personalized plate fee and the pro rated amount of the special annual renewal fee to the person holding the revoked personalized plate along with any credit or refund calculated by the Division.
   b. A person whose plate is revoked may request that instead of a refund, the Division issue the person a different personalized plate. The person shall apply for the personalized plate as prescribed under subsection (B).
4. The Division shall cancel the vehicle plate of a vehicle if the person who holds a revoked personalized plate does not surrender the plate within 30 days after the date of the Division's notice or, if the person timely requests an appeal, within 30 days after the Division issues a final decision.

Historical Note
Former Rule, General Order 25. Former Section R17-4-09 renumbered without change as Section R17-4-310 (Supp. 87-2). Transferred to R17-1-310 (Supp. 92-4). New Section recodified from R17-4-708 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4227, effective November 15, 2002 (Supp. 02-3).

R17-4-311. Special Organization Plate List
As required under A.R.S. § 28-2404(D), the Division provides the following list of special organization license plates authorized by the state license plate commission and available for issue to qualified applicants:
1. Arizona Historical Society,
2. Firefighter,
3. Fraternal Order of Police,
4. Legion of Valor,
5. University of Phoenix, and
6. Wildlife Conservation.

Historical Note
Former Rule, General Order 24. Former Section R17-4-08 renumbered without change as Section R17-4-311 (Supp. 87-2). Transferred to R17-1-311 (Supp. 92-4). New Section made by exempt rulemaking at 7 A.A.R. 5251, effective November 2, 2001 (Supp. 01-4). Amended by exempt rulemaking at 8 A.A.R. 4007, effective November 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 13 A.A.R. 1894, effective June 1, 2007 (Supp. 07-2).

R17-4-312. Off-highway Vehicle User Indicia
A. For lawful Arizona off-highway operation, the owner or operator of a qualifying all-terrain vehicle, off-highway vehicle, or off-road recreational motor vehicle shall apply to the Department for an off-highway vehicle user indicia as prescribed under A.R.S. § 28-1177. The owner or operator shall submit to the Division:
1. The off-highway vehicle user indicia application provided by the Division, and
2. The fee prescribed under subsection (C).

B. The owner or operator shall indicate, on the application submitted to the Division under subsection (A), one of the following categories of intended vehicle usage:
1. Exclusively off-highway;
2. Primarily off-highway, occasionally on-highway; or
3. Primarily on-highway, occasionally off-highway.

C. The fee for each off-highway vehicle user indicia issued or renewed by the Department under A.R.S. § 28-1177 is $25.

D. The off-highway vehicle user indicia, issued by the Division under subsection (A), shall have the same basic design as the license plate tab issued by the Division for other types of vehicles and shall contain the letters OHV.

E. The applicant shall display the off-highway vehicle user indicia in the upper left corner of the license plate issued by the Division under A.R.S. Title 28, Chapter 7, Articles 11 through 15.

Historical Note
Former Rule, General Order 39. Former Section R17-4-13 renumbered without change as Section R17-4-312 (Supp. 87-2). Transferred to R17-1-312 (Supp. 92-4). New Section made by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

R17-4-313. Expired

Historical Note
Former Rule, General Order 27. Former Section R17-4-10 renumbered without change as Section R17-4-313 (Supp. 87-2). Transferred to R17-1-313 (Supp. 92-4). Amended by exempt rulemaking at 24 A.A.R. 3512, effective December 1, 2018 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 104, effective December 21, 2018 (Supp. 19-2). Section repealed; new Section made by exempt rulemaking at 25 A.A.R. 2261, with an effective date of August 19, 2019 (Supp. 19-3). Section expired under A.R.S. § 41-1052(M) at 28 A.A.R. 2061 (August 19, 2022), with an immediate effective date of August 2, 2022 (Supp. 22-3).

R17-4-314. Transferred

Historical Note
Former Rule, General Order 69. Former Section R17-4-27 renumbered without change as Section R17-4-314 (Supp. 87-2). Transferred to R17-1-314 (Supp. 92-4).

R17-4-315. Transferred

Historical Note
Former Rule, General Order 61. Former Section R17-4-23 renumbered without change as Section R17-4-315 (Supp. 87-2). Transferred to R17-1-315 (Supp. 92-4).

R17-4-316. Transferred

Historical Note
Former Rule, General Order 57. Former Section R17-4-20 renumbered without change as Section R17-4-316 (Supp. 87-2). Transferred to R17-1-316 (Supp. 92-4).

R17-4-317. Transferred

Historical Note
Former Rule, General Order 36. Former Section R17-4-12 renumbered without change as Section R17-4-317 (Supp. 87-2). Transferred to R17-1-317 (Supp. 92-4).

R17-4-318. Transferred

Historical Note
Former Rule, General Order 7. Former Section R17-4-04 renumbered without change as Section R17-4-318 (Supp. 87-2). Transferred to R17-1-318 (Supp. 92-4).

R17-4-319. Transferred

Historical Note
Former Rule, General Order 44. Former Section R17-4-14 renumbered without change as Section R17-4-319 (Supp. 87-2). Transferred to R17-1-319 (Supp. 92-4).

R17-4-320. Transferred

Historical Note
Former Rule, General Order 54 (Amended). Former Section R17-4-18 renumbered without change as Section R17-4-320 (Supp. 87-2). Transferred to R17-1-320 (Supp. 92-4).

R17-4-321. Transferred

Historical Note
Former Rule, General Order 21. Former Section R17-4-07 renumbered without change as Section R17-4-321 (Supp. 87-2). Transferred to R17-1-321 (Supp. 92-4).

R17-4-322. Transferred

Historical Note
Former Rule, General Order 3. Former Section R17-4-02 renumbered without change as Section R17-4-322 (Supp. 87-2). Transferred to R17-1-322 (Supp. 92-4).

R17-4-323. Transferred

Historical Note
Former Rule, General Order 2A. Former Section R17-4-01 renumbered without change as Section R17-4-323 (Supp. 87-2). Transferred to R17-1-323 (Supp. 92-4).

R17-4-324. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-325. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-326. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-327. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-328. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-329. Transferred

Historical Note
Transferred to R17-1-301 (Supp. 92-4).

R17-4-330. Transferred

Historical Note
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-67 renumbered without change as Section R17-4-330 (Supp. 87-2). Transferred to R17-1-330 (Supp. 92-4).

R17-4-331. Transferred

Historical Note
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-68 renumbered without change as Section R17-4-331 (Supp. 87-2). Transferred to R17-1-331 (Supp. 92-4).

R17-4-332. Transferred

Historical Note
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-69 renumbered without change as Section R17-4-332 (Supp. 87-2). Transferred to R17-1-332 (Supp. 92-4).

R17-4-333. Transferred

Historical Note
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-71 renumbered without change as Section R17-4-333 (Supp. 87-2). Amended effective December 30, 1987 (Supp. 87-4). Transferred to R17-1-333 (Supp. 92-4).

R17-4-334. Transferred

Historical Note
Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-70 renumbered without change as Section R17-4-334 (Supp. 87-2). Transferred to R17-1-334 (Supp. 92-4).

R17-4-335. Transferred

Historical Note
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-401 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-401 renumbered without change as Section R17-4-335 (Supp. 87-2). Transferred to R17-1-335 (Supp. 92-4).

R17-4-336. Transferred

Historical Note
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-402 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-402 renumbered without change as Section R17-4-336 (Supp. 87-2). Transferred to R17-1-336 (Supp. 92-4).

R17-4-337. Transferred

Historical Note
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-403 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-403 renumbered without change as Section R17-4-337 (Supp. 87-2). Transferred to R17-1-337 (Supp. 92-4).

R17-4-338. Transferred

Historical Note
Transferred to R17-1-338 (Supp. 92-4).

R17-4-339. Transferred

Historical Note
Transferred to R17-1-339 (Supp. 92-4).

R17-4-340. Transferred

Historical Note
Transferred to R17-1-340 (Supp. 92-4).

R17-4-341. Transferred

Historical Note
Transferred to R17-1-341 (Supp. 92-4).

R17-4-342. Transferred

Historical Note
Transferred to R17-1-342 (Supp. 92-4).

R17-4-343. Transferred

Historical Note
Transferred to R17-1-343 (Supp. 92-4).

R17-4-344. Transferred

Historical Note
Transferred to R17-1-344 (Supp. 92-4).

R17-4-345. Transferred

Historical Note
Transferred to R17-1-345 (Supp. 92-4).

R17-4-346. Transferred

Historical Note
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-346 (Supp. 92-4).

R17-4-347. Transferred

Historical Note
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-347 (Supp. 92-4).

R17-4-348. Transferred

Historical Note
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-348 (Supp. 92-4).

R17-4-349. Transferred

Historical Note
Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-349 (Supp. 92-4).

R17-4-350. Rental Vehicle Surcharge Reimbursement

A. Definitions. In addition to the definitions prescribed under A.R.S. § 28-5810, the following terms apply to this Section, unless otherwise specified:

"Person" means an individual, a sole proprietorship, firm, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, estate, trust, business trust, receiver or syndicate, this state, any county, city, town, district or other subdivision of this state, an Indian tribe, or any other group or combination acting as a unit.

"Previous year" means the prior calendar year, January 1 through December 31.

"Rental revenue" means the total contract amount stated in the retail contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related charges, including boxes, packing blankets, straps, and tow bars.

"Surcharge" means the amount equal to five percent of the total contract amount stated in the rental contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related items, including boxes, packing blankets, straps, and tow bars.

"Vehicle License Tax" means the tax imposed by A.R.S. § 28-5801, less any tax credited under A.R.S. § 28-2356.

B. Reports. Each person subject to A.R.S. § 28-5810, who has conducted a vehicle rental business for any time period during the previous year, shall file an annual report, for the previous year, with the Department. The annual report is due no later than February 15 of each year, unless the rental business is closed before December 31, in which case the annual report is due immediately. The report shall be made on a form furnished by the Department and shall contain all of the following:

1. Address where business records are secured;
2. Name, title, phone number, and signature of the person authorized to sign the form;
3. Business name;
4. Business type, including sole proprietorship, partnership, corporation, limited liability company, and limited liability partnership;
5. Name, title, phone number, mailing address, and e-mail address of the contact person;
6. Federal Employer Identification Number (FEIN);
7. Mailing address (if different from principal business address);
8. Principal business address;
9. Rental vehicle revenue collected, by county;
10. Total Arizona Vehicle License Tax paid on rental vehicles;
11. Total rental vehicle revenue collected;
12. Total surcharge collected;
13. Total surcharge due to the Department; and
14. Type of rental business, including passenger vehicle, semitrailer, trailer, truck, motorcycle, moped, and recreational vehicle.

C. Records. A person in the business of renting vehicles, as defined under A.R.S. § 28-5810, is required to maintain records in support of the required annual reports for a period of four years after the date of the filing of the required annual report or the due date of the report, whichever is longer. The records shall contain all information in support of:

1. The total amount of Vehicle License Tax paid during the previous year. Supporting Vehicle License Tax records for each rental vehicle shall include:
   a. The Vehicle Identification Number,
   b. The Arizona vehicle license plate number,
   c. A copy of the Arizona registration,
   d. The amount paid for Vehicle License Tax minus any Vehicle License Tax credited under A.R.S. § 28-2356,
   e. The date on which the Vehicle License Tax was paid, and
   f. The dates the rental vehicle was in and out of service.
2. The total gross amount of Arizona vehicle rental revenues collected for the previous year. Supporting Arizona vehicle rental revenue records shall include:
   a. The rental contract for each rental vehicle,
   b. The amount of surcharge collected,
   c. Chart of accounts,
   d. General ledger,
   e. Financial statements,
   f. Federal tax returns, and
   g. Monthly trial balance.
3. The amount of the surcharge collected during the previous year. Supporting surcharge collection records shall include:
   a. All applicable rental contracts; and
   b. The total amount stated in each rental contract, supported by relevant documentation.
4. Failure to keep and maintain proper records or failure to provide records for audit purposes may result in the Department making an assessment against the rental business for the total surcharge amount estimated to have been collected, as determined from the best information available to the Director.

D. Audits. The Department shall conduct each audit of a person who collects the surcharge in accordance with generally accepted government auditing standards as set forth in *Government Auditing Standards: 2011 Revision* (commonly referred to as the Yellow Book,) issued by the U.S. Government Accountability Office. The Department incorporates by reference *Government Auditing Standards: 2011 Revision* and no later amendments or editions. The incorporated material is on file with the Department. The printed version is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material is available free of charge at http://www.gao.gov/yellowbook or can be ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov.

1. The rental business shall have records made available for audit during normal business hours at the rental business location in Arizona. The Department may conduct audits at an out-of-state location, which are paid for by the rental business. The rental business shall pay the audit expenses, per diem, and travel in accordance with the Arizona Department of Transportation expense guidelines in effect at the time of the audit.
2. The Director has appropriate subpoena powers to require records to be produced for examination and to take testimony. In accordance with A.R.S. § 28-5922, if a person fails to respond to the Director's or agent of the Director's request for records, the Director shall issue subpoenas for the production of records or allow seizure of records.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2058, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 888, effective, June 1, 2013 (Supp. 13-2).

R17-4-351. Special License Plate; Definition

For the purposes of R17-4-352, "special license plate" or "special plate" has the meaning prescribed in A.R.S. § 28-2401.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

R17-4-352. Duplicate Special License Plate; Fee

A. The Department shall charge and collect from a motor vehicle owner a one-time fee of $10 for each duplicate special license plate requested.

B. The Department shall charge and collect the current applicable U.S. Postal Service postage rate as provided in A.R.S. § 28-2151 and A.A.C. R17-1-204 to mail a duplicate special license plate to a motor vehicle owner.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

ARTICLE 4. DRIVER LICENSES

R17-4-401. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101, 28-1301, and 28-3001, the following definitions apply to this Article unless otherwise specified:

"Division" means the Arizona Department of Transportation, Motor Vehicle Division.

"Financial responsibility (accident) suspension" means a suspension, by the Department, of:

The Arizona driver license or driving privilege of an owner of a vehicle that:

Lacks the coverage required under A.R.S. § 28-4135, and

Is involved in an accident in Arizona; and

The Arizona registration of a vehicle, unless the Department receives proof the vehicle was sold.

"Gore area" is defined under A.R.S. § 28-644.

"Proof the vehicle was sold" means a written statement to the Department from an owner that includes the following:

The seller's name;

The VIN;

The sale date; and

The purchaser's name and address.

"Restricted permit" means written permission from the Department for:

A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

Between the person's home and workplace,

During the person's work-related activities, or

Between the person's home and school; and

A vehicle with an Arizona registration subject to a financial responsibility (accident) suspension to be operated by a person specified under R17-4-402 only:

Between the person's home and workplace;

During the person's work-related activities; or

Between the person's home and school.

"State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"SR22" means a certificate of insurance that complies with requirements under A.R.S. § 28-4077(A).

"Thirty-six-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month three years before the date of the violation.

"Twelve-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month one year before the date of the violation.

"Twenty-four-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month two years before the date of the violation.

"VIN" or "vehicle identification number" is defined under A.R.S. § 13-4701(4).

"Withdrawal action" means a Department action that invalidates a person's Arizona driving privilege or a vehicle's Arizona registration, which includes:

A cancellation;

A suspension;

A revocation;

Any outstanding warrant; or

Any unresolved citation.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

R17-4-402. Restricted Permit During a Financial Responsibility (Accident) Suspension

A. An applicant for a restricted permit shall:
1. Have no withdrawal action other than the financial responsibility (accident) suspension;
2. Provide an SR22 Certificate of Insurance as proof of future financial responsibility that must be kept in force for three consecutive years after the effective date of the financial responsibility (accident) suspension;
3. Pay the $10 driving privilege reinstatement fee under A.R.S. § 28-4144(C)(2)(b); and
4. Pay the $25 motor vehicle registration and license plate reinstatement fee under A.R.S. § 28-4144(C)(2)(b), or if the vehicle was sold before the date of the accident, provide proof the vehicle was sold as defined under R17-4-401;
5. Pay the driving privilege reinstatement application fee under A.R.S. § 28-3002(A)(2); and
6. Satisfy any applicable requirements of A.R.S. § 28-4033(A)(2)(c) or 28-4144(C).

B. In addition to subsection (A) during a financial responsibility (accident) suspension, a restricted permit applicant may:
1. Apply for an original or renew an Arizona driver license by:
   a. Complying with A.R.S. §§ 28-3153, 28-3158, or 28-3171; and
   b. Paying the application fee under A.R.S. § 28-3002(A)(2) determined by the applicant's age on the application date; or
2. Obtain a duplicate Arizona driver license by paying the $12 duplicate driver license application fee under A.R.S. § 28-3002(A)(7).

C. At the end of the financial responsibility (accident) suspension, the Division shall immediately remove the driving privilege restriction from the Arizona driving record when the person surrenders an expired restricted permit to the Division.

Historical Note

New Section recodified from R17-4-227 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

R17-4-403. Application for Duplicate Driver License or Duplicate Nonoperating Identification License; Fees

A. An applicant shall apply to the Division, on a form provided by the Division, for a duplicate driver license or a duplicate nonoperating identification license.

B. The fee for the duplicate driver license or duplicate nonoperating identification license issued by the Division is $12 under A.R.S. §§ 28-3002(A) and 28-3165.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

R17-4-404. Driver Point Assessment; Traffic Survival Schools

A. Point assessment. The Department shall assign points to a driver, as prescribed under Table 1, Driver Point Valuation, for each violation resulting in a conviction or judgment.

B. Actions after point assessment. Under A.R.S. § 28-3306(A)(3), if a driver accumulates eight or more points in a twelve-month period, the Department shall:
1. Order the driver to successfully complete the curriculum of a licensed traffic survival school; or
2. Suspend the driver's Arizona driver license or driving privilege.

C. Traffic survival school order of assignment. The Department or the private entity under contract with the Department shall send a dated order of assignment to traffic survival school, as prescribed under A.R.S. § 28-3318, to a driver who accumulates 8 to 12 points in a twelve-month period, and who did not complete a traffic survival school course in the previous twenty-four-month period.
1. The order of assignment shall:
   a. Instruct the driver to submit any hearing request to the Department within 15 days after the date of the order of assignment; and

b. Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the Department issuing a six-month order of suspension.

2. The Department shall record that a driver completed traffic survival school if:
   a. A licensed traffic survival school reports that the driver successfully completed the curriculum; or
   b. The driver presents to the Department an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.

D. Suspension for failure to complete traffic survival school. The Department or the private entity under contract with the Department shall mail a driver a six-month order of suspension, as prescribed under A.R.S. § 28-3318, if the driver failed to establish completion of traffic survival school in accordance with subsection (C). The order of suspension shall:
1. Specify the period within which the driver may submit a hearing request to the Department, and
2. Specify the effective date of the suspension.

E. Suspension for accumulation of excessive points. The Department shall mail an order of suspension as prescribed under A.R.S. § 28-3318 to a driver who accumulates an excessive amount of points. The order of suspension shall:
1. Specify the length of the suspension as follows:
   a. A three-month suspension for accumulation of 8 to 12 points in a twelve-month period if a traffic survival school course was successfully completed in the previous twenty-four-month period;
   b. A three-month suspension for accumulation of 13 to 17 points in a twelve-month period;
   c. A six-month suspension for accumulation of 18 to 23 points in a twelve-month period; and
   d. A twelve-month suspension for accumulation of 24 or more points in a thirty-six-month period;
2. Specify the period within which the driver may submit a hearing request to the Department; and
3. Specify the effective date of the suspension.

Historical Note

New Section recodified from R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1) Amended by final rulemaking at 19 A.A.R. 3897, effective January 4, 2014 (Supp. 13-4). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

Table 1. Driver Point Valuation

Violation	Points
A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence.	8
A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.	8
A.R.S. § 28-1383, aggravated driving or actual physical control while under the influence.	8
A.R.S. § 28-693, reckless driving.	8
A.R.S. § 28-708, racing on highways.	8
A.R.S. § 28-695, aggressive driving.	8
A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing death to another person.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person.	4
A.R.S. § 28-701, reasonable and prudent speed.	3
A.R.S. § 28-644(A)(2), driving over, across, or parking in any part of a gore area.	3
Any other traffic regulation that governs a vehicle moving under its own power.	2

Historical Note

New Table 1 made by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1).

R17-4-405. Emergency Expired

Historical Note

Emergency rule adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired.

R17-4-406. Minor's Application for Permit or License

A. For the purposes of administering the provisions of A.R.S. § 28-3160, the following definitions apply to this Section:
1. "Application," means a form provided by the Division that includes the Legal Guardian Affidavit required by the Division to be submitted with each minor's driver license application.
2. "Guardian" means one who has been appointed by a court of law to care for a minor child, but only if both parents of the child are deceased, or an agency as defined in A.R.S. § 8-513.
3. "Parent" means the natural or adoptive father or mother of a child.

B. Procedure when both parents sign: If both parents sign a child's application, no proof of custody need be furnished.

C. Procedure when only one parent signs:
1. If the signing parent is married to the child's other parent, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
2. If the signing parent is not married to the child's parent because the other parent is deceased, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
3. If the signing parent is not married to the child's other parent, the signing parent shall affirm, by sworn statement to the Division or a notary public, that the other parent does not have custody of the child, in which event the Division shall presume the signing parent has custody of the child.

D. Procedure when both parents are deceased:
1. If both parents are deceased, the minor or minor's guardian shall attach certified copies of certificates of death or other satisfactory proof of death, that includes a court

judgment, affidavits of close relatives of the child, or school records.

2. A person who is guardian of a child shall sign an application as defined by this rule or furnish a certified court order appointing guardianship.
3. An employer signing the application shall certify the person employs the minor on the date of application.
4. A person who has custody of a child shall sign a Legal Guardian Affidavit affirming custody or furnish a certified court order awaiting custody.

E. Proof of custody. Proof of custody may be established by a certified copy of the court order awarding custody or a written affirmation by the person signing the application.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-201 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (C)(4) should read "... governed by R17-4-58" as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-201 renumbered without change as Section R17-4-406 Supp. (87-2). Former Section R17-4-406 repealed, new Section R17-4-406 adopted effective July 14, 1989 (Supp. 89-3). Section recodified to R17-4-450 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4).

R17-4-407. Travel-compliant Driver License or Travel-compliant Non-operating Identification License Application; Fee

A. A person seeking a travel-compliant driver license or travel-compliant identification license shall meet and comply with all:

1. State laws and rules applicable to every applicant who seeks issuance of any other driver license class, type, endorsement or non-operating identification license issued by the Department; and
2. Federal laws and regulations regarding the application and minimum documentation, verification, and card issuance requirements prescribed in the most recent edition of 6 CFR 37.11 for establishing satisfactory proof of a person's identity, date of birth, social security number, principal residence address of domicile in this state, and lawful status in the United States.

B. A person seeking a travel-compliant driver license or travel-compliant identification license shall:

1. Apply to the Department using an application form provided by the Department; and
2. Submit to the Department for authentication, satisfactory proof of the applicant's full legal name, date of birth, sex, social security number, principal residence address of domicile in this state, and that the applicant's presence in the United States is authorized under federal law. A list of all source documents the Department may accept as satisfactory proof under state and federal law is maintained by the Department on its website at www.azdot.gov.

C. An applicant for a travel-compliant driver license or travel-compliant identification license shall submit to the Department a fee of $25:

1. On original application, reinstatement, or renewal of any travel-compliant driver license class; or
2. On original application or renewal of a travel-compliant identification license.

D. A travel-compliant driver license or travel-compliant identification license issued by the Department, as prescribed under A.R.S. § 28-3175 and this Section, is:

1. Valid for a period of up to eight years;
2. Renewable for successive periods of up to eight years; and
3. Subject to all state and federal laws or restrictions requiring the issuance of a shorter expiration period (e.g., up to age 65, as provided under A.R.S. § 28-3171, or for a time period equal to the applicant's authorized stay in the United States, as provided under 6 CFR 37.21, etc.).

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-202 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, subsection (D) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-202 renumbered without change as Section R17-4-407 (Supp. 87-2). Section recodified to R17-4-451 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-706 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 1158, effective May 12, 2003 (Supp. 03-1). New Section made by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1). Section repealed; new Section made by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

R17-4-408. Mandatory Extension of a Certified Ignition Interlock Device Order

A. For purposes of this Section, "conviction" has the meaning prescribed in A.R.S. § 28-101(12).

B. For the duration of a certified ignition interlock device order, each conviction for violating A.R.S. §§ 28-1464(A), 28-1464(C), 28-1464(D), 28-1464(F), or 28-1464(H) of the person subject to the order will result in the Division's extension of the order.

C. Each extension by the Division of a person's certified ignition interlock device order shall be for one year.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-203 and Appendix D adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, added (C)(5) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-203 renumbered without change as Section R17-4-408 (Supp. 87-2). Section recodified to R17-4-452 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-709.10 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-409. Non-operating Identification License Application; Applicability; Fee

A. A person seeking a non-operating identification license, issued by the Department as prescribed under A.R.S. § 28-3165 and

this Section, shall apply to the Department using a form provided by the Department.

B. An applicant shall submit a $12 fee to the Department, on application for a non-operating identification license, unless the applicant is provided a specific statutory exemption from payment of the fee.

C. An applicant shall provide to the Department, on application for a non-operating identification license, satisfactory proof of the applicant's full legal name, date of birth, sex, principal residence address of domicile in this state, and evidence that the applicant's presence in the United States is authorized under federal law as listed by the Department on its website at www.azdot.gov.

D. A person seeking a travel-compliant identification license issued by the Department under A.R.S. § 28-3175, which is recognized by federal agencies as proof of identity for use when accessing federal facilities, boarding federally-regulated commercial aircraft, or entering nuclear power plants, shall apply to the Department as provided under R17-4-407.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-204 and Appendix B adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-204 renumbered without change as Section R17-4-409 (Supp. 87-2). Section recodified to R17-4-453 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4). Amended by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1). Amended by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

R17-4-410. Voter Registration Through the Motor Vehicle Division

A. For purposes of this Section:
1. "License" has the same meaning as "driver's license" under A.R.S. § 16-111(2).
2. "MVD" means the Arizona Department of Transportation, Motor Vehicle Division.

B. To register to vote in Arizona through the MVD as provided for in A.R.S. § 16-112, a person who completes a transaction listed in subsection (C) shall complete and return to MVD:
1. A Secretary of State-approved hardcopy voter registration form for the county of the person's residence, or
2. An electronic voter registration form through MVD's ServiceArizona web site or through MVD's driver license system along with an electronic verification that the person meets voter eligibility criteria under A.R.S. § 16-101.

C. Subsection (B) applies to the following license transactions:
1. Initial licensee application;
2. License renewal;
3. Duplicate driver license; or
4. Licensee personal information update.

D. MVD shall transfer the voter registration forms and the data collected under this Section by:
1. Mailing the completed hardcopy forms to the appropriate county recorder; and
2. Transmitting the data from completed electronic voter registration forms and licensee personal information updates to the Secretary of State as prescribed under A.A.C. R2-12-605 for further distribution to the appropriate county recorder.

E. MVD shall maintain the confidentiality of applicant information as required under A.R.S. Title 16, Chapter 1.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-205 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-205 renumbered without change as Section R17-4-410 (Supp. 87-2). Section recodified to R17-4-454 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 2394, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 12 A.A.R. 1329, effective June 4, 2006 (Supp. 06-2).

R17-4-411. Special Ignition Interlock Restricted Driver License: Application, Restrictions, Reporting, Fee

A. In addition to the requirements prescribed in A.R.S. § 28-3158, an person applying for a special ignition interlock restricted driver license shall:
1. If the person is suspended for a first offense of A.R.S. § 28-1321:
   a. Complete at least 90 consecutive days of the period of the suspension, and
   b. Maintain a functioning certified ignition interlock device during the remaining period of the suspension.
2. If the person is revoked for a first offense of A.R.S. § 28-1383(A)(3):
   a. Complete at least 90 consecutive days of the suspension under A.R.S. § 28-1385,
   b. Submit proof to the Division that the person has completed an approved alcohol or drug screening or treatment program, and
   c. Maintain a functioning certified ignition interlock device during the remaining period of the revocation.
3. If the person has a court-ordered restriction under A.R.S. §§ 28-3320 or 28-3322:
   a. Comply with the restrictions in subsection (C), and
   b. Maintain a functioning certified ignition interlock device during the remaining period of the court-ordered restriction.

B. The Division shall not issue a special ignition interlock restricted driver license if the person's driver license or driving privilege is suspended or revoked for a reason not under subsections (A)(1), (2), or (3).

C. A person applying for a special ignition interlock restricted driver license shall pay the following fees:

1.	Age 50 or older	$10.00
2.	Age 45 – 49	$15.00
3.	Age 40 – 44	$20.00
4.	Age 39 or younger	$25.00

D. A special ignition interlock restricted driver license issued under subsection (A), permits a person to operate a motor

vehicle equipped with a functioning certified ignition interlock device as prescribed in A.R.S. § 28-1402(A).

E. Reporting. On the eleventh month after the initial date of installation and each eleventh month thereafter for as long as the person is required to maintain a functioning certified ignition interlock device, each installer shall electronically provide the Division all of the following information as recorded by the certified ignition interlock device:
1. Date installed;
2. Person's full name;
3. Person's date of birth;
4. Person's customer or driver license number;
5. Installer and manufacturer name;
6. Installer fax number;
7. Date report interpreted;
8. Report period;
9. Any tampering of the device within the meaning of A.R.S. § 28-1301(9);
10. Any failure of the person to provide proof of compliance or inspection as prescribed in A.R.S. § 28-1461;
11. Any attempts to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3), or if the person is younger than 21 years of age, attempts to operate the vehicle with any spirituous liquor in the person's body; and
12. Any other information required by the Director.

F. A person applying for a special ignition interlock restricted driver license shall provide proof of financial responsibility prescribed in Title 28, Arizona Revised Statutes, Chapter 9, Article 3.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-206 and Appendices C and E adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-206 renumbered without change as Section R17-4-411 (Supp. 87-2). Section recodified to R17-4-455 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

R17-4-412. Extension of a Special Ignition Interlock Restricted Driver License: Hearing, Burden of Proof and Presumptions

A. Extension. The Division shall extend a person's special ignition interlock restricted driver license for a period of one year if the Division has reasonable grounds to believe:
1. The person tampered with the certified ignition interlock device within the meaning of A.R.S. § 28-1301(9),
2. The person fails to provide proof of compliance prescribed in A.R.S. § 28-1461, or
3. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) three or more times during the period of license restriction or limitation, or if the person is younger than 21 years of age, attempted to operate the vehicle with any spirituous liquor in the person's body three or more times during the period of license restriction or limitation.

B. Hearing. If a person's special ignition interlock restricted driver license is extended under subsection (A), the person may submit, within 15 days of the date of the order of extension of the restriction, a written request to the Division requesting a hearing. A request for hearing stays the extension of the restriction.

C. Burden of proof and presumptions.
1. The hearing office shall presume that the person's whose special ignition interlock restricted driver license is extended under subsection (A)(3), was the person in control of the vehicle and the person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).
2. The person may be rebut the presumption by a showing of clear and convincing evidence that the person whose special ignition interlock restricted driver license being extended, was not the person in control of the vehicle or attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).

D. Except for subsection (A)(2), if the Division suspends, revokes, cancels, or otherwise rescinds a person's special ignition interlock restricted driver license for any reason, the Division shall not issue a new license or reinstate the special ignition interlock restricted driver license during the original period of suspension or revocation or while the person is otherwise ineligible to receive a license.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-207 adopted as an emergency effective August 18, 1983, now adopted as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (A)(3) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-207 renumbered without change as Section R17-4-412. Correction: subsection (F), paragraph (6), "overweight" corrected to read: "overheight" (Supp. 87-2). Section recodified to R17-4-456 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

R17-4-413. Lifetime Disqualification Reinstatement

A. Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101 and 28-3001, the following definitions apply to this Section, unless otherwise specified:
"CDL" means Commercial Driver License.
"Lifetime disqualification" means the individual is disqualified for life from operating a commercial motor vehicle as prescribed under 49 CFR 391.15.
"Permanently disqualified" means the individual will never be able to obtain a commercial driver license.

B. Eligibility. An individual with a lifetime disqualification may request reinstatement of the individual's commercial driving privilege if:
1. Ten years have passed since the date of the lifetime disqualification.
2. The individual:
   a. Is otherwise eligible for licensure.
   b. Has continuously been eligible for a driver license during the most recent 10-year period.
   c. Has not previously reinstated CDL privileges for another lifetime disqualification.

d. Has no record of a conviction for any of the following violations, in any state, within the previous 10-year period:
   i. Driving while under the influence of alcohol or a controlled substance.
   ii. Having a blood alcohol concentration of .04 or greater while driving a commercial motor vehicle.
   iii. Refusal to submit to a blood alcohol concentration test.
   iv. Leaving the scene of an accident.
   v. Using a vehicle in the commission of a felony.
   vi. Operating a commercial motor vehicle as defined under A.R.S. § 28-3001 while his or her commercial driving privileges are canceled, disqualified, suspended, or revoked.
   vii. Causing a fatality through the negligent operation of a commercial motor vehicle.

C. Application after lifetime disqualification. If the Division determines that the individual is eligible to reinstate his or her commercial driving privilege, the individual may obtain a new CDL by paying all required fees, submitting the medical examination form prescribed under Section R17-4-508(A)(1), and successfully completing all CDL written, vision, and demonstration-skill testing applicable to the type of CDL, including any endorsements, for which the individual is applying.

D. Permanent disqualification.
1. An individual who reinstated his or her commercial driving privilege in accordance with this Section and who is subsequently given a lifetime disqualification under A.R.S. § 28-3312 is permanently disqualified.
2. An individual convicted of using any vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance is permanently disqualified.
3. An individual who more than once refuses a test in violation of A.R.S. § 28-1321 if the refusals involve more than one incident is permanently disqualified.
4. An individual who more than once is convicted of violating A.R.S. § 28, Chapter 4, Article 3 is permanently disqualified.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-208 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-208 renumbered without change as Section R17-4-413 (Supp. 87-2). Section recodified to R17-4-457 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 2155, effective August 4, 2007 (Supp. 07-2).

R17-4-414. Commercial Driver License Applicant Driver History Check; Required Action; Hearing

A. Applicability. The provisions of this Section shall apply to all applicants requesting an original, renewal, reinstatement, transfer, or upgrade of a commercial driver license or commercial driver license instruction permit.

B. Driver History Check. In compliance with 49 CFR 384.206, 384.210, 384.225, and 384.232:
1. The Department shall require each applicant for a commercial driver license to supply the names of all states where the applicant has previously been licensed to operate a motor vehicle.
2. The Department shall request the complete driver history record from all states where the applicant was licensed to operate a motor vehicle within the previous 10 years. The Department shall make a driver history request no earlier than:
   a. Twenty-four hours prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license; or
   b. Ten days prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who currently possesses a valid Arizona commercial driver license.
3. The Department shall record and maintain as part of the driver history all convictions, disqualifications, and other licensing actions for violations of any state or local law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a commercial driver licensee or any driver operating a commercial motor vehicle.

C. Required Action. In compliance with 49 CFR 384.210 and 384.231:
1. The Department shall, based on the findings of the driver history checks, issue a commercial driver license or commercial driver license instruction permit to a qualified applicant.
2. In the case of a reported conviction, disqualification, or other licensing action, the Department shall promptly cancel, disqualify, suspend, or revoke the person's commercial driving privilege as prescribed under A.R.S. Title 28, Chapters 4, 6, 8, and 14 and A.A.C. Title 17.
3. The Department shall send written notification of the action to the person describing the action taken by the Department.

D. Hearing. A hearing may be allowed when the driver history information received by the Department is a result of a case of mistaken identity or identity theft.
1. The person shall submit a hearing request in writing and comply with A.A.C. R17-1-502.
2. The hearing request shall be submitted within 20 days from the date the notice of action was mailed.
3. The hearing request shall indicate whether the request for the hearing is based on a case of identity theft or mistaken identity.
4. The hearing shall be held in accordance with the procedures prescribed under A.R.S. § 28-3317 and 17 A.A.C. 1, Article 5.
5. It shall be presumed that the information received from the driver history check belongs to the person. The person may overcome this presumption if the person is able to present evidence that either:
   a. The person is not the driver convicted of the reported violation as in a case of mistaken identity; or
   b. The person's identity was stolen and the applicant or licensee was not the driver convicted of the violation.
6. The scope of the hearing is limited to determining whether the person is the driver convicted of the reported

driver history information, not the validity of the underlying conviction or licensing action that occurred in another licensing jurisdiction.

Historical Note
Adopted effective December 18, 1995 (Supp. 95-4). Section recodified to R17-4-458 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 14 A.A.R. 4100, effective October 7, 2008 (Supp. 08-4).

R17-4-415. Reserved

R17-4-416. Reserved

R17-4-417. Reserved

R17-4-418. Reserved

R17-4-419. Reserved

R17-4-420. Recodified

Historical Note
Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section recodified to R17-4-459 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-421. Recodified

Historical Note
Former Rule, General Order 79. Former Section R17-4-33 renumbered without change as Section R17-4-421 (Supp. 87-2). Section recodified to R17-4-460 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-422. Recodified

Historical Note
Adopted as an emergency effective July 29, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 12, 1986 (Supp. 86-1). Former Section R17-4-73 renumbered without change as Section R17-4-422 (Supp. 87-2). Section recodified to R17-4-461 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-423. Recodified

Historical Note
Former Rule, General Order 94. Former Section R17-4-38 renumbered without change as Section R17-4-423 (Supp. 87-2). Section R17-4-423 repealed, new Section adopted effective February 21, 1990 (Supp. 90-1). Section recodified to R17-4-462 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-424. Recodified

Historical Note
Former Rule, General Order 99. Former Section R17-4-40 renumbered without change as Section R17-4-424 (Supp. 87-2). Section recodified to R17-4-463 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-425. Recodified

Historical Note
Former Section R17-4-53 renumbered without change as Section R17-4-425 (Supp. 87-2). Section recodified to R17-4-464 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-426. Recodified

Historical Note
Adopted effective January 12, 1977 (Supp. 77-1). Amended subsections (A), (C), (D), and (H) effective January 23, 1981 (Supp. 81-1). Former Section R17-4-55 renumbered without change as Section R17-4-426 (Supp. 87-2). Section recodified to R17-4-465 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-427. Recodified

Historical Note
Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-58 renumbered without change as Section R17-4-427 (Supp. 87-2). Section recodified to R17-4-466 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-428. Recodified

Historical Note
New Section recodified from A.A.C. R17-3-403 at 7 A.A.R. 1260, effective February 20, 2001 (Supp. 01-1). Section recodified to R17-4-467 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-429. Reserved

R17-4-430. Reserved

R17-4-431. Reserved

R17-4-432. Reserved

R17-4-433. Reserved

R17-4-434. Reserved

R17-4-435. Recodified

Historical Note
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-63 adopted as an emergency now adopted and amended as a permanent rule effective October 8, 1982 (Supp. 82-5). Amended effective August 19, 1983 (Supp. 83-4). Correction to amendments shown effective August 19, 1983. The subsection "IT IS ORDERED: --" was also amended effective August 19, 1983, but not shown (Supp. 83-5). Amended effective February 18, 1986 (Supp. 86-1). Amended effective May 12, 1986 (Supp. 86-3). Adding Historical Note for Supp. 87-1, "Amended effective February 28, 1987." Former Section R17-4-63 renumbered as Section R17-4-435 and amended by adding a new subsection (C) effective April 7, 1987 (Supp. 87-2). Amended by adding paragraph (20) in subsection (B) and renumbering accordingly effective March 23, 1989 (Supp. 89-1). Amended as an emergency effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency amendments re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; permanent amendments adopted effective May 18, 1990 (Supp. 90-2). Section R17-4-435 repealed, new Section R17-4-435 adopted effective October 24, 1990 (Supp. 90-4). Emergency amendments effective November 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4) Emergency expired. Emergency

amendments readopted effective May 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended and renumbered to R17-4-435 and R17-4-435.01 through R17-4-435.04 effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-202 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.01. Recodified

Historical Note

Section R17-4-435.01 renumbered from R17-4-435(C) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-203 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.02. Recodified

Historical Note

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-204 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.03. Recodified

Historical Note

Section R17-4-435.03 adopted effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-205 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.04. Recodified

Historical Note

Section R17-4-435.04 renumbered from R17-4-435(E), (F) and (G) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-206 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.05. Recodified

Historical Note

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-207 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.06. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-208 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-436. Recodified

Historical Note

Adopted effective October 24, 1990 (Supp. 90-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective February 28, 1992 (Supp. 92-1). Amended effective October 21, 1993 (Supp. 93-4). Amended effective August 12, 1994 (Supp. 94-3). Amended effective November 21, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 3841, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-209 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-437. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.01. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.02. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.03. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

Appendix A. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.04. Emergency Expired

Historical Note
Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-438. Recodified

Historical Note
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-210 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-439. Recodified

Historical Note
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-211 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-440. Recodified

Historical Note
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-212 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-441. Reserved

R17-4-442. Reserved

R17-4-443. Reserved

R17-4-444. Repealed

Historical Note
Amended effective January 5, 1977 (Supp. 77-1). Repealed as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Repealed effective November 30, 1983 (Supp. 83-6). New Section R17-4-52 adopted as an emergency effective July 25, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 27, 1986 (Supp. 86-1). Amended subsections (A) and (B) effective February 18, 1987 (Supp. 87-1). Former Section R17-4-52 renumbered without change as Section R17-4-444 (Supp. 87-2). Repealed effective October 13, 1987 (Supp. 87-4).

R17-4-445. Recodified

Historical Note
Section R17-4-421 adopted and renumbered as Section R17-4-445 effective October 13, 1987 (Supp. 87-4). Amended subsection (A) effective May 20, 1988 (Supp. 88-2). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-504 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-446. Recodified

Historical Note
Section R17-4-422 adopted and renumbered as Section R17-4-446 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-505 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-447. Recodified

Historical Note
Section R17-4-423 adopted and renumbered as Section R17-4-447 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-506 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-448. Recodified

Historical Note
Section R17-4-424 adopted and renumbered as Section R17-4-448 effective October 13, 1987 (Supp. 87-4). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-507 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-449. Reserved

R17-4-450. Repealed

Historical Note
New Section recodified from R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-451. Repealed

Historical Note
New Section recodified from R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-452. Repealed

Historical Note
New Section recodified from R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-453. Repealed

Historical Note
New Section recodified from R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-454. Repealed

Historical Note
New Section recodified from R17-4-410 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-455. Repealed

Historical Note
New Section recodified from R17-4-411 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4351, effective September 17, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 926, effective February 13, 2002 (Supp. 02-1). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-456. Repealed

Historical Note
New Section recodified from R17-4-412 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section

repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-457. Repealed

Historical Note
New Section recodified from R17-4-413 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-458. Repealed

Historical Note
New Section recodified from R17-4-414 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-459. Repealed

Historical Note
Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-460. Repealed

Historical Note
New Section recodified from R17-4-421 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-461. Repealed

Historical Note
New Section recodified from R17-4-422 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-462. Repealed

Historical Note
New Section recodified from R17-4-423 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-463. Repealed

Historical Note
New Section recodified from R17-4-424 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-464. Repealed

Historical Note
New Section recodified from R17-4-425 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-465. Repealed

Historical Note
New Section recodified from R17-4-426 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-466. Repealed

Historical Note
New Section recodified from R17-4-427 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-467. Repealed

Historical Note
New Section recodified from R17-4-428 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

ARTICLE 5. SAFETY

R17-4-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, and 28-3005, in this Article, unless otherwise specified:

"Adaptation" means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

"Applicant" means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Department to complete an examination successfully or to obtain an evaluation.

"Application" means the Department form required to be completed by or for an applicant for a driver license or driver license renewal.

"Aura" means a sensation experienced before the onset of a neurological disorder.

"Commercial driver license physical qualifications" means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under A.A.C. R17-5-202 and R17-5-204.

"Disqualifying medical condition" means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

"Evaluation" means a medical assessment of an applicant or licensee by a specialist to determine whether a disqualifying medical condition exists.

"Examination" means testing or evaluating an applicant's or licensee's:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

"Functional ability" means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

"Licensee" means a person issued a driver license by this state.

"Licensing action" means an action by the Department to:

Issue, deny, suspend, revoke, cancel, or restrict a driver license or driving privileges; or

Require an examination or evaluation of an applicant or licensee.

"Medical alert code" means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

"Medical screening questions and certification" means the questions and certification on the application.

"Neurological disorder" means a malfunction or disease of the nervous system.

"Seizure" means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.

"Specialist" means:

A physician who is a surgeon or a psychiatrist,

A physician whose practice is limited to a particular anatomical or physiological area or function of the human body or to patients with a specific age range, or

A psychologist.

"Substance abuse" means:

Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or

Use of a controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.

"Substance abuse evaluation" means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

"Successful completion of an examination" means an applicant or licensee:

Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or

Achieves a score of at least 80% on any required tests.

Historical Note

Adopted effective December 14, 1995 (Supp. 95-4). Section recodified to R17-5-706 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely

A. Screening process for safe operation of a motor vehicle.

1. An applicant shall complete the application, including the medical screening questions and certification.
2. An applicant without a valid driver license shall successfully complete all required examinations or obtain an evaluation if:
   a. The Department informs the applicant that the applicant's responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
   b. The applicant comes under subsection (B)(1)(a), (B)(1)(c), or (B)(1)(d).
3. An applicant for license renewal shall successfully complete an examination or obtain an evaluation if the applicant's responses to the medical screening questions indicate that since the applicant's last driver license issuance:
   a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition; or
   b. There has been a change in an existing visual, physical, or psychological condition that may constitute a disqualifying medical condition.
4. As soon as a licensee's medical condition allows, the licensee shall notify the Department, in writing, that a medical condition exists not previously reported to the Department that may affect the licensee's functional ability. On receipt of the required notification, the Department shall require the licensee to complete an examination or evaluation.

B. Evaluation. An applicant or licensee shall submit to an evaluation as required by the Department.

1. The Department shall require an evaluation if the Department notifies the applicant or licensee in writing that:
   a. The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
   b. The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
   c. The applicant or licensee shows unexplained confusion, loss of consciousness, or incoherence that is observed by Department personnel; or
   d. A person with direct knowledge submits to the Department written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit timely an evaluation report on a form provided by the Department to the Department's Medical Review Program.
3. An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.

C. Licensing action. The Department shall take a licensing action after requiring an applicant or licensee to complete an examination successfully or obtain an evaluation and submit an evaluation report.

1. The Department shall deny a driver license if an applicant or licensee:
   a. Fails to complete successfully an examination; or
   b. Fails to:
      i. Obtain an evaluation; or

ii. Have a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Department within 30 days after the Department notifies the applicant that an evaluation is required; or

c. Has an evaluation report submitted that indicates a disqualifying medical condition.

2. The Department shall summarily suspend an applicant's or licensee's driving privileges under A.R.S. §§ 28-3306 and 41-1064 for a reason stated in subsection (C)(1).

3. The Department shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the applicant or licensee that:

a. Unless the Department receives the applicant or licensee's timely hearing request under subsection (E), the revocation becomes effective:

i. Fifteen days after the date the applicant or licensee is personally served with the notice, or

ii. Twenty days after the date the notice is mailed to the applicant or licensee.

b. An applicant or licensee who wishes to obtain a license after suspension or revocation shall reapply for a license as specified in A.R.S. § 28-3315.

4. The Department shall issue a driver license or shall not suspend or revoke an applicant or licensee's driving privileges if:

a. The applicant or licensee successfully completes all required examinations and the Department does not require an evaluation, or

b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.

D. Driver license restrictions. If an applicant or licensee uses an adaptation, including those listed below, to demonstrate functional ability during an examination, the Department shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant's or licensee's driving record:

1. Automatic transmission,
2. Hand dimmer switch,
3. Left-foot gas pedal,
4. Parking-brake extension,
5. Power steering,
6. Power brakes,
7. Six-way power seat,
8. Right-side directional signal,
9. A device that enables an operator to spin the steering wheel,
10. A device that enables full foot control,
11. Dual outside mirrors,
12. Chest restraints,
13. Shoulder restraints,
14. A device that extends pedals,
15. A device that enables full hand control,
16. Adapted seat, and
17. Prosthetic aid.

E. Hearings. The Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

F. The Department shall not release information required to be submitted to the Department under this Section by an applicant or licensee except to a person or entity qualified under A.R.S. § 28-455.

Historical Note

New Section recodified from R17-4-520 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1861, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

Exhibit A. Repealed

Historical Note

New Exhibit made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

R17-4-503. Vision Standards

A. Definitions.

1. "Binocular vision" means the ability to see in both eyes.
2. "Bioptic telescopic lens system" means a bioptic, spectacle-mounted corrective lens prescribed by a physician or optometrist for meeting vision acuity requirements for driving that uses magnification as the main method of obtaining minimal visual acuity.
3. "Corrected visual acuity" means distance vision corrected by eyeglasses, contact lenses, or a bioptic telescopic lens system.
4. "Corrective lens" means eyeglasses, contact lenses, or a bioptic telescopic lens system used to correct distance vision.
5. "Diplopia" means double vision.
6. "Impaired night vision" means below normal ability to see in reduced light.
7. "Monocular vision" means the ability to see in one eye only.
8. "Optometrist" means a person licensed to practice optometry in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.
9. "Retinitis pigmentosa" means a chronic progressive inflammation of the retina with atrophy and pigmentary infiltration of the inner layers of the retina.
10. "Snellen Chart" means a chart imprinted with lines of black letters of decreasing size for testing visual acuity.
11. "Visual acuity" means the clarity of a person's vision.
12. "Visual field" means the area in which objects may be seen when the eye is fixed.

B. Standard. The following applies only to class D, G, or M applicants or licensees.

1. Visual acuity. A person shall have binocular or monocular vision and visual acuity of 20/40 in at least one eye.
   a. The Department shall not license a person with monocular vision and visual acuity of 20/50 or greater.
   b. The Department shall not license a person with binocular vision and visual acuity of 20/70 or greater.
2. Visual field. Visual field shall be 70 degrees or greater temporally, and 35 degrees or greater nasally, in at least one eye.

C. Restrictions.

1. A person with corrected vision shall wear corrective lenses at all times when driving if the corrective lens is required to achieve the vision standards in subsection (B).
2. The Department shall restrict a person with diagnosed impaired night vision to daytime driving only.
3. The Department shall restrict a person with binocular vision and corrected or uncorrected visual acuity of 20/50 or 20/60, when using both eyes, to daytime driving only.

D. Screening process.
1. The Department, a physician, or an optometrist may administer visual acuity and visual field screening through the use of visual screening equipment or the Snellen Chart to determine if a person's visual acuity meets minimum standards and through the use of visual screening equipment to determine if a person's visual field meets minimum standards.
2. A person may use a bioptic telescopic lens system during vision screening.
   a. Beginning on the date of an initial application and every year thereafter, a person using a bioptic telescopic lens system shall submit to the Department an annual exam performed by a physician or optometrist to ascertain whether the person has a progressive eye disease.
   b. The Department shall not license a person using a bioptic telescopic lens system unless the person submits to the Department a vision examination form provided by the Department and completed by a physician or an optometrist indicating that the individual meets the visual acuity standard as prescribed in subsection (B).
   c. The Department shall not license a person using a bioptic telescopic lens system with magnification of the lens that is more than 4X.

E. Reporting requirements.
1. A person choosing to have initial visual acuity and visual field screening done by a physician or an optometrist shall submit the results to the Department.
2. If the Department does initial visual acuity and visual field screening and the person does not meet vision standards of subsection (B), the Department shall require the person to submit the results of the person's visual acuity and visual field screening by a physician or an optometrist.
3. The Department shall require a person diagnosed with any of the following conditions to file the results of the person's visual acuity and visual field screening completed by the physician or optometrist:
   a. Any progressive eye disease,
   b. Diplopia, or
   c. Impaired night vision.

F. Results of visual acuity and visual field screening from a physician or optometrist shall contain the following.
1. An examination date no more than three months before the submission date to the Department;
2. Visual acuity and visual field;
3. If applicable, specification that the person is monocular;
4. If applicable, diagnosis of any condition described in subsection (E)(3);
5. Any recommendations on frequency of reporting requirements for the person, in addition to those required by the Department;
6. Suggested restrictions on driving, in addition to those required by the Department; and
7. Any recommendations on the person's ability to safely operate a motor vehicle.

G. The Department shall require a driving test if a person's eye disease is determined by a physician or optometrist to be progressive.

Historical Note
New Section recodified from R17-4-521 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 221, effective January 10, 2006 (Supp. 06-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-504. Medical Alert Conditions

A. Definition. In this Section, "license" means any class of driver license, commercial driver license, non-operating identification license, or instruction permit.

B. Medical alert condition displayed on license. The Department will provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.

C. Retention of medical alert condition authorization. The Department will not maintain the medical alert code on the Department computer record unless written authorization is submitted.

D. A person shall submit a signed statement, from a physician or registered nurse practitioner, stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the Department to maintain the medical alert code on the Department computer record.

Historical Note
Adopted effective September 25, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-505. Repealed

Historical Note
Adopted effective May 2, 1990 (Supp. 90-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

R17-4-506. Neurological Standards

A. Driver license application.
1. A person who has a seizure in the three months before applying for a driver license shall undergo an evaluation as provided in R17-4-502.
2. After the evaluation under R17-4-502, the person or the person's physician shall submit the medical examination report to the Department.
3. The Department shall not issue a driver license to a person if the medical examination report shows that the person has a neurological disorder that affects the person's ability to operate a motor vehicle safely.

B. Driver license revocation.

1. A person with a driver license or nonresident driving privileges who experiences a seizure shall cease driving and:
   a. Undergo an evaluation as provided in R17-4-502;
   b. Submit the medical examination report to the Department; and
   c. Undergo a follow-up evaluation within one year after the seizure or within a shorter time, as recommended by a physician.
2. After each evaluation, the person or the person's physician shall submit the applicable medical examination report to the Department.
3. The Department shall revoke a person's driver license or nonresident driving privileges if any medical examination report shows the person has a neurological disorder that affects the person's ability to operate a motor vehicle safely.

C. Medical examination report. A medical examination report under this Section shall include the following information:
1. Age at onset of seizures, diagnosis, and history;
2. Aftereffects of seizures;
3. EEG findings, if any;
4. Description, cause, frequency, duration, and date of most recent seizure;
5. Current medications, including dosage, side effects, and serum level; and
6. A physician's medical opinion as to whether the neurological disorder will affect the person's ability to operate a motor vehicle safely.

D. Physician's medical opinion. A neurological disorder does not affect a person's ability to operate a motor vehicle safely if a physician concludes with reasonable medical certainty that:
1. Any seizure that occurred within the last three months was due to a change in anticonvulsant medication ordered by a physician and that seizures are under control after the change in medication;
2. Any seizure that occurred within the last three months was a single event that will not recur in the future;
3. Any seizure is likely to occur but has an established pattern of occurring only during sleep; or
4. There is an established pattern of an aura of sufficient duration to allow the person to cease operating a motor vehicle immediately at the onset of the aura.

Historical Note

Former Rule, General Order 107; Amended effective April 28, 1981 (Supp. 81-2). Amended effective July 1, 1985 (Supp. 85-4). Former Section R17-4-46 renumbered without change as Section R17-4-506 (Supp. 87-2). Emergency amendment adopted effective December 31, 1998, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 98-4). Emergency amendment expired June 29, 1999 pursuant to A.R.S. § 41-1026(C) (Supp. 99-3). Emergency amendment adopted effective October 1, 1999, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1172, effective March 9, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 3221, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-4-404 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-522 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5440, effective November 14, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-507. Repealed

Historical Note

Adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1986 (Supp. 86-2). Former Section R17-4-50 renumbered without change as Section R17-4-507 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 4355, effective September 14, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Section repealed by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-508. Commercial Driver License Physical Qualifications

A. Requirements.
1. A commercial driver license applicant shall submit a U.S. Department of Transportation medical examiner's certificate, available online from the Federal Motor Carrier Safety Administration at https://www.fmcsa.dot.gov, completed as prescribed under 49 CFR 391.43 to the Department.
   a. Except as provided in subsection (A)(1)(c), the medical examiner's certificate must be completed by a medical examiner who is listed on the current National Registry of Certified Medical Examiners. A search of certified medical examiners is available on the Federal Motor Carrier Safety Administration's website.
   b. The medical examiner's certificate must be completed upon the applicant's initial application and upon or prior to expiration of the applicant's current medical examiner's certificate.
   c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.41(b)(10).
2. As prescribed under 49 CFR 391.41(a)(2), a licensee who possesses a commercial driver license shall keep an original or photographic copy of the licensee's current medical examiner's certificate required under subsection (A)(1) available for law enforcement inspection upon request for no more than 15 days after the date it was issued as valid proof of medical certification.
3. A licensee who possesses a commercial driver license shall notify the Department of a physical condition that develops or worsens causing noncompliance with the commercial driver license physical qualifications as soon as the licensee's medical condition allows.

B. Commercial driver license suspension and revocation notification procedure. To notify a licensee of any commercial driver license suspension and revocation under subsection (C), the Department shall simultaneously mail two notices within 15 days after a medical examiner's certificate's due date or actual submission date to the licensee's address of record that:
1. Suspends the licensee's commercial driver license beginning on the notice's date; and
2. Revokes the licensee's commercial driver license 15 days after the date of the suspension notice issued under subsection (B)(1).

C. Noncompliance actions.

1. Initial application denial. If an applicant's initial medical examiner's certificate required under subsection (A)(1) shows that the applicant does not comply with the commercial driver license physical qualifications, the Department shall immediately mail the commercial driver license denial notification to the applicant's address of record.
2. Medical examiner's certificate renewal suspension and revocation. If a renewing commercial driver licensee submits:
   a. No medical examiner's certificate required under subsection (A)(1) or a form indicating noncompliance with commercial driver license physical qualifications, the Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).
   b. An incomplete medical examiner's certificate required under subsection (A)(1), the Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Department within 45 days after the date of the Department's letter. The Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return the requested information in the time-frame prescribed in this subsection.

D. A commercial driver license that remains revoked for longer than 12 months expires. The holder of an expired commercial driver license may obtain a new commercial driver license by successfully completing all commercial driver license original-application written, vision, and skills testing and by submitting the medical examiner's certificate prescribed under subsection (A)(1).

E. Administrative hearing. A person who is denied a commercial driver license or whose commercial driver license is suspended or revoked under this Section may request a hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

Historical Note

Adopted effective October 31, 1975 (Supp. 75-1). Former Section R17-4-57 renumbered without change as Section R17-4-508 (Supp. 87-2). Emergency amendments adopted effective July 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments permanently adopted effective October 27, 1993 (Supp. 93-4). Section recodified to R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-802 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-1). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 395, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final rulemaking at 27 A.A.R. 2730 (November 26, 2021), with an immediate effective date of November 2, 2021 (Supp. 21-4).

R17-4-509. Repealed

Historical Note

Adopted effective February 14, 1984 (Supp. 84-1). Former Section R17-4-56 renumbered without change as Section R17-4-509 (Supp. 87-2). Repealed effective December 17, 1993 (Supp. 93-4).

R17-4-510. Expired

Historical Note

Adopted effective October 17, 1986 (Supp. 86-5). Former Section R17-4-76 renumbered without change as Section R17-4-510 (Supp. 87-2). Section recodified to R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-705 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4). Section expired under A.R.S. § 41-1052(M) at 28 A.A.R. 121 (January 7, 2022), effective December 7, 2021 (Supp. 21-4).

R17-4-511. Repealed

Historical Note

Adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-62 renumbered without change as Section R17-4-511 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

R17-4-512. Expired

Historical Note

Former Rule, General Order 92. Former Section R17-4-37 renumbered without change as Section R17-4-512 (Supp. 87-2). Section recodified to R17-5-302 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section R17-4-512 recodified from R17-4-704 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 397, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4). Section expired under A.R.S. § 41-1052(M) at 28 A.A.R. 121 (January 7, 2022), effective December 7, 2021 (Supp. 21-4).

R17-4-513. Emergency Expired

Historical Note

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective May 2, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

R17-4-514. Emergency Expired

Historical Note

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

R17-4-515. Reserved

R17-4-516. Reserved

R17-4-517. Reserved

R17-4-518. Reserved

R17-4-519. Reserved

R17-4-520. Recodified

Historical Note
Adopted as Section R17-4-301 and renumbered as Section R17-4-520 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-502 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-521. Recodified

Historical Note
Adopted as Section R17-4-310 and renumbered as Section R17-4-521 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-503 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-522. Recodified

Historical Note
Adopted as Section R17-4-320 and renumbered as Section R17-4-522 effective September 22, 1987 (Supp. 87-3). Amended effective April 12, 1994 (Supp. 94-2). Section recodified to R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

ARTICLE 6. EXPIRED

R17-4-601. Reserved

R17-4-602. Reserved

R17-4-603. Reserved

R17-4-604. Reserved

R17-4-605. Reserved

R17-4-606. Repealed

Historical Note
Adopted effective February 6, 1984 (Supp. 84-1). Former Section R17-4-507 renumbered without change as Section R17-4-606 (Supp. 87-2). Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

R17-4-607. Repealed

Historical Note
Adopted effective August 24, 1982 (Supp. 82-4). Former Section R17-4-501 renumbered without change as Section R17-4-607 (Supp. 87-2). Emergency amendments adopted and filed August 24, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency amendments repealed, new emergency amendments adopted effective October 1, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-repealed, new emergency amendments readopted effective February 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments re-repealed, new emergency amendments re-adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency amendments re-adopted with changes effective November 14, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired. Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

R17-4-608. Expired

Historical Note
Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-504 renumbered without change as Section R17-4-608 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-609. Expired

Historical Note
Adopted effective March 7, 1983, to apply to chassis and bodies placed in production after May 1, 1983 (Supp. 83-2). Former Section R17-4-502 renumbered without change as Section R17-4-609 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-610. Expired

Historical Note
Adopted effective February 11, 1983 (Supp. 83-1). Former Section R17-4-503 renumbered without change as Section R17-4-610 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-611. Expired

Historical Note
Adopted effective August 24, 1983 (Supp. 83-4). Former Section R17-4-506 renumbered without change as Section R17-4-611 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-612. Expired

Historical Note
Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-505 renumbered without change as Section R17-4-612 (Supp. 87-2). R17-4-612 amended by summary action; Appendices A and B repealed by summary action with an interim effective date March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

R17-4-701. Definitions

In addition to the definitions contained in 49 CFR 1572, the following words and phrases apply to this Article:

"Applicant" means an individual who applies to obtain an original or renewal HME.

"CDL" means commercial driver license.

"Department" has the same meaning as defined in A.R.S. § 28-101.

"HME" means hazardous materials endorsement.

"Security Threat Assessment" means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.

"Transfer applicant" means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.

"TSA" means the U.S. Transportation Security Administration.

Historical Note
Adopted effective February 1, 1994 (Supp. 94-1). Section recodified to R17-4-309 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final rulemaking at 27 A.A.R. 2730 (November 26, 2021), with an immediate effective date of November 2, 2021 (Supp. 21-4).

Appendix A. Recodified

Historical Note
Adopted effective February 1, 1994 (Supp. 94-1). Appendix recodified to 17 A.A.C. 4, Article 3 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-702. Scope
This Article applies to commercial drivers who are applying for an original, renewal, or transfer of an HME, in accordance with 49 CFR 1572. The Department incorporates by reference 49 CFR 1572, revised as of October 1, 2020, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at https://www.govinfo.gov and ordered online by visiting the U.S. Government Bookstore at http://bookstore.gpo.gov. The International Standard Book Number is 9780160958861.

Historical Note
Adopted effective November 15, 1989 (Supp. 89-4). Amended effective October 11, 1995 (Supp. 95-4). Section recodified to R17-1-202 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final rulemaking at 27 A.A.R. 2730 (November 26, 2021), with an immediate effective date of November 2, 2021 (Supp. 21-4).

R17-4-703. Expired

Historical Note
New Section made by exempt rulemaking at 7 A.A.R. 2518, effective May 25, 2001 (Supp. 01-2). Section recodified to R17-1-204 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

R17-4-704. Requirements for an HME
To receive an HME an applicant shall:
1. Possess a valid Arizona CDL,
2. Be at least 21 years of age,
3. Successfully complete all required testing under R17-4-705,
4. Pay all applicable fees under R17-4-706,
5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat from TSA.

Historical Note
Adopted effective October 6, 1983 (Supp. 83-5). Former Section R17-4-49 renumbered without change as Section R17-4-704 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 3834, effective August 10, 2001 (Supp. 01-3). Section recodified to R17-4-512 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-705. Required Testing
A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
B. A transfer applicant shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay any applicable fee under R17-4-706.

Historical Note
Adopted effective August 2, 1978 (Supp. 78-4). Former Section R17-4-61 renumbered without change as Section R17-4-705 (Supp. 87-2). Section recodified to R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-706. Fees
All applicants and transfer applicants shall pay all applicable fees as prescribed by:
1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

Historical Note
Former Rule, General Order 96. Former Section R17-4-39 renumbered without change as Section R17-4-706 (Supp. 87-2). Section recodified to R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-707. 60-Day Notice to Apply
A. The Department shall notify an existing HME holder that a new Security Threat Assessment shall be successfully passed in order to retain the HME 60 days prior to the expiration of the Security Threat Assessment and the corresponding HME.
B. Upon expiration of the Department's 60 Day Notice to Apply, the Department shall cancel the Arizona driver license privi-

leges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

Historical Note

Adopted as an emergency effective April 24, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-2). Emergency expired. Former Section R17-4-66 renumbered and reserved as R17-4-707 (Supp. 87-2). New Section R17-4-66 adopted and renumbered as Section R17-4-707 effective August 11, 1987 (Supp. 87-3). Amended by final rulemaking at 6 A.A.R. 4668, November 14, 2000 (Supp. 00-4). Section recodified to R17-1-203 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-708. Security Threat Assessment

A. An applicant for an HME shall successfully pass a Security Threat Assessment every five years.

B. An applicant subject to any of the following actions, as defined in A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:

1. Cancellation,
2. Suspension for a period of one year or more,
3. Expiration for a period of one year or more, and
4. Revocation for a period of one year or more.

Historical Note

Adopted effective January 13, 1993 (Supp. 93-1). Section recodified to R17-4-310 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 27 A.A.R. 2730 (November 26, 2021), with an immediate effective date of November 2, 2021 (Supp. 21-4).

R17-4-709. Determination of Security Threat

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

1. For an original applicant:
   a. The Department will deny the request for an HME; and
   b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
   a. The Department shall immediately cancel the HME.
   b. The Department will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
   c. The applicant shall visit a Motor Vehicle Division Customer Service office for removal of the HME.
   d. If the applicant fails to comply with the Department's Notice of Action, the Department shall cancel the applicant's Arizona driver license privilege.
   e. Upon removal of an HME by the Department under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

Historical Note

Adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Section renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Section expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-601 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final rulemaking at 27 A.A.R. 2730 (November 26, 2021), with an immediate effective date of November 2, 2021 (Supp. 21-4).

R17-4-709.01. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-602 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.02. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-603 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.03. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-604 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.04. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-605 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.05. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-606 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.06. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-607 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix A. Recodified

Historical Note

Appendix A adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix A renewed and amended by emergency rulemaking, pursuant to A.R.S. §

41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix A expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix A adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix B. Recodified

Historical Note

Appendix B adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix B renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix B expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix B adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix C. Recodified

Historical Note

Appendix C adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix C renewed by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix C expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix C adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.07. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-608 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.08. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-609 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.09. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-610 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Exhibit A. Recodified

Historical Note

New Form adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Heading "Form A" changed to "Exhibit A" to conform with R1-1-412 (Supp. 00-3). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Exhibit B. Recodified

Historical Note

New Exhibit adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.10. Recodified

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-710. Requests for Administrative Hearing

A. In the event an applicant has failed to successfully complete the Security Threat Assessment or failed to receive a Determination of No Security Threat, the applicant may make an appeal directly through TSA, but cannot request an administrative hearing from the Department.

B. An applicant whose Arizona driver license privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Section recodified to R17-1-101 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-711. Expired

Historical Note

New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

R17-4-712. Transfer Applicant

A. Applicability. A transfer applicant shall comply with the provisions of this Article except as otherwise required by this Section.

B. Existing TSA approval. Upon application by a transfer applicant who has successfully passed a Security Threat Assessment prior to application in Arizona, the Department shall:

1. Verify the TSA approval of a Determination of No Security Threat;
2. Issue an Arizona CDL with an HME; and
3. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require the applicant to undergo a new Security Threat Assessment and testing requirements under R17-4-705.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

Table A. Recodified

Historical Note

Table A adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Table recodified to 17 A.A.C. 1, Article 1 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1).

ARTICLE 8. MOTOR VEHICLE RECORDS

R17-4-801. Definitions

"Batch" means a query-command method that initiates simultaneous production of an electronic file or series of requests that may have delayed results.

"Certified record" means a copy of a document designated as a true copy by the agency officer entrusted with custody of the original to be used for purposes prescribed under A.R.S. § 28-442.

"Commercial driver license record" has the same meaning as a CDLIS motor vehicle record as defined in 49 CFR 384.105.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Department to each person with a record on the Department's database, which includes the driver license number assigned to a person for a driver license, identification card, or instruction permit.

"Driver record" means a motor vehicle record more specifically defined to include any data that pertains to a driver license, identification card, instruction permit, or driver related activities.

"Interactive" means an electronic query-command method individually initiated by a person that produces immediate results.

"Reasonable costs" has the same meaning as defined in A.R.S. § 12-351.

"Requester" means the person, as defined in A.R.S. § 41-1001, requesting a motor vehicle record.

"Special MVR" means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.

"Support document" means any customer record maintained by the Department in an electronic, hardcopy, or microfilm file storage format.

"Title and registration record" means a motor vehicle record more specifically defined to include any data that pertains to a vehicle title or registration record.

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-701 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

R17-4-802. Motor Vehicle Record Request

A. Identification requirements. The requester of a motor vehicle record shall present valid identification as indicated on the motor vehicle record request form or at the request of the Department at the time a motor vehicle record request is made.

B. Charges and exemptions. The requester of a motor vehicle record shall pay the appropriate motor vehicle record copy charge under R17-4-803, unless exempt under A.R.S. § 28-446.

C. Motor vehicle record types. Under this Article, the Department may release any of the following motor vehicle record types:
1. Title and Registration record, uncertified;
2. Title and Registration record, certified;
3. Driver 39-month record, uncertified;
4. Driver five-year record, certified;
5. Driver extended history record, certified;
6. Special MVR, uncertified;
7. Commercial driver license record, uncertified;
8. Support documents, uncertified; and
9. Support documents, certified.

D. Search Criteria. A requester who has a permissible use under A.R.S. § 28-455, except as indicated under subsection (E) when using the permissible use under A.R.S. § 28-455(C)(11), shall provide at least one of the items of information listed in this subsection when requesting a motor vehicle record. The requester may need to provide additional information as needed in order to locate the record.
1. For a title and registration motor vehicle record:
   a. Vehicle identification number,
   b. License plate number, or
   c. Vehicle owner's full name.
2. For a driver motor vehicle record:
   a. The full name of the person whose record is requested, or
   b. Customer number.

E. Consent to release motor vehicle record. A requester who uses the permissible use under A.R.S. § 28-455(C)(13) shall present a properly signed Consent To Release Motor Vehicle Record - One-Time form from the person whose motor vehicle record is requested. A requester who uses the permissible use under A.R.S. § 28-455(C)(11) shall present a properly signed Consent To Release Motor Vehicle Record - General form from the person whose motor vehicle record is requested if that person has not previously submitted this form to the Department. In addition, a requester who uses the permissible use under A.R.S. § 28-455(C)(11) shall provide the items of information listed in this subsection. The Consent To Release Motor Vehicle Record forms are available at all Customer Service and Authorized Third Party Provider offices and online at https://www.azdot.gov.
1. For a title and registration motor vehicle record:
   a. Two items under subsection (D)(1), and
   b. The vehicle owner's residence address.
2. For a driver motor vehicle record:
   a. The name and customer number of the person whose record is requested, and
   b. The person's date of birth, or
   c. The person's address, or
   d. The person's Arizona driver license expiration date.

F. General consent to release information. The Department shall record a person's general consent to release information on the person's driver and title and registration records.
1. The general consent to release information is valid until revoked, in writing, by the person.
2. A person may submit the written notice of revocation:

a. In person, at a Customer Service office or Authorized Third Party Provider; or
b. By mail, to Motor Vehicle Division, P.O. Box 2100, Mail Drop 500M, Phoenix, AZ 85001-2100.

G. Insurance companies requesting a driver record. The Department shall not release to an insurer, broker, managing general agent, authorized agent or insurance producer any information in a person's driving record pertaining to a traffic violation that occurred 40 months or more before the date of a request for the release of the information.

Historical Note
Adopted effective August 16, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 19, 1994 (Supp. 94-2). Section recodified to R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

R17-4-803. Record Copy Charges
In accordance with A.R.S. §§ 12-351 and 28-446, for each separate request, the Department shall assess a charge as provided in Table 1. Certified and Uncertified Motor Vehicle Record Fees. Therefore, a fee is collected if the request results in a motor vehicle record or "No Record Found."

Historical Note
New Section made by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

Table 1. Certified and Uncertified Motor Vehicle Record Fees

Description	Method of Delivery	Amount
A certified record:	Over-the-counter immediate or drop-off service; Mail-in request; or Electronic interactive.	$5
	Electronic batch.	$3
A certified support document:	Over-the-counter immediate or drop-off service; or Mail-in request.	$5
An uncertified record:	Over-the-counter immediate service; Mail-in request; or Electronic interactive.	$3
	Electronic batch; or Over-the-counter drop-off service.	$2
An uncertified support document:	Over-the-counter immediate or drop-off service; or Mail-in request.	$3
An uncertified Special MVR:	Over-the-counter immediate or drop-off service; Mail-in request; or Electronic interactive.	$1.50
Civil subpoena support documentation:	Served by a process server.	Reasonable costs
Any photocopied item: (Does not include… etc.)	Over-the-counter immediate or drop-off service; or Mail-in request.	25¢ per page

Historical Note
Table 1 made by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

R17-4-804. Repealed

Historical Note
Adopted effective June 29, 1990 (Supp. 90-2). Repealed effective November 21, 1995 (Supp. 95-4).

R17-4-805. Recodified

Historical Note
Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-702 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-806. Recodified

Historical Note
Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-703 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-807. Recodified

Historical Note
Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-704 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-808. Recodified

Historical Note
Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-705 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

ARTICLE 9. RESERVED

R17-4-901. Recodified

Historical Note
Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-59 renumbered without change as Section R17-4-901 (Supp. 87-2). Former Section R17-4-901 repealed, new Section R17-4-901 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-501 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-902. Recodified

Historical Note
Adopted effective March 31, 1978 (Supp. 78-2). Amended subsections (A), (E) and (F) effective April 4, 1984 (Supp. 84-2). Former Section R17-4-60 renumbered without change as Section R17-4-902 (Supp. 87-2). Former Section R17-4-902 repealed, new Section R17-4-902 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-502 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-903. Recodified

Historical Note
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-503 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-904. Recodified

Historical Note
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-504 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-905. Recodified

Historical Note
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-505 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-906. Recodified

Historical Note
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-506 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-907. Recodified

Historical Note
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-507 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-908. Recodified

Historical Note
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-508 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-909. Recodified

Historical Note
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-509 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-910. Recodified

Historical Note
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-513 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-911. Recodified

Historical Note
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-511 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-912. Recodified

Historical Note
Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-512 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-913. Recodified

Historical Note
Adopted as an emergency effective December 30, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-4). Readopted as an emergency with a correction in subsection (A), paragraph (A) effective March 29, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Adopted without change as a permanent rule effective June 15, 1988 (Supp. 88-2). Amended effective July 13, 1989 (Supp. 89-3). Section recodified to R17-1-510 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

R17-4-914. Repealed

Historical Note
Former General Order 68. Former Section R17-4-26 renumbered without change as Section R17-4-914 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

Material Incorporated by Reference

R17-4-702. Scope

In this Section, the Department incorporates by reference, 49 CFR 1572, revised as of October 1, 2023**.**

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

Statutory Authority

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-5204. Administration and enforcement; rules

A. In the administration and enforcement of this chapter, the department of transportation shall adopt:

1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:

(a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.

(b) Rules adopted by the director of environmental quality pursuant to section 49-855.

2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting transporter safety standards for hazardous materials, hazardous substances and hazardous waste. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.

B. Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.

C. The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.

D. The department may audit records and inspect vehicles that are subject to this chapter.

Specific Statutes

A.R.S. § 28-3103. Driver license endorsements

A. A driver license applicant shall obtain the following endorsements to the applicant's driver license and shall submit to an examination appropriate to the type of endorsement if the applicant operates one or more of the following vehicles:

1. A motorcycle endorsement for operation of a motorcycle if the applicant qualifies for a class M license and if the applicant qualifies for or has a class A, B, C, D or G license.

2. A hazardous materials endorsement on a class A, B or C license for operation of a vehicle that transports hazardous materials, wastes or substances in a quantity and under circumstances that require the placarding or marking of the transport vehicle as required by the department's safety rules prescribed pursuant to chapter 14 of this title. The department or an outside source authorized by the department and approved by the transportation security administration may:

(a) Conduct background checks in accordance with the transportation security administration procedures.

(b) Require that all hazardous materials endorsement applicants submit fingerprints.

3. A double-triple trailer endorsement on a class A license for operation of a vehicle towing double or triple trailers.

4. A passenger vehicle endorsement on a class A, B or C license for operation of a bus designed to transport sixteen or more passengers, including the driver, or a school bus.

5. A tank vehicle endorsement on a class A, B or C license for operation of a tank vehicle. For the purposes of this paragraph, "tank vehicle" means a commercial motor vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or chassis, including a cargo tank and a portable tank and excluding a portable tank having a rated capacity under one thousand gallons.

6. A school bus endorsement on a class A, B or C license for operation of a school bus. Applicants shall successfully complete both a written knowledge test and a driving skills test to obtain a school bus endorsement.

B. When applying for a commercial driver license endorsement pursuant to article 5 of this chapter, the applicant shall successfully complete the skills portion of the examination in a motor vehicle or vehicle combination applicable to the endorsement.

C. On notification by the transportation security administration that an individual's authorization to hold a hazardous materials endorsement has been terminated, the department shall immediately cancel the hazardous materials endorsement on the driver's commercial driver license.

A.R.S. § 28-3159. Restricted licenses

A. With good cause, the department may issue the following restricted driver licenses:

1. A driver license with any of the following:

(a) Restrictions suitable to the licensee's driving ability for the type of motor vehicle or special mechanical control devices required on a motor vehicle that the licensee may operate.

(b) Restrictions suitable to the licensee's ability to drive a motor vehicle in areas, at locations or on highways or during certain times.

(c) Other restrictions as the department determines appropriate to ensure the safe operation of a motor vehicle by the licensee.

2. A class A, B or C driver license that restricts the driver from operating:

(a) A commercial motor vehicle equipped with air brakes, if the applicant either fails the air brake component of the knowledge examination or performs the skills test in a vehicle that is not equipped with air brakes.

(b) A vehicle in interstate commerce, if the applicant is not subject to 49 Code of Federal Regulations part 391.

(c) A motor vehicle for the purposes of interstate commerce, if an applicant for a class A, B or C license is at least eighteen years of age.

3. A class A, B or C driver license with other restrictions that the department determines are appropriate to ensure the safe operation of a commercial motor vehicle by the licensee.

4. A class M license that restricts the driver from driving a vehicle other than a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less, if the applicant performs the driving examination with a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less.

5. A special ignition interlock restricted driver license pursuant to chapter 4, article 3.1 of this title.

6. A license restricting the travel of the driver as provided in section 25-518.

B. The department may either issue a special restricted license or display the restrictions on the usual driver license form.

A.R.S. § 28-3223. Original applicant; requirements; expiration; renewal examination

A. In addition to the requirements applicable to all driver license applicants, an original applicant for a class A, B or C license is subject to the following requirements:

1. The applicant shall submit evidence of compliance with medical standards and requirements that the department adopts by rule.

2. The applicant must have held a driver license for at least one year either in this state, any other state or a foreign country.

3. The applicant shall take additional knowledge examinations to demonstrate understanding of the following:

(a) Safety operation rules.

(b) Commercial motor vehicle safety control systems.

(c) Safe vehicle control.

(d) The relationship of cargo to vehicle control.

(e) Basic hazardous materials knowledge.

(f) The objectives and proper procedures for performing vehicle safety inspections.

(g) Air brake systems.

(h) Legal requirements for size, weight and vehicle configurations.

(i) Emergency procedures.

4. In addition to the other requirements of this section, an applicant for a class A driver license shall demonstrate a knowledge and understanding of:

(a) Vehicle coupling and uncoupling.

(b) Unique combination vehicle inspections.

5. The applicant shall take a driving test in a vehicle or vehicle combination that at least meets the minimum size requirements for the class of driver license sought. The driving test shall include a demonstration of familiarity with pretrip inspection procedures.

B. A person possessing a commercial driver license on or before June 30, 2005 shall renew the license within eight years according to procedures established by the department.

C. Notwithstanding section 28-3171, the holder of a class A, B or C driver license shall renew the license every eight years in a manner prescribed by the department.

D. The department may administer an examination to a renewal applicant for a class A, B or C driver license. This examination on renewal shall include the following:

1. Evidence of compliance with medical standards adopted by the department.

2. Administration of knowledge tests or road tests, or both, as required of an original applicant.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 2, Article 3

New Article: Article 3

New Section: R17-2-301; R17-2-302

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 20, 2025

SUBJECT: **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 2 , Article 3

New Article: Article 3,

New Section: R17-2-301, R17-2-302

Summary:

This regular rulemaking from the Department of Transportation (Department) seeks to add a new article and two (2) new rules in Title 17, Chapter 2 regarding Aircraft Registration. Laws 2022, Chapter 264 authorized the Department to establish a staggered registration system for aircraft. This law amended the following statutes A.R.S. § 28-8322, 28-8324, 28-8325, 28-8328, 28-8329, 28-8330, and 28-8335. The law also added A.R.S. § 28-8322.01 and 28.8322.02. In addition to the registration system, the Department is setting a registration cycle, a prorated license tax (A.R.S. § 28-8322.01(C)), and allowing owners to register an aircraft fleet. The taxes and fees referenced within these rules are set by the legislature in statute, and not by the Department. The Department does issue a general permit as part of the aircraft registration, and is in compliance with A.R.S. § 41-1037.

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

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

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

This rulemaking does not establish a new fee or contain a fee increase. These rules do however reference fees that are already set by statute, which is set by the legislature and not the Department. The tax referenced in A.R.S. § 28-8322.01(C) is also set by statute and not at the discretion of the Department.

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

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

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

The Department indicates that it engages in this rulemaking to implement a staggered aircraft registration system pursuant to Laws 2022, Chapter 264. The department states that this rulemaking provides for a registration expiration date on the last day of the month. This rulemaking also includes an option for a fleet aircraft and the owner may choose to utilize the same expiration date for all aircraft placed within the fleet. The Department states that the creation of a system of monthly staggered registration will allow a distribution of the work of registering aircraft as uniformly as practicable throughout the 12 months of the calendar year which will benefit the aircraft owners, the public and ADOT. The Department believes the overall benefits to the aircraft owners, the public and ADOT outweigh the costs of establishing and implementing a new system.

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

The Department states that in the rulemaking, ADOT routinely adopts the least costly and most practicable and effective option for any process or procedure required of the regulated public or industry. ADOT has determined that there is no less intrusive or less costly alternative method for achieving the proposed rulemaking as the rulemaking is statutorily driven and meant to help the aircraft owners and ADOT. In addition, ADOT is implementing a new electronic and online registration system that should be a benefit. Plus, the new staggered registration system is similar to ADOT's staggered vehicle registration system.

6. What are the economic impacts on stakeholders?

The Department states that for the aircraft owners and the public, this rulemaking will provide guidance and clarity for the legislation, the new registration process, and for ADOT requirements. The Department believes this new system should help prevent increases in the turnaround time for registration which will decrease frustration from the owners and ADOT. The implementation of this new system will also include more electronic and online interaction and processing which will benefit the public as well. The Department states that this rulemaking also provides for a fleet option as allowed under the new legislation, which will help aircraft owners to maintain the same expiration date for all their aircraft. The Department indicates that this rulemaking does not impose any new cost for the public.

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

The Department indicates that there was one change between the proposed rulemaking and the final rulemaking. In R17-2-302(C) the Department removed the language ""applying for Initial", this was removed because renewal registrations also apply and the initial language would be inaccurate.

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

The Department indicates it received three public comments regarding this rulemaking. All comments are part of the materials provided to the Council.

One comment was from an individual who works for someone who owns a hangar and aircraft at a local airport. The comment was asking about if registration applied if the aircraft are domiciled in another state. The Department responded by saying domicile will dictate where the aircraft is registered, in this case the other state.

The second comment was in support of the rulemaking, and request for the Department to explore future rulemaking concerning what constitutes a "based aircraft". Using the FAA National Based Aircraft registry as means of auditing registration, and to track how many days aircraft are in the state. The Department indicates that they would review the suggestions and further investigate if they are necessary.

The third comment came in after the rules were submitted to GRRC. The comment asked the question about the definition of day concerning a recent court case for a different matter. The Department indicated that the case was considered in the rulemaking process and that there is no issue with the definition.

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

The Department indicates that these rules deal with registration of an aircraft and the Department considers this registration to be a general permit because the activities are substantially similar in nature for all aircraft owners.

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

The Department indicates there are no corresponding requirements in federal law. The Department indicates that FAA regulations do apply if a lien is recorded on an aircraft, and that the rules are in accordance with those regulations.

11. Conclusion

This regular rulemaking from the Department of Transportation (Department) seeks to add a new article and two (2) new rules in Title 17, Chapter 2 regarding Aircraft Registration. The Department is specifically required by A.R.S. § 28-8322.01 (Laws 2022, Chapter 264) to establish a system of staggered registration for aircraft.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. §41-1032(A).

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF TRANSPORTATION

206 S. 17th Ave
Phoenix, AZ 85007

KATIE HOBBS
GOVERNOR

JENNIFER TOTH
DIRECTOR

April 18, 2025

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 305
Phoenix, AZ 85007

Re: Department of Transportation, 17. A.A.C. 2, Article 3, Aircraft Registration, Notice of Final Rulemaking

Dear Chairperson Jessica Klein:

The Arizona Department of Transportation submits the accompanying final rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-201(A)(1):

a. The rulemaking record closed on January 29, 2025, and written public comments were received on these rules;
b. The rulemaking activity does not relate to a five-year review report;
c. The rulemaking does not establish a new fee;
d. The rulemaking does not increase an existing fee;
e. An immediate effective date is not requested for these rules under A.R.S. § 41-1032;
f. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;
g. No new full-time employees are necessary to implement and enforce the rules;
h. Documents included in this final rule package are as follows:
    1. Signed cover letter;
    2. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
    3. Economic, Small Business and Consumer Impact Statement;
    4. Written comments on the rules received by the Department and the Department's responses;
    5. Written transcript of the oral proceeding;
    6. General authorizing statutes and specific statutes, including relevant statutory definitions;
    7. Definitions of terms; and
    8. Request for, and approvals of initial and final rulemaking from the Governor's Office.

Sincerely,

Jennifer Toth
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 2. DEPARTMENT OF TRANSPORTATION

AERONAUTICS

PREAMBLE

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

April 16, 2025

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
Article 3	New Article
R17-2-301	New Section
R17-2-302	New Section

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

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. §§ 28-8322, 28-8322.01, 28-8322.02, 28-8324, 28-8325, 28-8328, 28-8329, 28-8330, and 28-8335

4. The effective date of the rule:

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

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 3782, Issue Date: December 13, 2024, Issue Number: 50, File number: R24-275

Notice of Proposed Rulemaking: 30 A.A.R. 3745, Issue Date: December 13, 2024, Issue Number: 50, File number: R24-270

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

Name: Candace Olson

Title: Senior Rules Analyst

Office: Government Relations and Rules

Address: Department of Transportation
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007
Telephone: (480) 267-6610
Email: COlson2@azdot.gov
Website: https://azdot.gov/about/government-relations

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

The Arizona Department of Transportation (ADOT) engages in this rulemaking to implement a staggered aircraft registration system pursuant to Laws 2022, Chapter 264. This rulemaking provides for a registration expiration date on the last day of the month. This rulemaking also includes an option for a fleet aircraft and the owner may choose to utilize the same expiration date for all aircraft placed within the fleet. The creation of a system of monthly staggered registration will allow a distribution of the work of registering aircraft as uniformly as practicable throughout the 12 months of the calendar year which will benefit the aircraft owners, the public, and ADOT.

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

ADOT did not review or rely on any study relevant to the rules.

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

Not applicable

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

The creation of a system of staggered registration on a monthly basis will allow a distribution of the work of registering aircraft as uniformly as practicable throughout the 12 months of the calendar year which will benefit the aircraft owners, the public, and ADOT.

This rulemaking will allow a more efficient use of ADOT's resources and minimize any increases in cost and burdens to ADOT personnel having to meet the demands and pressure of processing the renewal registrations of all aircraft at the end of February. The initial setup and transition had substantial costs but with the system in place costs should decrease.

For the aircraft owners and the public, this rulemaking will provide guidance and clarity for the legislation, the new registration process, and for ADOT requirements. This new system should help to prevent increases in the turnaround time for registration which will decrease frustration from the owners and ADOT. The implementation of this new system will also include more electronic and online interaction and processing which will benefit the public as well. This rulemaking also provides for a fleet option as allowed under the new legislation, which will help the aircraft owners to maintain the same expiration date for all their aircraft. This rulemaking does not impose any new costs for the public.

The overall benefits to the aircraft owners, the public, and to ADOT outweigh the costs of establishing and implementing this new system.

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

In R17-2-302(C), removed the verbiage "applying for initial" to clarify and allow for the notification of an exemption at renewal registrations, which is currently allowed.

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

ADOT received a couple of comments regarding this rulemaking.

Company/Individual	Comment	ADOT's Response
3D Money/Sharaya Hagen-Howard	I work for a pilot that owns a hangar at Falcon Field in Mesa. However, his aircraft is domiciled in the state of Minnesota, which is where he also pays his aircraft registration fee and pays sales tax. Will any of this proposed rulemaking affect how he is to register his aircraft? Or will he continue to register with the State of Minnesota the way he has.	No, it will not. Correct, that he will continue to register the same way he has (with Minnesota).
Glendale Regional Airport/Matthew Smith	I want to express my support for the proposed changes. 1. It will be more convenient for aircraft owners, and more in-line with generally accepted practices of motor vehicle registration. It should be very easy to implement considering MVD has millions of cars and we're only looking at thousands of aircraft. 2. It will help ADOT finance group smooth out cashflow on behalf of the MPD-Aeronautics group. Instead of a couple big deposits into the State Aviation Fund, there will be a monthly deposit from which ADOT-MPD-Aeronautics can disperse grant reimbursements. This is a big win for airports. If I could ask anything more, it might be to make it explicit that aircraft owners must be registered in the State of Arizona to qualify as a "based aircraft" at an Arizona Airport. However, local airport sponsors can probably include that in our own rules	ADOT appreciates the support and suggestions. Regarding the "based aircraft" suggestion, ADOT understands the concern but does not think this falls within ADOT's authority which is to the registration of the aircraft, and this is for the airports to manage and enforce. State statute, A.R.S. § 28-8322, also asserts that aircraft based in this state shall be registered. Regarding the last two suggestions, ADOT will conduct an in-depth analysis to further investigate, evaluate, and assess the cost-effectiveness of them. There does look to be potential in using these tools and may make it easier to audit and

	and regulations. It would just be nice to have it consistent statewide. Many aircraft owners constantly play the shell game with their aircraft to avoid paying the registration fee and local airport fees. I would also encourage the ADOT-MVD-Aircraft Registration Unit and MPD-Aeronautics group to use the FAA National Based Aircraft registry as a means of auditing state aircraft registration. Finally, I would encourage the Aircraft Registration Unit to use Virtower or a similar ADS-B tracking system to determine what aircraft are in-state for 90 days or more per year and use that information to press the owners for the registration fees.	enforce registration. These processes though are more of an internal process and ADOT does not think they need to be added to the rules.

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

There are no other matters prescribed by statute applicable to ADOT or to any specific rule or class of rules.

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

These rules deal with the registration of aircraft. This registration is a general permit since the activities and practices authorized by them are substantially similar in nature to all aircraft owners.

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

In general, these rules concern the process of registering aircraft with Arizona and are subject to state law and regulations. A person that fails to register and pay their aircraft fees in full may be subject to an assessment by ADOT and having a lien recorded on the aircraft with the Federal Aviation Administration (FAA). Liens recorded with the FAA are subject to their recording fee. This rulemaking is in accordance with that.

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

No analysis was submitted to ADOT.

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

Not applicable

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

Not applicable

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 17. TRANSPORTATION
CHAPTER 2. DEPARTMENT OF TRANSPORTATION
AERONAUTICS

ARTICLE 3. AIRCRAFT REGISTRATION

Section

ARTICLE 3. AIRCRAFT REGISTRATION

R17-2-301. Definitions

The following terms apply to this Article unless otherwise specified:

"Aircraft" has the same meaning as defined in A.R.S. § 28-8201.

"Aircraft fees" means the fees due to the Department at the time of registration and consisting of the general registration fee imposed under A.R.S. § 28-8325; the license tax imposed under A.R.S. Title 28, Chapter 25, Article 4; and applicable penalty.

"Day" means the 24-hour period from one midnight to the following midnight.

"Department" has the same meaning as defined in A.R.S. § 28-101.

"Expiration date" means the day, month, and year in which an aircraft registration expires.

"Initial registration" means the first time an aircraft is subject to registration in Arizona.

"Lien recording fee" means the recording fee prescribed by the Federal Aviation Administration.

"Registration certificate" means proof, issued by the Department, of the aircraft's registration in this state.

"Registration cycle" means the time-frame during which an aircraft registration is valid.

R17-2-302. Aircraft Registration

A. The Department shall assign a staggered expiration date when issuing an initial registration to an aircraft.

1. The initial registration expires on the last day of the month, 12 months from the month the aircraft is subject to Arizona registration.
2. The subsequent expiration dates expire 12 months from the expiration of the previous registration cycle.

B. Registration requirements. A person applying to register or to renew the registration of an aircraft shall submit the following:

1. A request for registration from either:
   a. A completed application for aircraft registration, provided by the Department, when applying for registration; or
   b. Identifying aircraft registration information as indicated by the Department when renewing a registration;
2. Payment of aircraft fees, as applicable, which may be submitted as multiple partial payments, but the registration of the aircraft is not complete until the full payment is received; and
3. An aircraft exemption affidavit, if applicable.

C. Exemptions. A person who owns an aircraft exempt from registration or license tax or both must declare their exempt status on an aircraft exemption affidavit, provided by the Department, at the time of registration. An active-duty military personnel member must resubmit the affidavit annually and a tribal member will need to resubmit the affidavit if the tribal member's address changes.

D. Proration of fees. The Department shall prorate an aircraft license tax as applicable under A.R.S. § 28-8322.01.

E. Date of receipt. The date of receipt for the items required under subsections (B) and (C) shall be the following:

1. The date of the completed electronic transaction, or
2. The date of the postmark stamped on the mailed items.

F. Evidence of registration. The Department shall issue a registration certificate and receipt as evidence of registration.

G. Assessment, penalty, and lien. A person that fails to register and pay their aircraft fees in full within 60 days of the aircraft's entry into this state, within 60 days of purchase or lease, or by the annual expiration date established in subsection (A) will be subject to an assessment under A.R.S. § 28-8328 and a penalty under A.R.S. § 28-8329. To determine if an assessment is to be issued, any part of a calendar day that an aircraft spends on the ground is counted as one day toward the determination of whether the aircraft is required to be registered and whether aircraft registration fees, assessments, penalties, and liens are to be collected. After 30 days from the issuance of the assessment, the Department may record a lien under A.R.S. § 28-8330 on the aircraft. To release the lien, a person will need to submit to the Department the full payment of the outstanding aircraft fees and a lien recording fee when the lien is filed with the Federal Aviation Administration.

H. Fleet. A person who owns two or more aircraft may request to have the aircraft registrations expire on the same date by submitting an application provided by the Department and a list of all aircraft to be included in the fleet at least 30 days before the registration.

1. The Department shall establish a registration cycle that expires on the last day of the month selected by the aircraft owner. The month selected must be the established expiration month of a currently registered aircraft.
2. Aircraft eligible to be placed into an unexpired fleet must be within at least three months prior to the aircraft's registration expiration date, if currently registered, or at any time, if the aircraft's registration is expired.
3. The Department shall prorate aircraft license tax as applicable under A.R.S. § 28-8322.02.
4. The person shall pay any aircraft fees and submit an aircraft exemption affidavit, if applicable.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 2. DEPARTMENT OF TRANSPORTATION

AERONAUTICS

R17-2-301 and R17-2-302

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation (ADOT) engages in this rulemaking to implement a staggered aircraft registration system pursuant to Laws 2022, Chapter 264. This rulemaking provides for a registration expiration date on the last day of the month. This rulemaking also includes an option for a fleet aircraft and the owner may choose to utilize the same expiration date for all aircraft placed within the fleet. The creation of a system of monthly staggered registration will allow a distribution of the work of registering aircraft as uniformly as practicable throughout the 12 months of the calendar year which will benefit the aircraft owners, the public and ADOT.

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

Prior to the 2022 legislation, all aircraft registration had to be renewed annually by the last day of February. In addition, if an aircraft became subject to Arizona registration after the beginning of the calendar year the license tax for that year on the aircraft had to be reduced by one-twelfth for each full month of the calendar year that had expired. This registration system created undue costs and burdens for ADOT and for personnel having to meet the demands and pressure of processing all the renewal registrations of aircraft at the end of February.

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

If these rules are not adopted, ADOT will not be in compliance with state law and the statutory rulemaking requirement under A.R.S. § 28-8322.01, which could expose ADOT to potential litigation and confusion by owners of Arizona-based aircraft. Additionally, failure to adopt rules could be seen as a state agency ignoring the will of the Legislature, which could cause unnecessary problems.

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

This rulemaking would ensure compliance with Laws 2022, Chapter 264 (A.R.S. § 28-8322.01) and consistency in application of the statutory and ADOT requirements which will better serve the public and allow for better public understanding. It would also allow more efficient use of ADOT's resources and minimize any increases in cost and burdens. This new system should help to prevent increases in the turnaround time for registration which will decrease frustration from the owners and ADOT. This rulemaking also provides for a fleet option as allowed under the new legislation, which will help the public to maintain the same expiration date for all their aircraft.

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

The creation of a system of staggered registration on a monthly basis will allow a distribution of the work of registering aircraft as uniformly as practicable throughout the 12 months of the calendar year which will benefit the aircraft owners, the public, and ADOT.

This rulemaking will allow a more efficient use of ADOT's resources and minimize any increases in cost and burdens to ADOT personnel having to meet the demands and pressure of processing the renewal registrations of all aircraft at the end of February. The initial setup and transition had substantial costs but with the new system in place costs should decrease.

For the aircraft owners and the public, this rulemaking will provide guidance and clarity for the legislation, the new registration process, and for ADOT requirements. This new system should help to prevent increases in the turnaround time for registration which will decrease frustration from the owners and ADOT. The implementation of this new system will also include more electronic and online interaction and processing which will benefit the public as well. This rulemaking also provides for a fleet option as allowed under the new legislation, which will help the aircraft owners to maintain the same expiration date for all their aircraft. This rulemaking does not impose any new costs for the public.

The overall benefits to the aircraft owners, the public, and to ADOT outweigh the costs of making and implementing this new system.

3. **Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:**

Name: Candace Olson, Senior Rules Analyst
Address: Government Relations and Rules
Department of Transportation
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007
Telephone: (480) 267-6610
E-mail: COlson2@azdot.gov

B. Economic, small business and consumer impact statement:

1. **Identification of the proposed rulemaking:**

See paragraph (A)(1) above.

2. **Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:**

Persons to bear costs	**Persons directly benefiting**
ADOT	ADOT

Persons to bear costs	Persons directly benefiting
Aircraft owners	Aircraft owners
	General public

3. Analysis of costs and benefits occurring in this state:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than $10,000

Moderate $10,000 to $99,999

Substantial $100,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

ADOT incurred substantial costs, including necessary programming costs to update and change the aircraft registration system, and costs from communicating the change to the aircraft owners. While exact programming costs are indeterminate due to work being done in tangent with other ADOT programming, it is estimated to have cost at least $1,269,000. ADOT benefits from the rulemaking due to the savings in time from having all the registered aircraft being renewed and processed in the same limited period, changing to the registrations being renewed and processed staggered throughout the year. This rulemaking will allow a more efficient use of ADOT's resources and minimize any increases in cost and burdens to ADOT personnel having to meet the demands and pressure of processing the renewal registrations of all aircraft at the end of February. The rules do not impose additional costs on any other state agency. In time, ADOT may experience some cost savings from a more efficient registration system. The overall benefits to aircraft owners, the public, and to ADOT outweigh the costs of making and implementing this new system.

ADOT is not required to notify the Joint Legislative Budget Committee under A.R.S. § 41-1055(B)(3)(a), since no new full-time employees are necessary to enforce and implement these rules.

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

The costs and benefits to a political subdivision would be the same as for any aircraft owner. There are no new fees associated with this rulemaking, which are set by statute. Existing aircraft owners may have minimal costs for recordkeeping and organization needed for adjusting to a new registration expiration date if chosen or to the new electronic renewal system. This rulemaking will provide guidance and clarity for the legislation, the new registration process, and for ADOT requirements. This new system should help to prevent increases in the turnaround time for registration which will decrease frustration from the owners and ADOT. The implementation of this new system will also include more electronic and online interaction and processing which will benefit the public as well.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

The costs and benefits for businesses are the same as discussed under paragraph (B)(3)(b) above.

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

ADOT anticipates no impact on private and public employment as a result of this rulemaking.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

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

Any small businesses, as defined under A.R.S. § 41-1001, that own any aircraft subject to registration under A.R.S. § 28-8322.

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

General administrative costs for small businesses are the same as discussed under paragraph (B)(3)(b) above. Overall, ADOT anticipates a minimal impact to aircraft owners and business entities as a result of this rulemaking.

c. Description of the methods that ADOT may use to reduce the impact on small businesses:

The costs associated with this rulemaking are uniform regardless of business size. Pursuant to A.R.S. § 28-8322.02, applicable small businesses that own more than one aircraft may choose a fleet option for their registered aircraft and have the same expiration date. The new registration system and electronic process should help small businesses better manage their aircraft registrations and may help reduce administrative costs in the long run.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

The costs and benefits for private persons and consumers are the same as discussed under paragraph (B)(3)(b) above.

6. Statement of the probable effect on state revenues:

ADOT anticipates that there is no fiscal impact to state revenues associated with this rulemaking. Potentially, with the rules providing guidance and clarity for the legislation and ADOT requirements, especially in regard to time spent by an aircraft on the ground, there may be more aircraft that are determined to meet the registration requirements. For FY 2024, there were 7,901 aircraft registered with $9,346,555 in total revenue (annual license tax, registration fee, assessment, and penalties) collected. Also, in FY 2024, there were 71 aircraft with a lien.

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

In rulemaking, ADOT routinely adopts the least costly and most practicable and effective option for any process or procedure required of the regulated public or industry. ADOT has determined that there is no less intrusive or less costly alternative method for achieving the proposed rulemaking as the rulemaking is

statutorily driven and meant to help the aircraft owners and ADOT. In addition, ADOT is implementing a new electronic and online registration system that should be a benefit. Plus, the new staggered registration system is similar to ADOT's staggered vehicle registration.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

None

Gmail

Candace Olson <colson2@azdot.gov>

Rulemaking Title 17, Chapter 2, Article 3 (R17-2-301 & -302)

1 message

Smith, Matt <MSmith3@glendaleaz.com> Thu, Jan 2, 2025 at 1:06 PM
To: "COlson2@azdot.gov" <COlson2@azdot.gov>

I cannot make it to the public hearing, but I want to express my support for the proposed changes.

1. It will be more convenient for aircraft owners, and more in-line with generally accepted practices of motor vehicle registration. It should be very easy to implement considering MVD has millions of cars and we're only looking at thousands of aircraft.
2. It will help ADOT finance group smooth out cashflow on behalf of the MPD-Aeronautics group. Instead of a couple big deposits into the State Aviation Fund, there will be a monthly deposit from which ADOT-MPD-Aeronautics can disperse grant reimbursements. This is a big win for airports.

If I could ask anything more, it might be to make it explicit that aircraft owners must be registered in the State of Arizona to qualify as a "based aircraft" at an Arizona Airport. However, local airport sponsors can probably include that in our own rules and regulations. It would just be nice to have it consistent statewide. Many aircraft owners constantly play the shell game with their aircraft to avoid paying the registration fee and local airport fees.

I would also encourage the ADOT-MVD-Aircraft Registration Unit and MPD-Aeronautics group to use the FAA National Based Aircraft registry as a means of auditing state aircraft registration.

Finally, I would encourage the Aircraft Registration Unit to use Virtower or a similar ADS-B tracking system to determine what aircraft are in-state for 90 days or more per year and use that information to press the owners for the registration fees.

Thank you.

Best regards,

Matt Smith, C.M., D.Eng.

Airport Administrator, Glendale Regional Airport

Former President, Arizona Airports Association

Matthew (Matt) Smith, CM
Airport Administrator
Glendale Regional Airport

MSmith3@glendaleaz.com
P 623.930.4744
6801 N Glen Harbor Blvd, Suite 201
Glendale, AZ 853XX

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Gmail

Candace Olson <colson2@azdot.gov>

Re: Rulemaking Title 17, Chapter 2, Article 3 (R17-2-301 & -302)

1 message

Candace Olson <colson2@azdot.gov> Wed, Jan 15, 2025 at 8:23 AM
To: "Smith, Matt" <MSmith3@glendaleaz.com>

Good Morning Mr. Smith,

Thank you for your response and support of the rulemaking. I will share your suggestions and let you know if anything is determined.

Thank you,
Candace

Candace Olson
SENIOR RULES ANALYST
ARIZONA DEPARTMENT
OF TRANSPORTATION

206 S. 17th Ave.
MD 180A, Room 190
Phoenix, AZ 85007

480.267.6610
azdot.gov

On Thu, Jan 2, 2025 at 1:06 PM Smith, Matt <MSmith3@glendaleaz.com> wrote:

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Thank you.

Best regards,

Matt Smith, C.M., D.Eng.

Airport Administrator, Glendale Regional Airport

Former President, Arizona Airports Association

Glendale
ARIZONA

Matthew (Matt) Smith, CM
Airport Administrator
Glendale Regional Airport

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Gmail

Candace Olson <colson2@azdot.gov>

Re: Rulemaking Title 17, Chapter 2, Article 3 (R17-2-301 & -302)

1 message

Candace Olson <colson2@azdot.gov> Fri, Mar 28, 2025 at 2:33 PM
To: "Smith, Matt" <MSmith3@glendaleaz.com>

Good Afternoon Mr. Smith,

I just wanted to follow up to my previous email.

First, the Department really appreciates the support and suggestions.

Regarding the “based aircraft” suggestion, the Department understands the concern but does not think this falls within ADOT’s authority which is to the registration of the aircraft, and this is for the airports to manage and enforce. State statute, A.R.S. § 28-8322, also asserts that aircraft based in this state shall be registered.

Regarding the last two suggestions, the Department is conducting an in-depth analysis to further investigate, evaluate, and assess the cost-effectiveness of them. There does look to be potential in using these tools and may make it easier to audit and enforce registration. These processes though are more of an internal process and the Department does not think they need to be added to the rules.

Thank you for your comments and if you have any questions, please let me know.

Thank you,
Candace

ARIZONA DEPARTMENT OF TRANSPORTATION

Candace Olson
Senior Rules Analyst
OFFICE OF LAW & POLICY

206 S. 17th Ave.
Phoenix, AZ 85007
480.267.6610 | azdot.gov

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> Candace
>
> AZ
>
> **Candace Olson**
> SENIOR RULES ANALYST
> **ARIZONA DEPARTMENT**
> **OF TRANSPORTATION**
>
> 206 S. 17th Ave.
> MD 180A, Room 190
> Phoenix, AZ 85007
>
> 480.267.6610

azdot.gov

On Thu, Jan 2, 2025 at 1:06 PM Smith, Matt <MSmith3@glendaleaz.com> wrote:

I cannot make it to the public hearing, but I want to express my support for the proposed changes.

1. It will be more convenient for aircraft owners, and more in-line with generally accepted practices of motor vehicle registration. It should be very easy to implement considering MVD has millions of cars and we're only looking at thousands of aircraft.
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I would also encourage the ADOT-MVD-Aircraft Registration Unit and MPD-Aeronautics group to use the FAA National Based Aircraft registry as a means of auditing state aircraft registration.

Finally, I would encourage the Aircraft Registration Unit to use Virtower or a similar ADS-B tracking system to determine what aircraft are in-state for 90 days or more per year and use that information to press the owners for the registration fees.

Thank you.

Best regards,

Matt Smith, C.M., D.Eng.

Airport Administrator, Glendale Regional Airport

Former President, Arizona Airports Association

Glendale
ARIZONA

Matthew (Matt) Smith, CM
Airport Administrator
Glendale Regional Airport

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Glendale, AZ 853XX

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Gmail

Candace Olson <colson2@azdot.gov>

Aircraft Registration Rules Question

1 message

Sharaya Hagen <assist@3dmoney.com> Wed, Jan 29, 2025 at 2:40 PM
To: COlson2@azdot.gov

Hello Candace,
I just raised my hand during this hearing and asked the following question:

“I work for a pilot that owns a hangar at Falcon Field in Mesa. However, his aircraft is domiciled in the state of Minnesota, which is where he also pays his aircraft registration fee and pays sales tax. Will any of this proposed rule making affect how he is to register his aircraft? Or will he continue to register with the State of Minnesota the way he has.”

Thank you!

Thank You,

Sharaya Hagen-Howard
FOCUS MANAGER for Jeff Huston

Office: (320) 434 5602
Cell: (612) 756-4077
Email: assist@3dmoney.com
3dmoney.com

3D Money

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Gmail

Candace Olson <colson2@azdot.gov>

Fwd: Aircraft Registration Rules Question

1 message

Candace Olson <colson2@azdot.gov> Thu, Feb 13, 2025 at 5:00 PM
To: grrccomments@azdoa.gov

Good Afternoon GRRC Staff,

Please find the following email the Arizona Department of Transportation received in regards to its aircraft registration rulemaking package. The comment was originally given during the oral proceeding on January 29th. The Department provided an answer at that time, which was no, that the rules will not affect that registration and that the pilot would continue to register the way they have.

I asked the commenter to submit their comment in writing.

Thank you,
Candace

Candace Olson
SENIOR RULES ANALYST
ARIZONA DEPARTMENT
OF TRANSPORTATION

206 S. 17th Ave.
MD 180A, Room 190
Phoenix, AZ 85007

480.267.6610
azdot.gov

---------- Forwarded message ---------
From: **Candace Olson** <colson2@azdot.gov>
Date: Wed, Jan 29, 2025 at 3:03 PM
Subject: Re: Aircraft Registration Rules Question
To: Sharaya Hagen <assist@3dmoney.com>

Thanks Sharaya for attending and sending this information. If you have any further questions or concerns, please let me know.

Thank you,
Candace

Candace Olson
SENIOR RULES ANALYST
ARIZONA DEPARTMENT
OF TRANSPORTATION

206 S. 17th Ave.
MD 180A, Room 190
Phoenix, AZ 85007

480.267.6610
azdot.gov

On Wed, Jan 29, 2025 at 2:41 PM Sharaya Hagen <assist@3dmoney.com> wrote:

Hello Candace,
I just raised my hand during this hearing and asked the following question:

“I work for a pilot that owns a hangar at Falcon Field in Mesa. However, his aircraft is domiciled in the state of Minnesota, which is where he also pays his aircraft registration fee and pays sales tax. Will any of this proposed rule making affect how he is to register his aircraft? Or will he continue to register with the State of Minnesota the way he has.”

Thank you!

Thank You,

Sharaya Hagen-Howard
FOCUS MANAGER for Jeff Huston

Office: (320) 434 5602
Cell: (612) 756-4077
Email: assist@3dmoney.com
3dmoney.com

3D Money

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Gmail

Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

Fwd: Aircraft Registration Rulemaking Authorized April 2, 2024

Thomas Mc Neeley <thomas.mcneeley@azdoa.gov> Thu, May 8, 2025 at 3:29 PM
To: Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

---------- Forwarded message ---------
From: Candace Olson <Unknown>
Date: Wednesday, May 7, 2025 at 11:11:08 AM UTC-7
Subject: Fwd: Aircraft Registration Rulemaking Authorized April 2, 2024
To: grrcco...@azdoa.gov <Unknown>

Good Morning GRRC Staff,

The Arizona Department of Transportation received the following inquiry in regards to the Department's aircraft registration rulemaking and included is the Department's response.

Thank you,
Candace

ARIZONA
DEPARTMENT OF
TRANSPORTATION

Candace Olson
Senior Rules Analyst
OFFICE OF LAW & POLICY

206 S. 17th Ave.
Phoenix, AZ 85007

480.267.6610 | azdot.gov

---------- Forwarded message ---------
From: **Candace Olson** <colson2@azdot.gov>
Date: Wed, May 7, 2025 at 8:54 AM
Subject: Re: Aircraft Registration Rulemaking Authorized April 2, 2024
To: Samantha Spawn <samantha@hamplaw.com>

Good Morning Samantha Spawn,

Thank you for your inquiry regarding the Department’s aircraft registration rulemaking.

A definition of “day” is included in the proposed R17-2-301 with additional language regarding the determination of an assessment in R17-2-302. The proposed rulemaking language can be found in the Notice of Proposed Rulemaking, published in 30 A.A.R. 3745, December 13, 2024, Issue 50. The ruling in the BSI Holdings case was considered during the rulemaking process. The public record for this rulemaking closed on January 29th. A Notice of Final Rulemaking has been filed with the Governor's Regulatory Review Council for their consideration on April 21st, with no changes to the definition or assessment language from the Notice of Proposed Rulemaking.

If you have any additional questions or if I can be of further assistance, please let me know.

Thank you,
Candace

ARIZONA DEPARTMENT OF TRANSPORTATION

Candace Olson
Senior Rules Analyst
OFFICE OF LAW & POLICY

206 S. 17th Ave.
Phoenix, AZ 85007

480.267.6610 | azdot.gov

On Fri, May 2, 2025 at 8:22 AM Samantha Spawn <samantha@hamplaw.com> wrote:

> Good morning,
>
> Will this rulemaking address the definition of "day" or "Based in" pursuant to the ruling in BSI Holdings vs ADOT?
>
> **Samantha Spawn ACP**
> **Certified Paralegal**
> HAMP Law Offices, LLC Arizona Criminal Defense
> p. 928-263-8477 (Direct)
> f. 928-753-6870
> Hamp Law Offices
> 2001 Stockton Hill Rd., Suite A
> Kingman, AZ 86401
>
> **This message and any files attached hereto are intended strictly for the use of the intended addressee and may contain information that is PRIVILEGED AND CONFIDENTIAL. If you are not the intended recipient, and have received this communication in error, please delete all electronic copies of this message and any attached files, destroy any hard copies in existence, and notify me at samantha@hamplaw.com.**

Public Hearing - Aircraft Registration Rules - 2025/01/29 14:18 MST - Transcript

Attendees

Anahi Villalobos, Antonia Mejia, Candace Olson, Candace Olson's Presentation, Jennifer Thomsen, John Lindley, John Parks, Kamaria McDonald, Ralene Whitmer, Sharaya Hagen, Susan Trask

Transcript

Candace Olson: Good afternoon. Welcome to the oral proceeding for the Arizona Department of Transportation proposed rules for the implementation of a staggered aircraft registration system pursuant to Laws 2022, Chapter 264. My name is Candace Olson, Senior Rules Analyst with the Arizona Department of Transportation, and I will be facilitating this oral proceeding. Today is January 29th, 2025, and the time is 2:31 p.m. This meeting is being held virtually through Google Meet with a phone-in option as noted in the agenda. This virtual meeting is being recorded.

Candace Olson: There are links to the following documents and forms in the chat feature. Aircraft Registration Rules Oral Proceeding Agenda, Notice of Proposed Rulemaking, Meeting Sign-in Sheet form, Speaker Slip/Comments form, ADOT Self-Identification Survey. ADOT complies with Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990 and other related authorities in all its programs and activities.

Candace Olson: Any person who believes his or her Title VI or ADA rights have been violated may file a complaint by contacting the ADOT Civil Rights Office at 602-712-8946 or by email at civilrightsoffice@azdot.gov within 180 days of the alleged violation. For the record, here's the previous information presented in Spanish.

Candace Olson: ADOT will make reasonable accommodations to ensure that individuals with disabilities have an equal opportunity to enjoy ADOT's programs, services, and activities. If you require an accommodation, please contact the External Civil Rights Program at 602-712-8946. For the record, here is the previous information presented in Spanish.

Candace Olson: The ADOT Self-Identification Survey. By completing this voluntary survey, ADOT will be able to determine who attends its public meetings and how the department can improve participation. This survey will also help ADOT fulfill federal reporting requirements. For the record, that information is also presented in Spanish. The Department is conducting this oral proceeding to solicit comments relating to the proposed rules for the implementation of a staggered aircraft registration system pursuant to Laws 2022, Chapter 264. This rulemaking establishes a registration expiration on the last day of the month; registration requirements; and clarifies exemption requirements, assessments, penalties, and liens.

Candace Olson: This rulemaking also includes an option for a fleet aircraft and the owner may choose to utilize the same expiration date for all aircraft placed within the fleet. The creation of a system of monthly staggered registration will allow a better distribution of the work of registering aircraft throughout the 12 months of the calendar year which will benefit the aircraft owners, the public, and ADOT. The Director has designated me to preside during this oral proceeding. It is my responsibility to act as presiding officer for the purposes of securing oral and written public comments and compiling the record to be considered in the development of the final rules. Oral statements will be recorded and the Department will consider all written oral comments in drafting the final rules.

Candace Olson: I am joined on today's panel with an additional member of Department staff who may respond to your questions and concerns. At this time, the other panel member will introduce himself.

John Parks: Hello, my name is John Parks and I am the Supervisor of the Aircraft Registration Unit.

Candace Olson: We do appear to have at least one attendee.

John Parks: I am the supervisor of the aircraft registration unit.

Candace Olson: The Department welcomes and appreciates all public comments. Everyone who wishes to speak must complete and submit a Speaker Slip/Comments form, link available in the chat feature, so that we are able to identify the source of comments when the oral proceeding record is reviewed. For anyone that is on the phone, I will complete the Speaker Slip/Comments form for you. I will call up each speaker from the slips that have been submitted. I will then ask for anyone that is on the phone to unmute and speak. If you have not submitted a Speaker Slip/Comments form and decide to speak as we proceed today, simply complete and submit the form before I conclude this meeting. Each of you will have the opportunity to provide comments regarding the proposed rules. We will limit each person to 5 minutes. If you would like to further elaborate or clarify your comments, the Department will accept written comments on the proposed rulemaking until 5:00 p.m. today.

00:05:00

Candace Olson: These comments may be submitted through the Speaker Slip/Comments form or emailed to COlson2@azdot.gov. If anyone has any general questions regarding this proceeding, please submit them through the chat feature, the Q&A feature, the raise your hand feature, or unmute your phone and let me know. Otherwise, again, any comments regarding this rulemaking must be submitted through the Speaker Slip/Comments form. Thank you. Okay, let me see if we have any submitted Comments forms. Okay, I do not see any submitted. Is there anyone on the phone or anyone else that would like to speak on these rules?

Candace Olson: Yes. Is it Sharaya?

Sharaya Hagen (online attendee): Yes, it is. Thank you, nice job. Um, I just have a quick question. So, we have…I work for a pilot and he owns a hanger at Falcon Field in Mesa, but his aircraft is domiciled and registered with the state of Minnesota. Will any of this affect his registration?

John Parks: No, it will not.

Sharaya Hagen: Okay. So, he will continue to just register the same way that he has been.

John Parks: Correct.

Sharaya Hagen: Great. That's all I needed. Thank you so much.

John Parks: You're welcome.

Candace Olson: Sharaya, just for the record, could you still submit your question, even though it wasn't specific to the rules but still submit it in written form. Just so I have it for the record.

Sharaya Hagen: In the Speaker Comments form?

Candace Olson: Yes. Are you able to access that? If not, you can just email me, too.

Sharaya Hagen: I was just going to email you, so I'll do that.

Candace Olson: Okay. I appreciate it. Thank you.

Sharaya Hagen: Thank you.

Candace Olson: Is there anyone else wishing to speak? Do not believe I see any other, nor do I see anyone on the phone. So, we'll move on then. Well, thank you for your question and comment. Once again, comments on these rules are encouraged, and any written comments I received by 5:00 PM today will be considered in drafting the final rules. If you have not completed and submitted a Meeting Sign-in Sheet form, please do so before you leave. Just again, one last chance for anyone else to join or speak up.

Candace Olson: Okay. I now conclude this oral proceeding. The time is 2:39 p.m. Thank you for attending. We'll now end the recording as well.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

Definitions of Terms

A.R.S. § 28-101. Definitions

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.

2. "Alcohol concentration" if expressed as a percentage means either:

(a) The number of grams of alcohol per one hundred milliliters of blood.

(b) The number of grams of alcohol per two hundred ten liters of breath.

3. "All-terrain vehicle" means either of the following:

(a) A motor vehicle that satisfies all of the following:

(i) Is designed primarily for recreational nonhighway all-terrain travel.

(ii) Is fifty or fewer inches in width.

(iii) Has an unladen weight of one thousand two hundred pounds or less.

(iv) Travels on three or more nonhighway tires.

(v) Is operated on a public highway.

(b) A recreational off-highway vehicle that satisfies all of the following:

(i) Is designed primarily for recreational nonhighway all-terrain travel.

(ii) Is eighty or fewer inches in width.

(iii) Has an unladen weight of two thousand five hundred pounds or less.

(iv) Travels on four or more nonhighway tires.

(v) Has a steering wheel for steering control.

(vi) Has a rollover protective structure.

(vii) Has an occupant retention system.

4. "Authorized emergency vehicle" means any of the following:

(a) A fire department vehicle.

(b) A police vehicle.

(c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.

(d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. “Autocycle” means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.

6. “Automated driving system” means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.

7. “Automotive recycler” means a person that is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and that removes parts for resale from six or more vehicles in a calendar year.

8. “Autonomous vehicle” means a motor vehicle that is equipped with an automated driving system.

9. “Aviation fuel” means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.

10. “Bicycle” means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:

(a) Two tandem wheels, either of which is more than sixteen inches in diameter.

(b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.

11. “Board” means the transportation board.

12. “Bus” means a motor vehicle designed for carrying sixteen or more passengers, including the driver.

13. “Business district” means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

14. “Certificate of ownership” means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.

15. “Certificate of title” means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.

16. “Combination of vehicles” means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.

17. “Controlled substance” means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.

18. “Conviction” means:

(a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.

(b) An unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court.

(c) A plea of guilty or no contest accepted by the court.

(d) The payment of a fine or court costs.

19. “County highway” means a public road that is constructed and maintained by a county.

20. “Dealer” means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.

21. “Department” means the department of transportation acting directly or through its duly authorized officers and agents.

22. “Digital network or software application” has the same meaning prescribed in section 28-9551.

23. “Director” means the director of the department of transportation.

24. “Drive” means to operate or be in actual physical control of a motor vehicle.

25. “Driver” means a person who drives or is in actual physical control of a vehicle.

26. “Driver license” means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.

27. “Dynamic driving task”:

(a) Means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic.

(b) Includes:

(i) Lateral vehicle motion control by steering.

(ii) Longitudinal motion control by acceleration and deceleration.

(iii) Monitoring the driving environment by object and event detection, recognition, classification and response preparation.

(iv) Object and event response execution.

(v) Maneuver planning.

(vi) Enhancing conspicuity by lighting, signaling and gesturing.

(c) Does not include strategic functions such as trip scheduling and selecting destinations and waypoints.

28. “Electric bicycle” means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:

(a) “Class 1 electric bicycle” means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(b) “Class 2 electric bicycle” means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(c) “Class 3 electric bicycle” means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.

29. “Electric miniature scooter” means a device that:

(a) Weighs less than thirty pounds.

(b) Has two or three wheels.

(c) Has handlebars.

(d) Has a floorboard on which a person may stand while riding.

(e) Is powered by an electric motor or human power, or both.

(f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.

30. “Electric personal assistive mobility device” means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.

31. “Electric standup scooter”:

(a) Means a device that:

(i) Weighs less than seventy-five pounds.

(ii) Has two or three wheels.

(iii) Has handlebars.

(iv) Has a floorboard on which a person may stand while riding.

(v) Is powered by an electric motor or human power, or both.

(vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

(b) Does not include an electric miniature scooter.

32. “Evidence” includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

(b) An electronic or digital license plate authorized pursuant to section 28-364.

33. “Farm” means any lands primarily used for agriculture production.

34. “Farm tractor” means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

35. “Foreign vehicle” means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

36. “Fully autonomous vehicle” means an autonomous vehicle that is equipped with an automated driving system designed to function as a level four or five system under SAE J3016 and that may be designed to function either:

(a) Solely by use of the automated driving system.

(b) By a human driver when the automated driving system is not engaged.

37. “Golf cart” means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.

38. “Hazardous material” means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety

and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

39. "Human driver" means a natural person in the vehicle who performs in real time all or part of the dynamic driving task or who achieves a minimal risk condition for the vehicle.

40. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:

(a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

41. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

42. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

43. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

44. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

45. "Minimal risk condition":

(a) Means a condition to which a human driver or an automated driving system may bring a vehicle in order to reduce the risk of a crash when a given trip cannot or should not be completed.

(b) Includes bringing the vehicle to a complete stop.

46. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

47. “Motorcycle” means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

48. “Motor driven cycle” means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.

49. “Motorized quadricycle” means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

50. “Motor vehicle”:

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

(i) “Motorized skateboard” means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) “Motorized wheelchair” means a self-propelled wheelchair that is used by a person for mobility.

51. “Motor vehicle fuel” includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

52. “Neighborhood electric shuttle”:

(a) Means a self-propelled electrically powered motor vehicle to which all of the following apply:

(i) The vehicle is emission free.

(ii) The vehicle has at least four wheels in contact with the ground.

(iii) The vehicle is capable of transporting at least eight passengers, including the driver.

(iv) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(v) The vehicle is a vehicle for hire as defined in section 28-9501 and operates under a vehicle for hire company permit issued pursuant to section 28-9503.

(vi) The vehicle complies with the definition and standards for low-speed vehicles set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

(b) Includes a vehicle that meets the standards prescribed in subdivision (a) of this paragraph and that has been modified after market and not by the manufacturer to transport up to fifteen passengers, including the driver.

53. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low-speed vehicles, unless excepted or exempted under federal law, set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

54. "Neighborhood occupantless electric vehicle" means a neighborhood electric vehicle that is not designed, intended or marketed for human occupancy.

55. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.

56. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

57. "Operational design domain":

(a) Means operating conditions under which a given automated driving system is specifically designed to function.

(b) Includes roadway types, speed range, environmental conditions, such as weather or time of day, and other domain constraints.

58. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

59. "Owner" means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

60. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the

purposes of this paragraph, “motorized wheelchair” means a self-propelled wheelchair that is used by a person for mobility.

61. “Personal delivery device”:

(a) Means a device that is both of the following:

(i) Manufactured for transporting cargo and goods in an area described in section 28-1225.

(ii) Equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.

(b) Does not include a personal mobile cargo carrying device.

62. “Personal mobile cargo carrying device” means an electronically powered device that:

(a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.

(b) Weighs less than eighty pounds, excluding cargo.

(c) Operates at a maximum speed of twelve miles per hour.

(d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.

(e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.

63. “Power sweeper” means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

64. “Public transit” means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

65. “Reconstructed vehicle” means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, “essential parts” means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

66. “Residence district” means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

67. “Right-of-way” when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

68. “SAE J3016” means surface transportation recommended practice J3016 taxonomy and definitions for terms related to driving automation systems for on-road motor vehicles published by SAE international in June 2018.

69. “School bus” means a motor vehicle that is designed for carrying more than ten passengers and that is either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

70. “Scrap metal dealer” has the same meaning prescribed in section 44-1641.

71. “Scrap vehicle” has the same meaning prescribed in section 44-1641.

72. “Semitrailer” means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, “pole trailer” has the same meaning prescribed in section 28-601.

73. “Single-axle tow dolly” means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.

74. “State” means a state of the United States and the District of Columbia.

75. “State highway” means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

76. “State route” means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

77. “Street” or “highway” means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

78. “Taxi” means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

79. “Title transfer form” means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.

80. “Traffic survival school” means a school that is licensed pursuant to chapter 8, article 7.1 of this title and that offers educational sessions that are designed to improve the safety and habits of drivers and that are approved by the department.

81. “Trailer” means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly

known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

82. "Transportation network company" has the same meaning prescribed in section 28-9551.

83. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

84. "Transportation network service" has the same meaning prescribed in section 28-9551.

85. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

86. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

87. "Vehicle":

(a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.

(b) Does not include:

(i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.

(ii) Devices used exclusively on stationary rails or tracks.

(iii) Personal delivery devices.

(iv) Scrap vehicles.

(v) Personal mobile cargo carrying devices.

88. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-8201. Definitions

In this article and articles 2 through 5 of this chapter, unless the context otherwise requires:

1. "Aeronaut" includes any aviator, pilot, balloonist and other person participating in the operation of aircraft while in flight.

2. "Aircraft" includes a balloon, airplane, amphibian and craft used for navigation through the air.

3. "Passenger" includes a person who rides in aircraft but has no part in its operation.

4. "Seizure of aircraft" means the physical disabling or securing of an aircraft by locks, chains or other mechanical devices.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 2. DEPARTMENT OF TRANSPORTATION

AERONAUTICS

Statutory Authority Including Relevant Statutory Definitions

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

Specific Statutes

A.R.S. § 28-8322. Registration; exceptions; definition

A. Aircraft based in this state shall be registered with the department.

B. A person or governmental entity shall register an aircraft by applying to the department on a form provided by the department within sixty days after the aircraft is brought into this state. A person who registers an aircraft shall renew the registration annually as prescribed by section 28-8322.01.

C. The department shall not issue a registration certificate for an aircraft to a person who is subject to the use tax paid pursuant to title 42, chapter 5, article 4 unless the applicable tax has been paid as shown by a receipt from the collecting officer.

D. Subsections A and B of this section do not apply to aircraft that is any of the following:

1. Operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate, intrastate or international transportation.
2. Owned by a nonresident who bases the aircraft in this state for a period of not more than ninety consecutive days or ninety days in any one calendar year, if the aircraft is not engaged in intrastate commercial activity.
3. A balloon.

E. Aircraft, except aircraft included in subsection D, paragraph 1 or 3 of this section, entering the state to engage in intrastate commercial operations shall be registered before commencing these operations.

F. For the purposes of this section, “balloon” means either:

1. An aircraft that is a flexible, nonporous bag inflated with a gas that is lighter than air.
2. A hot air balloon.

A.R.S. § 28-8322.01. Staggered aircraft registration; rules

A. The director shall establish a system of staggered registration on a monthly basis to distribute the work of registering aircraft as uniformly as practicable throughout the twelve months of the calendar year.

B. All aircraft registrations under this article expire pursuant to schedules established by the director. The director may set the number of renewal periods within a month.

C. If adoption of the staggered system results in the expiration of any registration more than one year after its issuance, the department shall charge a prorated license tax that is one-twelfth of the full annual amount for each full month of the registration cycle and shall charge a full registration fee.

D. In order to initiate a system of registering or reregistering aircraft during any month of the calendar year, the director may register or reregister an aircraft for more or less than a twelve-month period, but for not more than an eighteen-month period, and may prorate the license tax by one-twelfth of the full annual amount for each full month of the registration cycle and shall charge a full registration fee.

E. The director or a registering officer may allow a person who owns two or more aircraft to register or reregister the aircraft for less than one year so that the aircraft's registrations expire on the same date.

F. The director shall adopt rules necessary to implement this section.

A.R.S. § 28-8322.02. Fleet registration requirements

A. In lieu of the staggered aircraft registration requirements under section 28-8322.01, a person may register a fleet of two or more aircraft on an annual basis so that the registrations for all aircraft in the fleet expire in the same month.

B. The director shall approve the request for fleet registration if, at least thirty days before the registration date, the applicant provides both of the following:

1. An application containing information necessary for qualification as a fleet registrant.

2. A list of all aircraft to be included in the fleet.

C. To establish a new fleet registration and a uniform month of expiration, all of the following apply:

1. The department shall maintain the valuation for aircraft determined pursuant to section 28-8335 at the current valuation if it is necessary to calculate a prorated license tax.

2. The license tax for that year on the aircraft shall be prorated by one-twelfth of the full annual amount for each full month of the registration cycle.

3. The aircraft owner shall pay the full registration fee. The registration may not be prorated.

A.R.S. § 28-8324. Registration; license tax

A. Aircraft on which a license tax is due under section 28-8335 shall not be registered until the license tax is paid.

B. If an aircraft that was not previously subject to registration in this state becomes subject to registration, the aircraft shall be registered pursuant to section 28-8322.01.

A.R.S. § 28-8325. Registration fee; certificate

On payment of a registration fee of $5, the license tax and the penalty, if any, the department shall issue a registration certificate that must be kept with the aircraft at all times.

A.R.S. § 28-8328. Failure to register; assessment procedure

If an aircraft is not registered within the time periods prescribed in this article, the director shall assess registration fees, license taxes and penalties due as follows:

1. The director shall give written notice of the assessment to the owner of the aircraft by either mailing the notice in a postage prepaid sealed envelope addressed to the owner of the aircraft at the owner's address as it appears in the records of the department or by delivery in person. Notice is deemed to be complete at the time of mailing or at the time of personal delivery.

2. The assessment is final thirty days after notice is deemed to be complete, unless, before that time, the department receives a written objection to the assessment and a request for a hearing from the owner. If the department receives a request for a hearing, the hearing shall be conducted as provided in section 28-8244.

A.R.S. § 28-8329. Late registration; penalty; abatement

A. If an aircraft required to be registered under this article is not registered within sixty days after its entry into this state and renewed annually pursuant to section 28-8322.01, a penalty of $25 for the first month and $5 for each succeeding month of delinquency shall be added to the registration fee and collected unless an exemption for the aircraft is established pursuant to this article.

B. Registration of the aircraft for the year immediately preceding the year for which the application for registration is made is prima facie evidence that the aircraft has been based in this state during the year for which the application for registration is made.

C. The director may abate all or a part of any penalty assessed for failure to register an aircraft within the time periods prescribed in this article if the director believes that reasonable cause exists for the failure to register the aircraft as provided by this article. For the purposes of this subsection, "reasonable cause" means a reasonable basis for the person responsible for registration of the aircraft to believe that the aircraft was exempt from registration requirements.

A.R.S. § 28-8330. Lien

A. The license tax, registration fee and penalty constitute a lien on the aircraft on which they are due from the due date.

B. The lien has priority over any other lien or encumbrance on the aircraft, except for a lien of other state taxes that has priority by law.

C. The lien continues until the license taxes, registration fees, penalties and lien recording fees are paid.

D. The department shall issue a release of the lien on receipt of full payment of the registration fees, license taxes, penalties and lien recording fees secured by the lien. The release shall be a document in a form as specified in section 11-480.

E. If requested by the department, the sheriff of the county in which the aircraft is found or any other peace officer shall collect the license tax, registration fee, penalty and lien recording fee by seizure of the aircraft from the person in possession of the aircraft, if any, and by sale as provided in section 28-8331.

A.R.S. § 28-8335. License tax; tax rate

A. An annual license tax is imposed on all aircraft based in this state and required to be registered pursuant to this article, unless an exemption for the aircraft is established pursuant to this article. The license tax is payable to the department on initial registration and annually pursuant to section 28-8322.01.

B. Except as provided in sections 28-8336, 28-8337, 28-8338, 28-8339, 28-8340 and 28-8341, the department shall determine and assess the license tax prescribed by subsection A of this section on the basis of one-half percent of the average fair market value of the particular make, model and year of aircraft. The average fair market value:

1. May not have an annual percentage change that is more than the annual percentage change in the average consumer price index as published by the United States department of labor, bureau of labor statistics.

2. In fiscal year 2021-2022, shall be benchmarked to what the average fair market value of the aircraft was in 2019.

C. The tax assessed under this section shall be at least $20 for a full year of registration.

D-7.

STATE BOARD OF DENTAL EXAMINERS
Title 4, Chapter 11, Articles 6 & 12

Amend: R4-11-601; R4-11-1201; R4-11-1203; R4-11-1204

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 13, 2025

SUBJECT: **STATE BOARD OF DENTAL EXAMINERS**
Title 4, Chapter 11, Articles 6 & 12

Amend: R4-11-601; R4-11-1201; R4-11-1203; R4-11-1204

Summary:

This regular rulemaking from the State Board of Dental Examiners (Board) seeks to amend four (4) rules in Title 4, Chapter 11, Articles 6 and 12 related to Dental Hygienists and Continuing Dental Education and Renewal Requirements, respectively. Specifically, the Board indicates it needs to amend its rules in order to clarify the specific continuing education credits that must be completed in order for a licensee to provide aesthetic injectables to their patients. The Board is proposing to require at least twelve (12) credit hours in didactic or clinical training related to botulinum toxin type A or dermal fillers if the dentist provides botulinum toxin type A or dermal fillers to a patient.

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

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

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

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

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

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

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

The Board indicates it needs to amend its rules to clarify what requirements dentists and hygienists must meet to administer botulinum toxin A ("Botox") and dermal fillers. Dentists and hygienists will both be positively affected by these rule changes, dentists and hygienists will bear their own cost to receive the proper education in order to administer Botox and dermal fillers.

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

The Board believes that by amending its rules this will benefit the dental community and the public they serve.

6. What are the economic impacts on stakeholders?

The Board believes that dentists and hygienists will both be positively affected by these rule changes/clarifications. The Board states that while there are no costs associated with the rule changes, dentists and hygienists will bear their own costs to receive the proper education in order to administer Botox and dermal fillers. The Board states there are no costs related to this rulemaking, but the benefit is that dentists and hygienists may now offer a new service(s), and therefore, consumers will have options when seeking therapeutic or cosmetic Botox and/or dermal fillers.

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

The Board indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register on November 29, 2024 and the Notice of Final Rulemaking now before the Council for consideration.

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

The Board indicates it received no public comments related to this rulemaking.

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

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

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

Here, the Board indicates it issues general permits to licensees who meet the criteria established in statute and rule. Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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

The Board indicates there is no corresponding federal law.

11. Conclusion

This regular rulemaking from the Board seeks to amend four (4) rules in Title 4, Chapter 11, Articles 6 and 12 related to Dental Hygienists and Continuing Dental Education and Renewal Requirements, respectively. Specifically, the Board indicates it needs to amend its rules in order to clarify the specific continuing education credits that must be completed in order for a licensee to provide aesthetic injectables to their patients. The Board is proposing to require at least twelve (12) credit hours in didactic or clinical training related to botulinum toxin type A or dermal fillers if the dentist provides botulinum toxin type A or dermal fillers to a patient.

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

Arizona State Board of Dental Examiners
"Caring for the Public's Dental Health
and Professional Standards"

1740 West Adams Street, Suite 2470
Phoenix, Arizona 85007
P: 602.242.1492
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April 21, 2025

Ms. Jessica Klein, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations, Chapter 11. State Board of Dental Examiners – BOTOX® and Dermal Fillers NFR

Dear Ms. Klein:

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

1. Close of record date: The rulemaking record was closed on January 27, 2025 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-Year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
8. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. Therefore, no notification was required to be provided to JLBC.
9. List of documents enclosed:
    a. Cover letter signed by the Board's Executive Director;
    b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
    c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Ryan Edmonson
Executive Director

The Americans with Disabilities Act: Persons with disabilities may request reasonable accommodations, such as sign language interpreters. Requests should be made as early as possible to allow time to arrange the accommodation. This document is available in alternative format upon request.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

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

June 21, 2024

2. Article, Part, or Section Affected (as applicable)		**Rulemaking Action**
R4-11-601.	Duties and Qualification	Amend
R4-11-1201.	Continuing Dental Education	Amend
R4-11-1203.	Dentists and Dental Consultants	Amend
R4-11-1204.	Dental Hygienists	Amend

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

Authorizing statute: A.R.S. § 32-1207

Implementing statute: A.R.S. § 32-1201 et seq.

4. The effective date of the rule:

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

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

N/A

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

N/A

5. Citations to all related notices published in the *Register* that pertain to the current record of the proposed rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 3684, Issue Date: November 29, 2024, Issue Number: 48, File Number: R24-259

Notice of Rulemaking Proposed Rulemaking: 30 A.A.R. 3565, Issue Date: November 29, 2024, Issue Number: 48, File Number: R24-254

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

Name: Ryan Edmonson

Title: Executive Director

Address: 1740 W. Adams St., Ste. 2470, Phoenix, AZ 85007

Telephone: (602) 542-4493

Email: ryan.edmonson@dentalboard.az.gov

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

The Board needs to amend its rules in order to clarify the specific continuing education credits that must be completed in order for a licensee to provide aesthetic injectables to their patients.

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

None.

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

Not applicable.

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

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. There may be some impact to dental professionals who must now obtain specific continuing education credits in order to provide aesthetic injectables to their patients. However, the increased regulation is necessary to ensure that dental professionals are qualified to provide such services to patients in order to better protect the health, safety, and welfare of those patients. Thus, the economic impact is minimized.

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

N/A

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

The Board held an Oral Proceeding on January 27, 2025, but did not receive any comments.

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

None.

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

The Board issues general permits to licensees who meet the criteria established in statute and rule.

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

Not applicable.

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

No analysis was submitted.

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

None.

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

N/A

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 4. PROFESSONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 6. DENTAL HYGIENISTS

Section

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply Preventative and Therapeutic Agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281, including botulinum toxin type A or dermal fillers, as identified in A.R.S. § 32-1202, when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. A dental hygienist shall not perform an Irreversible Procedure, except for botulinum toxin type A or dermal fillers as identified in A.R.S. § 32-1202.

D. To qualify to use Emerging Scientific Technology as authorized by A.R.S. § 32-1281(C)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201, a recognized dental hygiene school as defined in A.R.S. § 32-1201, or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A ~~licensee~~ Licensee or ~~certificate holder~~ Certificate Holder shall:

1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the ~~licensee's~~ Licensee's or ~~certificate holder's~~ Certificate Holder's practice; and
2. Complete the ~~recognized continuing dental education~~ Recognized Continuing Dental Education required by this Article each renewal period.

B. A ~~licensee~~ Licensee or ~~certificate holder~~ Certificate Holder receiving an initial license or certificate shall complete the prescribed credit hours of ~~recognized continuing dental education~~ Recognized Continuing Dental Education by the end of the first full renewal period.

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 36 Credit Hours in any one or more of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in opioid education;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.
7. If the dentist provides botulinum toxin type A or dermal fillers to a patient, at least 12 Credit Hours in didactic or clinical training related to botulinum toxin type A or dermal fillers, as identified in A.R.S. § 32-1202.

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 45 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 25 Credit Hours in any one or more of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies, pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 11 Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three Credit Hours in infectious diseases or infectious disease control; and
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills.
6. If the hygienist provides botulinum toxin type A or dermal fillers to a patient, at least 12 Credit Hours in didactic or clinical training related to botulinum toxin type A or dermal fillers, as identified in A.R.S. § 32-1202.

B. A Licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those Credit Hours to the requirements of this Section.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

1. Identification of the rulemaking:

   The Arizona State Board of Dental Examiners ("Board") needs to amend its rules to clarify what requirements dentists and hygienists must meet to administer botulinum toxin A ("Botox") and dermal fillers.

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

      The Board currently has a definition for its scope of practice that includes administering botulinum toxin type A and dermal fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes (A.R.S. § 32-1202). The rule change provides clarification to the professions on what's required to administer both.

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

      Unless these rule amendments are made, the professions will continue with some ambiguity. It's believed, by some, that the scope of practice was only identifying dentists. However, many believe that hygienists are more likely to administer Botox and dermal fillers in their profession than dentists, even while the dentists may be the prescribers. The Board believes that by amending its rules, clarification will conclude that the scope of practice is for both professions.

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

      N/A

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

   In 2022, the Arizona Legislature passed a bill changing the Board's scope of practice to include the administration of Botox and dermal fillers. Many, in the dental profession, believed the change was only for dentists. Due to this belief, the local hygiene association sought and received a legal opinion from the attorney general's office. The legal opinion, no. I23-003 (R23-001), states clearly that the law permits dental hygienists to administer Botox and dermal fillers, but left the final decision-making to the specialized expertise – in this case that expertise is the Board. After a failed attempt to correct this in legislation, the Board worked with its

stakeholders to amend its rules to reflect the clarification needed for dentists and hygienists to feel comfortable that the law allows both professions the opportunity to administer Botox and dermal fillers.

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

Name: Ryan Edmonson, Executive Director

Address: Arizona State Board of Dental Examiners
1740 W. Adams St., Ste. 2470
Phoenix, AZ 85007

Telephone: (602) 542-4493

E-Mail: ryan.edmonson@dentalboard.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:
   Dentists and hygienists will both be positively affected by these rule changes/clarifications. While there are no costs associated with the rule changes, dentists and hygienists will bear their own costs to receive the proper education in order to administer Botox and dermal fillers. Therefore, both professions will receive a direct positive benefit.

5. Cost-benefit analysis:
   a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
      The Board is the only state agency affected by the rulemaking amendment and there will *not* be any costs, including the hiring of more personnel to manage the effects of the amendment.
   b. Costs and benefits to political subdivisions directly affected by the rulemaking:
      N/A
   c. Costs and benefits to businesses directly affected by the rulemaking:
      No new costs will be incurred to businesses. However, these rule changes will help dental practices receive new revenue. It's been said that no profession(s) know more

about the human maxillofacial area more than hygienists and dentists. So, it's understandable that dental practices will be directly affected.

6. Impact on private and public employment:
   With no empirical data to rely on, the Board believes that the 'new' definition of the scope of practice and these rules promulgated because of the scope of practice change will have a direct, positive impact.

7. Impact on small businesses:
   a. Identification of the small business subject to the rulemaking:
      There is no negative financial impact to small businesses.

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

   c. Description of methods that may be used to reduce the impact on small businesses:
      There are no costs to small businesses with this rulemaking.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
   There are no costs related to this rulemaking, but the benefit is that dentists and hygienists may now offer a new service(s), and therefore, consumers will have options when seeking therapeutic or cosmetic Botox and/or dermal fillers.

9. Probable effects on state revenues:
   No new expenses are expected at this time. However, all revenue received by the Board is shared with the State's general fund.

10. Less intrusive or less costly alternative methods considered:
    The Board believes that by amending its rules this will be a benefit the dental community and the public they serve.

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ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide and oxygen with or without Local Anesthesia.

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard, mineralized deposit attached to the teeth.

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental, dental therapy, or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a Recognized Continuing Dental Education program.

"Deep sedation" is a Drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental therapist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

"Documentation of attendance" means documents that contain the following information:

Name of sponsoring entity;
Course title;
Number of Credit Hours;
Name of speaker; and
Date, time, and location of the course.

"Drug" means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

"Emerging scientific technology" means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental, dental therapy, or dental hygiene school and use of the technology poses material risks.

"Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival sulcus along the tooth, forming an organic attachment.

"Ex-parte communication" means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

"General anesthesia" is a Drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or Drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

"Homebound patient" means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

"Irreversible procedure" means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

"Licensee" means a dentist, dental therapist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

"Local anesthesia" is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic Drug.

"Minimal sedation" is a minimally depressed level of consciousness that retains a patient's ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

"Mobile dental permit holder" means a Licensee or denturist who holds a mobile permit under R4-11-1301, R4-11-1302, or R4-11-1303.

"Moderate sedation" is Drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a Drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

"Nitrous oxide analgesia" means nitrous oxide used as an inhalation analgesic.

"Official compendium" means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

"Oral sedation" is the enteral administration of a Drug or non-Drug substance or combination inhalation and enterally administered Drug or non-Drug substance in a dental office or dental clinic to achieve Minimal Sedation or Moderate Sedation.

"Parenteral sedation" is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the Drug bypasses the gastrointestinal tract.

"Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the Epithelial Attachment.

"Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

"Polishing" means a procedure limited to the removal of Plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and Polishing agent. A Licensee or dental assistant shall not represent that this procedure alone constitutes an oral Prophylaxis.

"Prescription-only device" means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only Drug" does not include a Controlled Substance but does include:

Any Drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any Drug that is limited by an approved new Drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful Drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any Drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a Scaling and Polishing procedure performed on patients with healthy tissues to remove coronal Plaque, Calculus, and stains.

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school, or sponsored by a national or state dental, dental therapy, dental hygiene, or denturist association, American Dental Association Continuing Education Recognition Program or Academy of General Dentistry, Program Approval for Continuing Education approved provider, dental, dental therapy, dental hygiene, or denturist Study Club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237, or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental therapist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with Calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove Plaque, Calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer General Anesthesia and Deep Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist under Article 13.

"Section 1302 permit" means a permit to administer Parenteral Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist under Article 13.

"Section 1303 permit" means a permit to administer Oral Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental therapists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

New Article 2, consisting of Sections R4-11-201 through R4-11-205, made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240, 32-1276.07, or 32-1292.01, the Board shall ensure that the applicant has passed the clinical examination of A.R.S. §§ 32-1233(2) for dentists, or 32-1276.01(B)(3)(a) for dental therapists, or 32-1285(2) for dental hygienists, notwithstanding each respective statute's timing stipulation. Satisfactory completion of the clinical examination may be demonstrated by certified documentation, sent directly from another state, United States territory, District of Columbia or a testing agency that meets the requirements of A.R.S. §§ 32-1233(2) for dentists, or 32-1276.01(B)(3)(a) for dental therapists, or 32-1285(2) for dental hygienists, notwithstanding each respective statute's timing stipulation, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240 shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240 shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed;

4. Provide evidence regarding the clinical examination by complying with R4-11-201(A); and
5. Pass the Arizona jurisprudence examination with a minimum score of 75%.

C. For any application submitted under A.R.S. § 32-1240, the Board may request additional clarifying evidence required under R4-11-201(A).

D. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
1. Underserved areas, such as declared or eligible Health Professional Shortage Areas; or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

E. An applicant for dental licensure by credential who works in areas or facilities described in subsection (D) shall:
1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

F. A Licensee's failure to comply with the requirements in subsection (E) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01 shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01 shall:
1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed;
4. Provide evidence regarding the clinical examination by complying with R4-11-201(A); and
5. Pass the Arizona jurisprudence examination with a minimum score of 75%.

C. For any application submitted under A.R.S. § 32-1292.01, the Board may request additional clarifying evidence as required under R4-11-201(A).

D. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
1. Underserved areas such as declared or eligible Health Professional Shortage Areas; or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

E. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (D) shall:
1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

F. A Licensee's failure to comply with the requirements in R4-11-203(E) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former

Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:
1. A sworn statement of the applicant's eligibility, and
2. A letter from the issuing institution that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant's documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-206. Dental Therapist Licensure by Credential; Application

A. A dental therapist applying under A.R.S. § 32-1276.07 shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental therapist applying under A.R.S. § 32-1276.07 shall:
1. Have a current dental therapy license in another state, territory or district of the United States with substantially the same scope of practice as defined in A.R.S. § 32-1276.03;
2. Submit a written affidavit affirming that the applicant has practiced as a dental therapist for a minimum of 3000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental therapy practice includes experience as a dental therapy educator at a dental program accredited by the Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dental therapist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental therapy education requirement of the state in which the applicant is currently licensed;
4. Provide evidence showing that five years or more before applying for licensure under this Section, the applicant completed the clinical examination by complying with R4-11-201(A);
5. Submit official transcripts to the Board directly from a recognized dental therapy school as defined by A.R.S. § 32-1201(21) or an approved third party showing a degree was conferred to the applicant; and
6. Not be required to obtain an Arizona dental hygienist license, if the dental therapist submits one of the following:
   a. Certified documentation of a current or past dental hygiene license sent directly from the applicable state, United States territory, District of Columbia to the Board; or
   b. Official transcripts sent to the Board directly from a recognized dental hygiene school as defined by A.R.S. § 32-1201(19) or an approved third party showing a degree was conferred to the applicant; or
   c. A written affidavit from a recognized dental therapy school as defined in A.R.S. § 32-1201(21) affirming that all dental hygiene procedures defined in A.R.S. § 32-1281 were part of the education the applicant received.

C. For any application submitted under A.R.S. § 32-1276.07, the Board may request additional clarifying evidence required under R4-11-201(A).

D. If an applicant meets all the requirements set forth in this Section except that their current dental therapy license is from a state, territory, or district of the United States that does not include one or more of the following procedures in its legally defined scope, then the applicant must provide evidence of competency before being granted a dental therapy license by credential:
1. Fabricating soft occlusal guards;
2. Administering Nitrous Oxide Analgesia;
3. Performing nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal;
4. Suturing; or
5. Placing space maintainers.

E. The Board will accept the any of following as evidence of competency in the aforementioned procedures:
1. A certificate or credential in the procedure or procedures issued by a state licensing jurisdiction; or
2. A signed affidavit from a recognized dental therapy school, recognized dental hygiene school, or recognized dental school, affirming that the applicant successfully completed academic coursework that included both theory and supervised clinical practice in the procedure or procedures.

F. Subject to A.R.S. § 32-1276.04, an applicant for licensure under this Section shall pay the fee prescribed in A.R.S. § 32-1276.07, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
1. Underserved areas, such as declared or eligible Health Professional Shortage Areas; or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

G. An applicant for dental therapist licensure by credential who works in areas or facilities described in subsection (F) shall:
1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

H. A Licensee's failure to comply with the requirements in subsection (G) is considered unprofessional conduct and may

result in disciplinary action based on the circumstances of the case.

Historical Note
Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-207. Repealed

Historical Note
Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11-207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note
Former Section R4-11-20 repealed, new Section R4-11-20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note
Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note
Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note
Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note
Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note
Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIMEFRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:
1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
   a. The applicant's dental, dental therapy, dental hygiene, or denturist school, or
   b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, a dental, dental therapy, and dental hygiene license applicant shall provide proof of successfully completing a clinical examination by submitting:
   a. If applying for dental licensure by examination, a copy of the certificate or scorecard sent to the Board directly from a clinical examination administered by a state or testing agency that meets the requirements of A.R.S. § 32-1233(2), indicating that the applicant passed a state or regional testing agency examination that meets the requirements of A.R.S. § 32-

1233(2) within the five years immediately before the date the application is filed with the Board;

b. If applying for dental therapy licensure by examination, a copy of the certificate or scorecard sent to the Board directly from a clinical examination administered by a state, United States territory, District of Columbia or testing agency that meets the requirements of A.R.S. § 32-1276.01(B)(3)(a). The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board. The application must also include the applicant's Arizona dental hygiene license number;

c. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard sent to the Board directly from a clinical examination administered by a state, United States territory, District of Columbia or testing agency that meets the requirements of A.R.S. § 32-1285(2). The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board;

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official scorecard sent directly from the National Board examination to the Board;
6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for cardiopulmonary resuscitation training and certification as the American Red Cross or American Heart Association;
7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
8. If an applicant has been licensed or certified in another jurisdiction, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30 calendar days old;
9. If the applicant is in the military or employed by the United States government, a letter sent to the Board directly from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government; and
10. The jurisprudence examination fee paid by a method authorized by law.

B. The Board may request that an applicant provide:

1. An official copy of the applicant's dental, dental therapy, dental hygiene, or denturist school diploma from the issuing institution;
2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names;
3. Written verification of the applicant's work history; and
4. A copy of a high school diploma or equivalent certificate.

C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-302. Repealed

Historical Note

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental therapy license, dental hygiene license, dental consultant license, denturist certificate, Business Entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 30 calendar days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 30 calendar days, that

the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
   b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
   c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
   d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 30 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

A. Within 30 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The notice of denial shall inform the applicant of the following:

1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation

Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or Certified Registered Nurse Anesthetist

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.
1. Within 30 calendar days of receiving an initial or renewal application for a General Anesthesia and Deep Sedation permit, parenteral sedation permit, Oral Sedation permit or permit to employ a physician anesthesiologist or Certified Registered Nurse Anesthetist the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.
1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
   b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
   c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
   d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a Retired Licensee or Disabled Licensee is $15 and shall be paid by a method authorized by law.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-402. Business Entity Fees

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services paid by credit card on the Board's website or by money order or cashier's check:
1. Initial triennial registration, $300 per location;
2. Renewal of triennial registration, $300 per location; and
3. Late triennial registration renewal, $100 per location in addition to the fee under subsection (2).

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered

from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, 32-1297.06, and 32-1299.23, the Board establishes and shall collect up to the following licensing fees paid by a method authorized by law:
1. Dentist triennial renewal fee: $650;
2. Dentist prorated initial license fee: $110;
3. Dental therapist triennial renewal fee: $375;
4. Dental therapist prorated initial license fee: $80;
5. Dental hygienist triennial renewal fee: $325;
6. Dental hygienist prorated initial license fee: $55;
7. Denturist triennial renewal fee: $300;
8. Denturist prorated initial license fee: $46; and
9. Mobile dental facility permit initial license or annual renewal fee: $200.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the following fees paid by a method authorized by law:
1. Jurisprudence examination fee:
   a. Dentists: $300;
   b. Dental therapists: $200;
   c. Dental hygienists: $100; and
   d. Denturists: $250.
2. Licensure by credential fee:
   a. Dentists: $2,000; and
   b. Dental therapists: $1,500;
   c. Dental hygienists: $1,000.
3. Penalty to reinstate an expired license or certificate: $100 for a dentist, mobile dental facility permit, dental therapist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, mobile dental facility permit, dental therapist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
   a. Failure after 10 days: $50; and
   b. Failure after 30 days: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2). Amended by final rulemaking at 29 A.A.R. 3791 (December 15, 2023), effective January 29, 2024 (Supp. 23-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1_. Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Charges for Board Services

The Board shall charge the following fees for the services provided paid by credit card on the Board's website or by money order or cashier's check:
1. Duplicate license: $25;
2. Duplicate certificate: $25;
3. License verification: $25;
4. Copy of audio recording: $10;
5. Photocopies (per page): $.25;
6. Mailing lists of Licensees in digital format: $100

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-406. Anesthesia and Sedation Permit Fees

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:
1. Section 1301 permit fee: $300 plus $25 for each additional location;
2. Section 1302 permit fee: $300 plus $25 for each additional location;
3. Section 1303 permit fee: $300 plus $25 for each additional location; and
4. Section 1304 permit fee: $300 plus $25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.

C. Permit renewal fees:
1. Section 1301 permit renewal fee: $300 plus $25 for each additional location;
2. Section 1302 permit renewal fee: $300 plus $25 for each additional location;
3. Section 1303 permit renewal fee: $300 plus $25 for each additional location; and

4. Section 1304 permit renewal fee: $300 plus $25 for each additional location.

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note
Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.

B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.

C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.

D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.

E. A dentist of record shall:
1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32-1289 at one time.

B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.

C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(E), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 29 A.A.R. 3793 (December 15, 2023), effective January 29, 2024 (Supp. 23-4).

R4-11-503. Repealed

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective

July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply Preventative and Therapeutic Agents under the general supervision of a licensed dentist.
B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:
1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. A dental hygienist shall not perform an Irreversible Procedure.
D. To qualify to use Emerging Scientific Technology as authorized by A.R.S. § 32-1281(C)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:
1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201, a recognized dental hygiene school as defined in A.R.S. § 32-1201, or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.
B. Each selection committee member's term is one year.
C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note
New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

A. The Board shall appoint seven members to the dental hygiene committee as follows:
1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.
C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note
New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:
1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

Historical Note
New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.

B. In performing the duty in subsection (A), the committee may:
1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in Local Anesthesia, Nitrous Oxide Analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as dental hygiene examiners or Board consultants.

D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.

E. The Board may assign additional duties to the committee.

Historical Note
New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:
1. Act as dental hygiene examiners for the clinical portion of the dental hygiene examination;
2. Act as dental hygiene examiners for the Local Anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including Clinical Evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note
New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289.01, a dental hygienist shall:
1. Provide evidence to the Board of successfully completing a total of 12 hours of Recognized Continuing Dental Education that consists of the following subject areas:
   a. A minimum of four hours in medical emergencies; and
   b. A minimum of eight hours in at least two of the following areas:
      i. Pediatric or other special health care needs,
      ii. Preventative dentistry, or
      iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation.

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1287(B) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

E. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the Direct Supervision of a licensed dentist or a licensed dental therapist:

1. Place dental material into a patient's mouth in response to a licensed dentist's or licensed dental therapist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
   a. The placement of bands, crowns, and restorations;
   b. Dental dam application;
   c. Acid etch procedures; and
   d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;
9. Apply topical fluorides;
10. Take final digital impressions for any activating orthodontic appliance, fixed, or removable prosthesis;
11. Prepare a patient for Nitrous Oxide Analgesia administration upon the direct instruction and presence of a dentist or licensed dental therapist; or
12. Observe a patient during Nitrous Oxide Analgesia as instructed by the dentist or licensed dental therapist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist or a licensed dental therapist:
1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and Plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:
1. A procedure which by law only licensed dentists, licensed dental therapists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions, other than digital impressions, for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An Irreversible Procedure.

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-703. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5

A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS

R4-11-801. Expired

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-802. Expired

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-803. Renumbered

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note
Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note
Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:
1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter from any other jurisdiction in which an applicant is licensed or certified verifying that the applicant is licensed or certified in that jurisdiction, sent directly from that jurisdiction to the Board;
4. If the applicant is in the military or employed by the United States government, a letter from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a Charitable Dental Clinic or Organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note
Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11-902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic or Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11-903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 29 A.A.R. 3793 (December 15, 2023), effective January 29, 2024 (Supp. 23-4).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11-904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904 renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Expired

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11-905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-906. Expired

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11-406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11-1001 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1001 renumbered to R4-11-901, new Section R4-11-1001 renumbered from R4-11-602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1002. Expired

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11-1002 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1002 renumbered to R4-11-902, new Section R4-11-1002 renumbered from R4-11-603 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11-1003 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11-1004 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11-1005 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note
Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase "Services provided by an Arizona licensed general dentist." A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase "Services provided by an Arizona licensed dental hygienist." A denturist may advertise specific denture services only if the advertisement includes the phrase "Services provided by an Arizona certified denturist."

Historical Note
Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on "Management of Craniomandibular Disorders" and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services only if the dentist limits the dentist's practice exclusively to one or more specialty area that are:
1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):
1. Endodontics,
2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:
1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
   a. Has established examination requirements and standards,
   b. Appraised an applicant's qualifications,
   c. Administered comprehensive examinations, and
   d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note
Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note
Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note
Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:
1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note
Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a Licensee, denturist, or Restricted Permit Holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each Licensee or denturist shall possess a current form of one of the following:
1. A cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A Licensee or denturist shall include an affidavit affirming the Licensee's or denturist's completion of the prescribed Credit Hours of Recognized Continuing Dental Education with a renewal application. A Licensee or denturist shall include on the affidavit the Licensee's or denturist's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A Licensee or denturist shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a Licensee or denturist fails to meet the Credit Hours requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the Recognized Continuing Dental Education Credit Hour requirement.

E. The Board shall:
1. Only accept Recognized Continuing Dental Education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow Recognized Continuing Dental Education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A Licensee or denturist shall maintain Documentation of Attendance for each program for which credit is claimed that verifies the Recognized Continuing Dental Education Credit Hours the Licensee or denturist participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a Licensee or denturist may not be in compliance with this Article. A Licensee or denturist selected for audit shall provide the Board with Documentation of Attendance that shows compliance with the continuing dental education requirements within 35 calendar days from the date the Board issues notice of the audit by certified mail.

H. If a Licensee or denturist is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note
Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022

(Supp. 22-3).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 36 Credit Hours in any one or more of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in opioid education;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 45 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 25 Credit Hours in any one or more of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies, pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 11 Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three Credit Hours in infectious diseases or infectious disease control; and
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills.

B. A Licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those Credit Hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1205. Denturists

Denturists shall complete 27 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 15 Credit Hours in any one or more of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than three Credit Hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one Credit Hour in chemical dependency, which may include tobacco cessation;
4. At least two Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental Restricted Permit Holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed 15 Credit Hours of Recognized Continuing Dental Education yearly.

2. To determine whether to grant the renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental Restricted Permit Holder shall complete the 15 hours of Recognized Continuing Dental Education before renewal as follows:
   a. At least six Credit Hours in one or more of the subjects enumerated in R4-11-1203(1);
   b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1203(2);
   c. At least one Credit Hour in the subjects enumerated in R4-11-1203(3);
   d. At least one Credit Hour in the subjects enumerated in R4-11-1203(4).
   e. At least three Credit Hours in the subjects enumerated in R4-11-1203(5); and
   f. At least one Credit Hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene Restricted Permit Holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed nine Credit Hours of Recognized Continuing Dental Education yearly.
2. To determine whether to grant renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene Restricted Permit Holder shall complete the nine hours of Recognized Continuing Dental Education before renewal as follows:
   a. At least three Credit Hours in one or more of the subjects enumerated in R4-11-1204(1);
   b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1204(2);
   c. At least one Credit Hour in the subjects enumerated in R4-11-1204(3);
   d. At least two Credit Hours in the subjects enumerated in R4-11-1204(4) and
   e. At least three Credit Hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1208. Retired Licensees or Retired Denturists

A Retired Licensee or Retired denturist shall:

1. Except for the number of Credit Hours required, comply with the requirements in R4-11-1202; and
2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1276.02 for a dental therapist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the Retired Licensee or Retired denturist has completed the following Credit Hours of Recognized Continuing Dental Education per renewal period:
   a. Dentist - 24 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation-healthcare provider level;
   b. Dental therapist - 21 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation- healthcare provider level;
   c. Dental hygienist - 18 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation-healthcare provider level; and
   d. Denturist - six Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation-healthcare provider level.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1209. Types of Courses

A. A Licensee or denturist shall obtain Recognized Continuing Dental Education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the Licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
   a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the Licensee or denturist passes the examination;
   b. Participation on the Board, in Board complaint investigations including Clinical Evaluations or anesthesia and sedation permit evaluations;

c. Participation in peer review of a national or state dental, dental therapy, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
d. Providing dental-related instruction to dental, dental therapy, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental therapy, dental hygiene, or denturist association;
e. Publication or presentation of a dental paper, report, or book authored by the Licensee or denturist that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A Licensee or denturist may claim Credit Hours:
i. Only once for materials presented;
ii. Only if the date of publication or original presentation was during the applicable renewal period; and
iii. One Credit Hour for each hour of preparation, writing, and presentation; or
f. Providing dental, dental therapy, dental hygiene, or denturist services in a Board-recognized Charitable Dental Clinic or Organization.

B. The following limitations apply to the total number of Credit Hours earned per renewal period in any combination of the activities listed in subsection (A)(4):
1. Dentists, no more than 21 hours;
2. Dental therapists, no more than 18 hours;
3. Dental hygienists, no more than 15 hours;
4. Denturists, no more than nine hours;
5. Retired or Restricted Permit Holder dentists, dental therapists, or dental hygienists, no more than two hours; and
6. Retired denturists, no more than two hours.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1210. Dental Therapists

Dental therapists shall complete 54 hours of Recognized Continuing Dental Education in each renewal period as follows:
1. At least 31 Credit Hours in any one or more of the following areas: Dental and medical health, dental therapy services, dental therapy treatment planning, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry;
2. No more than 14 Credit Hours in any one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in infectious diseases or infectious disease control;
4. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
5. At least three Credit Hours in any one or more of the following areas: ethics, risk management, chemical dependency, tobacco cessation, or Arizona dental jurisprudence.

Historical Note
New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering General Anesthesia, or Deep Sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 Permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
a. General information about the applicant such as:
i. Name;
ii. Home and office addresses and telephone numbers;
iii. Limitations of practice;
iv. Hospital affiliations;
v. Denial, curtailment, revocation, or suspension of hospital privileges;
vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
i. Emergency Drugs;
ii. Electrocardiograph monitor;
iii. Pulse oximeter;
iv. Cardiac defibrillator or automated external defibrillator;
v. Positive pressure oxygen and supplemental oxygen;
vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;

vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
viii. Endotracheal tubes and appropriate connectors;
ix. Magill forceps;
x. Oropharyngeal and nasopharyngeal airways;
xi. Auxiliary lighting;
xii. Stethoscope; and
xiii. Blood pressure monitoring device; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered General Anesthesia or Deep Sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
   b. A copy of the General Anesthesia or Deep Sedation permit in effect in another state or certification of military training in General Anesthesia or Deep Sedation from the applicant's commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.
1. The onsite evaluation team shall consist of:
   a. Two dentists who are Board members, or Board designees for initial applications; or
   b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
   c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
   e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
   f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing edu-

cation with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1301 mobile permit may be issued if a Section 1301 Permit holder travels to dental offices or dental clinics to provide anesthesia or Deep Sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
   b. Compliance with subsection (B)(2)(b).

E. A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:

1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
4. A list of all medications given, with dosage and time intervals, and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and
8. Time of discharge and status, including name of escort.

F. The Section 1301 Permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.

G. The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure.

H. The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 Permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:

1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
2. A Certified Registered Nurse Anesthesiology currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.

J. A Section 1301 Permit holder may also administer parenteral sedation without obtaining a Section 1302 Permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 Permit every five years by complying with R4-11-1307.

1. A Section 1301 Permit holder may also administer parenteral sedation.
2. A Section 1302 Permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.

B. To obtain or renew a Section 1302 Permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
   b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
   a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or General Anesthesia

or Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist:
i. Emergency Drugs;
ii. Positive pressure oxygen and supplemental oxygen;
iii. Stethoscope;
iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
v. Oropharyngeal and nasopharyngeal airways;
vi. Pulse oximeter;
vii. Auxiliary lighting;
viii. Blood pressure monitoring device; and
ix. Cardiac defibrillator or automated external defibrillator; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
i. Holds a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;
ii. Is present during the parenteral sedation procedure; and
iii. After the procedure, monitors the patient until discharge;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support in a practice treating pediatric patients; or
c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
a. Sixty didactic hours of basic parenteral sedation to include:
i. Physical evaluation;
ii. Management of medical emergencies;
iii. The importance of and techniques for maintaining proper documentation; and
iv. Monitoring and the use of monitoring equipment; and
b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).

D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.
1. The onsite evaluation team shall consist of:
a. Two dentists who are Board members, or Board designees for initial applications, or
b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation;
b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the

failed evaluation. An example is failure to recognize and manage more than one emergency; or

e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11-1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
   b. Compliance with R4-11-1302(B)(2)(b).

E. A Section 1302 Permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   c. A list of all medications given, with dosage and time intervals and route and site of administration;
   d. Type of catheter or portal with gauge;
   e. Indicate nothing by mouth or time of last intake of food or water;
   f. Consent form; and
   g. Time of discharge and status, including name of escort; and
2. May include pre-operative and post-operative electrocardiograph report.

F. The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.

G. The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.

H. The Section 1302 Permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1303. Oral Sedation

A. Before administering Oral Sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every five years by complying with R4-11-1307.
1. A Section 1301 Permit holder or Section 1302 Permit holder may also administer Oral Sedation without obtaining a Section 1303 Permit.
2. The administration of a single Drug for Minimal Sedation does not require a Section 1303 Permit if:
   a. The administered dose is within the Food and Drug Administration's maximum recommended dose as printed in the Food and Drug Administration's approved labeling for unmonitored home use;
      i. Incremental multiple doses of the Drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
      ii. During Minimal Sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the Food and Drug Administration's maximum recommended dose on the date of treatment; and
   b. Nitrous oxide/oxygen may be administered in addition to the oral Drug as long as the combination does not exceed Minimal Sedation.

B. To obtain or renew a Section 1303 Permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
   b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Oral Sedation:
   a. Contains the following properly operating equipment and supplies during the provision of sedation:
      i. Emergency Drugs;
      ii. Cardiac defibrillator or automated external defibrillator;
      iii. Positive pressure oxygen and supplemental oxygen;
      iv. Stethoscope;

v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
vi. Pulse oximeter;
vii. Blood pressure monitoring device; and
viii. Auxiliary lighting; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
i. Holds a current certificate in cardiopulmonary resuscitation healthcare provider level;
ii. Is present during the Oral Sedation procedure; and
iii. After the procedure, monitors the patient until discharge;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
a. Cardiopulmonary resuscitation healthcare provider level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
b. Pediatric advanced life support in a practice treating pediatric patients; or
c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Complete a Board-recognized post-doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or
2. Complete a Board recognized post-doctoral residency program that includes documented training in Oral Sedation more than three years before submitting the permit application shall provide the following documentation:
a. On a form provided by the Board, a written affidavit affirming that the applicant has administered Oral Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
b. A copy of the Oral Sedation permit in effect in another state or certification of military training in Oral Sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
3. Provide proof of participation in 30 clock hours of Board-recognized undergraduate, graduate, or post-graduate education in Oral Sedation within the three years before submitting the permit application that includes:
a. Training in basic Oral Sedation,
b. Pharmacology,
c. Physical evaluation,
d. Management of medical emergencies,
e. The importance of and techniques for maintaining proper documentation, and
f. Monitoring and the use of monitoring equipment.

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.
1. The onsite evaluation team shall consist of:
a. For initial applications, two dentists who are Board members, or Board designees.
b. For renewal applications, one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the Oral Sedation record; and
e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation;
b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
4. The onsite evaluation of an additional dental office or dental clinic in which Oral Sedation is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The applicant must submit a completed affidavit verifying:

a. That the equipment and supplies for the provision of Oral Sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where Oral Sedation is provided, and
b. Compliance with R4-11-1303(B)(2)(b).

E. A Section 1303 Permit holder shall keep an Oral Sedation record for each Oral Sedation procedure that:
1. Includes the following entries:
a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
b. Pre-operative and post-operative blood pressure;
c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
d. List of all medications given, including dosage and time intervals;
e. Patient's weight;
f. Consent form;
g. Special notes, such as, nothing by mouth or last intake of food or water; and
h. Time of discharge and status, including name of escort; and
2. May include the following entries:
a. Pre-operative and post-operative electrocardiograph report; and
b. Intra-operative blood pressures.

F. The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Oral Sedation for the duration of the procedure.

G. The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Oral Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 Permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);
2. The Section 1303 Permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:
a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support in a practice treating pediatric patients;
c. A recognized continuing education course in advanced airway management;
3. The Section 1303 Permit holder ensures that:
a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;
b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1303 renumbered to R4-11-1304; new Section R4-11-1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
a. General information about the applicant such as:
i. Name;
ii. Home and office addresses and telephone numbers;
iii. Limitations of practice;
iv. Hospital affiliations;
v. Denial, curtailment, revocation, or suspension of hospital privileges;
vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist

has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
   a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
      i. Emergency drugs;
      ii. Electrocardiograph monitor;
      iii. Pulse oximeter;
      iv. Cardiac defibrillator or automated external defibrillator (AED);
      v. Positive pressure oxygen and supplemental continuous flow oxygen;
      vi. Suction equipment, including endotrachael, tonsillar or pharyngeal and emergency backup medical suction device;
      vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
      viii. Endotracheal tubes and appropriate connectors;
      ix. Magill forceps;
      x. Oropharyngeal and nasopharyngeal airways;
      xi. Auxiliary lighting;
      xii. Stethoscope; and
      xiii. Blood pressure monitoring device; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
3. Hold a valid license to practice dentistry in this state; and
4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
   c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation; or
   b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).

D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
4. A list of all medications given, with dosage and time intervals and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and
8. Time of discharge and status, including name of escort.

E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.

F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.

G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1304 renumbered to R4-11-1305; new Section R4-11-1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of

or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1305 renumbered to R4-11-1306; new Section R4-11-1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.

1. The program shall include instruction in the following subject areas:
   a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
   b. Physiological and psychological risks for the use of various modalities of pain control;
   c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
   d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
   e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
   a. Be the same for all dentists, whether general practitioners or specialists; and
   b. Include each subject area listed in subsection (A)(1).
3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).

B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:

1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
   a. General anesthesia,
   b. Parenteral sedation,
   c. Physical evaluation,
   d. Medical emergencies,
   e. Monitoring and use of monitoring equipment, or
   f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management;
3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:

1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
   a. Oral sedation,
   b. Physical evaluation,
   c. Medical emergencies,
   d. Monitoring and use of monitoring equipment, or
   e. Pharmacology of oral sedation drugs and non-drug substances; and
2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
   a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
   b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   c. Pediatric advanced life support (PALS);
   d. A recognized continuing education course in advanced airway management; and
3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:

1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.

B. To renew a Section 1304 permit, the permit holder shall:

1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and

2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.

C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.

D. The Board may stagger due dates for renewal applications.

Historical Note
Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
1. Date of issuance;
2. Name and address of the patient to whom the prescription is issued;
3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
4. Name and address of the dentist prescribing the drug; and
5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.

B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1402. Labeling and Dispensing

A. A dentist shall include the following information on the label of all drugs and devices dispensed:
1. The dentist's name, address, and telephone number;
2. The serial number;
3. The date the drug or device is dispensed;
4. The patient's name;
5. Name, strength, and quantity of drug or name and quantity of device dispensed;
6. The name of the drug or device manufacturer or distributor;
7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.

C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.

D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
   a. A patient's allergies,
   b. Incompatibilities with a patient's currently-taken medications,
   c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
   d. The frequency of refills;
2. Verify that the dosage is within proper limits;
3. Interpret the prescription order;
4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:
1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85º F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
   a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
   b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the sup-

plier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:
1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
2. Sequentially file orders separately from patient records, as follows:
   a. File Schedule II drug orders separately from all other prescription orders;
   b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
   c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
5. Record the date the drug or device is dispensed on each prescription order and label.

B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.

C. A dentist shall maintain:
1. Purchase records of all drugs and devices for three years from the date purchased; and
2. Dispensing records of all drugs and devices for three years from the date dispensed.

D. A dentist who dispenses controlled substances:
1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
3. Shall maintain the inventory for three years from the inventory date;
4. May use one inventory book for all controlled substances;
5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.

E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).

F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

A. A dentist who determines that there has been a theft or loss of Drugs or Controlled Substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
1. For non-Controlled Substance Drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
2. For Controlled Substance theft or loss, complete a Drug Enforcement Administration's 106 form; and
3. Provide copies of the Drug Enforcement Administration's 106 form to the Drug Enforcement Administration and the Board within one day of the discovery.

B. A dentist who dispenses Drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1406. Dispensing for Profit Registration and Renewal

A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing the Board the following information:
1. A completed registration form that includes the following information:
   a. The dentist's name and dental license number;
   b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
   c. Locations where the dentist desires to dispense the drugs and devices for profit; and
2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.

B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.

C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note
Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4-11-1406 renumbered to R4-11-1205, new Section R4-11-1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note
New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications

A dentist, dental therapist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note
New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:

1. The Board shall notify the Licensee, denturist, Business Entity or Mobile Dental Permit Holder by certified U.S. Mail when the following occurs:
   a. A formal interview is scheduled, and
   b. A subpoena, notice, or order is issued.
2. The Board shall notify the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder by U.S. mail or email when the following occurs:
   a. The complaint is tabled, and
   b. The Board grants a postponement or continuance.
3. Board shall provide the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder with a copy of the complaint.
4. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to Clinical Evaluation are:

1. Except as provided in subsection (B)(1)(a), the President's Designee shall appoint one or more dental consultants to perform a Clinical Evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
   a. If the complaint involves a dental hygienist, denturist, dental therapist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the President's Designee shall appoint a dental consultant from that area of practice or specialty.
   b. The Board shall disclose the identity of the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder to a dental consultant performing a Clinical Evaluation before the Board receives the dental consultant's report.
2. The dental consultant shall prepare and submit a Clinical Evaluation report. The President's Designee shall provide a copy of the Clinical Evaluation report to the Licensee or denturist. The Licensee or denturist may submit a written response to the Clinical Evaluation report.

C. Notwithstanding any other provision, the Board may take immediate action consistent with A.R.S. §§ 32-1201.01 or 32-1263 in order to protect public health and safety.

Historical Note
New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2). Amended by final rulemaking at 29 A.A.R. 3793 (December 15, 2023), effective January 29, 2024 (Supp. 23-4).

R4-11-1504. Postponement of Interview

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the

licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:
1. Is made in writing,
2. States the reason for the postponement, and
3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:
1. Review and either deny or approve the request for postponement; and
2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. DENTAL THERAPISTS

R4-11-1601. Duties and Qualifications

A. A dental therapist may perform a procedure not specifically authorized by A.R.S. § 32-1276.03 when all of the following conditions are satisfied:
1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental therapist has received training by a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school, as defined under A.R.S. § 32-1201, to perform the procedure in a safe manner; and
3. The procedure is performed under the Direct Supervision of, or according to, a written collaborative practice agreement with a licensed dentist.

B. A dental therapist may administer Nitrous Oxide Analgesia as authorized by A.R.S. § 32-1276.03(B)(12) if the dental therapist submits proof directly from an issuing institution of completing courses in the administration of Nitrous Oxide Analgesia offered by a recognized dental school, recognized dental therapy school, or recognized dental hygiene school, as defined under A.R.S. § 32-1201, that include both theory and supervised clinical practice in the procedures.

C. A dental therapist may perform suturing and suture removal as authorized by A.R.S. § 32-1276.03(B)(21) if the dental therapist submits proof directly from an issuing institution of completing courses in suturing and suture removal offered by a recognized dental school, recognized dental therapy school, or recognized dental hygiene school, as defined under A.R.S. § 32-1201, that include both theory and supervised clinical practice in the procedures.

D. A dental therapist may perform an Irreversible Procedure only if it is specifically authorized by A.R.S. § 32-1276.03 or meets the conditions of R4-11-1601(A).

Historical Note

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008. New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-1602. Limitation on Number Supervised

A dentist shall not provide direct supervision for more than three dental therapists while the dental therapists are providing services or performing procedures under A.R.S. § 32-1276.03 or R4-11-1601.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-1603. Dental Therapy Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental therapy consultants may:
1. Participate in Board-related procedures, including a Clinical Evaluation, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's or denturist's quality of care; and
2. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-1604. Written Collaborative Practice Agreements; Collaborative Practice Relationships

A. A dental therapist shall submit a signed affidavit to the Board affirming that:
1. The Collaborative Practice Agreement complies with all the requirements listed in A.R.S. § 32-1276.04.
2. The dental therapist is and will be continuously certified in basic life support, including healthcare provider level cardiopulmonary resuscitation and training in automated external defibrillator.
3. The dental therapist is in compliance with the continuing dental education requirements of this state.

B. Each dentist who enters into a Collaborative Practice Agreement shall be available telephonically or electronically during the business hours of the dental therapist to provide an appropriate level of contact, communication, and consultation.

C. A Collaborative Practice Agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the dental therapist.

D. A Collaborative Practice Agreement shall include a signed and dated statement from the dentist providing Direct Supervision, verifying the dental therapist's completion of 1000 hours of dental therapy clinical practice according to A.R.S. § 32-1276.04(B).

E. A Collaborative Practice Agreement shall be between one dentist and one dental therapist.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure

A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review

with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:

1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Excessive or insufficient penalties;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
7. That the findings of fact of decision is not justified by the evidence or is contrary to law; or
8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.

D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

A. A business entity shall ensure that the receipt for the current registration period is:

1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

ARIZONA
STATE BOARD OF DENTAL EXAMINERS

Statutes & Rules

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Article 1 Dental Board

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.

2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.

3. "Board" means the state board of dental examiners.

4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.

5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.

6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.

7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.

8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.

9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.

10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography, including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.

11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.

12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

(a) Imposition of an administrative penalty in an amount not to exceed $2,000 for each violation of this chapter or rules adopted under this chapter.

(b) Imposition of restrictions on the scope of practice.

(c) Imposition of peer review and professional education requirements.

(d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:

(a) Charges for services not rendered.

(b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.

(c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.

(d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.

(e) Any statement that is material to the claim and that the licensee knows is false or misleading.

(f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.

(g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.

16. "Licensed" means licensed pursuant to this chapter.

17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.

18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

19. "Qualified anesthesia provider" means any of the following:

(a) A licensee who holds a permit to administer anesthesia and sedation from the board pursuant to section 32-1207.

(b) A physician who has completed residency training in anesthesiology, who is licensed pursuant to chapter 13 or 17 of this title and who is registered with the Arizona medical board or the Arizona board of osteopathic examiners in medicine and surgery to administer anesthesia in dental offices and dental clinics pursuant to section 32-1403 or 32-1803.

(c) A certified registered nurse anesthetist who has a national board certification in anesthesiology, who is licensed pursuant to chapter 15 of this title and who is registered with the Arizona state board of nursing to administer anesthesia in dental offices and dental clinics pursuant to section 32-1606.

20. "Recognized continuing dental education" means continuing dental education as prescribed by the board in rule.

21. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

22. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.

23. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.

24. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.

25. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.

26. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.

3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's needs and in conjunction with the scope of practice prescribed in section 32-1202.

4. Committing gross malpractice or repeated acts constituting malpractice.

5. Acting or assuming to act as a member of the board if this is not true.

6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.

7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.

8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.

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

10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in treating a condition, disease, injury, ailment or infirmity.

11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.

12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

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

16. Committing repeated irregularities in billing.

17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in performing work that can be done legally only by licensed persons.

18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.

19. Wilfully or intentionally causing or allowing supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that allowed under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.

20. Committing the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.

22. Failing to comply with a board order, including an order of censure or probation.

23. Failing to comply with a board subpoena in a timely manner.

24. Failing or refusing to maintain adequate patient records.

25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.

26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.

27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.

28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

(a) Professionally incompetent.

(b) Engaging in unprofessional conduct.

(c) Impaired by drugs or alcohol.

(d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues of the oral maxillofacial facial complex, including removing stains, discolorations and concretions and administering botulinum toxin type A and dermal fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes.

32-1203. State board of dental examiners; qualifications of members; terms

A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The business entity member and the public members may participate in all board proceedings and determinations, except in preparing, giving or grading examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in preparing, giving and grading examinations that do not relate to dental hygiene procedures.

D. A board member shall not serve more than two consecutive terms.

E. For the purposes of this section, the business entity member must be an employee or owner of a registered business entity pursuant to section 32-1213 and may not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board members; investigation committee members

A. Members of the board are entitled to receive compensation in the amount of $250 for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

B. Members of an investigation committee established by the board may receive compensation in the amount of $100 for each committee meeting.

32-1207. Powers and duties; executive director; immunity; fees; definitions

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided that:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for administering intravenous or intramuscular drugs for the purpose of sedation or for using general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

7. Establish an investigation committee consisting of not more than eleven licensees who are in good standing, who are appointed by the board and who serve at the pleasure of the board to investigate any

complaint submitted to the board, initiated by the board or delegated by the board to the investigation committee pursuant to this chapter.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for applying general anesthesia and sedation, shall establish and collect a fee of not more than $300 to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section:

1. "Good standing" means that a person holds an unrestricted and unencumbered license that has not been suspended or revoked pursuant to this chapter.

2. "Record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report; posting

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding fiscal year that includes the following information:

1. The number of licensed dentists, dental therapists and hygienists in this state.

2. The number of certified denturists in this state.

3. The number of registered business entities in this state.

4. The number of licenses, certificates and registrations issued during the preceding fiscal year for each license type, certificate and registration.

5. The outcomes with respect to complaints filed with the board and of any formal hearings held in connection with those complaints and the results of those hearings.

6. The facts with respect to persons charged with violations of this chapter.

7. A full and complete statement of financial transactions of the board.

8. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor, the board shall submit a supplemental report.

C. The reports made pursuant to this section shall be posted on the board's public website.

32-1212. Dental board fund

(L24, Ch. 222, sec. 13. Eff. until 7/1/28)

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit fifteen percent of all fees, fines and other revenue received by the board in the state general fund and deposit the remaining eighty-five percent in the dental board fund.

B. Monies deposited in the dental board fund are subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1212. Dental board fund; Version 2

(L24, Ch. 222, sec. 14. Eff. 7/1/28)

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten percent of all fees, fines and other revenue received by the board in the state general fund and deposit the remaining ninety percent in the dental board fund.

B. Monies deposited in the dental board fund are subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The business entity is registered with the board pursuant to this section.

2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the business entity's services offered to the public.

2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.

3. The names and addresses of the officers and directors of the business entity.

4. The name of the business entity's custodian of records.

5. A registration fee prescribed by the board in rule.

C. A business entity must file a separate registration application and pay a fee for each branch office in this state.

D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. A business entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.

E. The business entity must notify the board in writing within thirty days after any change:

1. In the business entity's name, address or telephone number.

2. In the officers or directors of the business entity.

3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.

4. The name of the business entity's custodian of records who will accept subpoenas and respond to patient records requests.

F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.

2. Disposing of unclaimed dental records.

3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the business entity's procedure by which its patients may obtain their records.

H. The board may do any of the following pursuant to its disciplinary procedures if a business entity violates the board's statutes or rules:

1. Refuse to issue a registration.

2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than $2,000 for each violation.

4. Enter a decree of censure.

5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.

6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.

I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

J. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.

2. Any of the following entities licensed under title 20:

(a) A service corporation.

(b) An insurer authorized to transact disability insurance.

(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.

(d) A health care services organization that does not provide directly for dental services.

3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.

4. A facility regulated by the federal government or a state, district or territory of the United States.

5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.

K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:

1. Owned by a dentist who is licensed pursuant to this chapter.

2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for a business entity registered pursuant to this section to disregard or interfere with a policy or practice established by the business entity for the operation and management of the business.

2. Authorize a business entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the business entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.

Article 2 Licensing

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

(a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

(b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, recognized dental therapy school, recognized dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director's administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist from practicing for educational purposes on behalf of a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

9. A dentist who holds an active and unrestricted license in another state, territory or possession of the United States from practicing for educational purposes in connection with recognized continuing dental education. A dentist who practices under this paragraph:

(a) May not receive compensation for dental services provided in connection with recognized continuing dental education.

(b) Is subject to the jurisdiction and discipline of the board to the same extent as dentists who are licensed in this state.

(c) May not provide any dental care or services in this state to a person who is either:

(i) Physically unable to safely receive the dental care or services.

(ii) Not mentally competent to knowingly and voluntarily consent to the dental care or services.

(d) Shall file a restricted permit application on a form approved by the board with the provider of the recognized continuing dental education before providing any dental care or services in this state. The provider of the recognized continuing dental education shall retain the dentist's restricted permit application for a period of at least five years.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.

B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of $300. The board shall waive this fee for candidates who are applying for a restricted permit. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia but is not currently licensed to practice dentistry in Arizona.

2. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

3. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

4. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Meets the applicable requirements of section 32-1232.

6. Meets the requirements of section 32-1233, paragraph 1. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.

7. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section does not require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of $50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A. A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization or will be practicing for educational purposes in connection with and while enrolled in recognized continuing dental education that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization or in connection with the recognized continuing dental education.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for at least three years immediately preceding the application:

(a) The practice of dentistry.

(b) An approved dental residency training program.

(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

B. For the purposes of meeting the requirements of subsection A of this section, the provider of the recognized continuing dental education, before the commencement of the recognized continuing dental education, shall notify the board of the restricted permit applicants the provider has accepted that meet the requirements of section 32-1231, paragraph 9. The board shall acknowledge receipt of the notification within five business days after the later of receiving either:

1. The notification.

2. A copy of the applicants' valid fingerprint clearance cards.

32-1238. Issuance of restricted permit

A. The board shall issue a restricted permit within thirty days after the date the board receives a complete application that meets the requirements of section 32-1232, subsection B from an applicant that meets the requirements of section 32-1237.

B. A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

C. For the purposes of this section, the acknowledgment from the board pursuant to section 32-1237, subsection B serves as the issuance of a restricted permit to an applicant who will be practicing for educational purposes in connection with and while enrolled in recognized continuing dental education.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued may practice dentistry only in the course of the person's employment by a recognized charitable dental clinic or organization or for educational purposes in connection with and while enrolled in recognized continuing dental education as approved by the board. The person shall file a copy of the person's employment contract or confirmation of enrollment with recognized continuing dental education with the board, and the contract or confirmation shall contain the following provisions:

1. The applicant understands and acknowledges that if the applicant's employment by the charitable dental clinic or organization or enrollment in the recognized continuing dental education is terminated before the expiration of the applicant's restricted permit, the applicant's restricted permit will be automatically revoked and the applicant will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until the applicant has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

2. The person must be either:

(a) Employed by a dental clinic or organization that is organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision includes the performance of dental services without compensation.

(b) Enrolled in recognized continuing dental education and providing charitable dental services, for which the person may not receive any compensation, in connection with recognized continuing dental education with an organization that is exempt from taxation pursuant to section 501(c)(3) of the internal revenue code.

3. The person is subject to all the provisions of this chapter applicable to licensed dentists and to the jurisdiction and discipline of the board for all dental care and services provided under the restricted permit.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

Article 3 Regulation

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.

C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.

D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address, a change in the dentists providing services or a change in the custodian of records pursuant to section 32-1213, subsection E.

8. Failing to maintain or provide patient records pursuant to section 32-1264.

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

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a complete or timely manner.

13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

18. Failing to provide medical records or payment records to a third party, including current or former associates, employees or dentists of the practice, as required by sections 12-2294 and 12-2294.01.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its own motion, or the investigation committee if established by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board or investigation committee may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a licensee occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board or investigation committee shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or investigation committee shall conduct necessary investigations, including interviews between representatives of the board or investigation committee and the licensee with respect to any information obtained by or filed with the board under subsection A of this section or obtained by the board or investigation committee during the course of an investigation. The results of the investigation conducted by the investigation committee, including any recommendations from the investigation committee for disciplinary action against any licensee, shall be forwarded to the board for its review.

D. The board or investigation committee may designate one or more persons of appropriate competence to assist the board or investigation committee with any aspect of an investigation.

E. If, based on the information the board receives under subsection A or C of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a licensee's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

F. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board or the investigation committee.

G. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is insufficient to merit disciplinary action against a licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed $500 if the complaint involves the licensee's failure to respond to a board subpoena.

H. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is sufficient to merit disciplinary action against a licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

I. If, after completing a formal interview, the board finds that the information provided under subsection A or C of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.

2. Order disciplinary action pursuant to section 32-1263.01, subsection A.

3. Enter into a consent agreement with the licensee for disciplinary action.

4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.

5. Issue a nondisciplinary letter of concern to the licensee.

J. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.

K. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

L. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

N. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

O. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

P. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

Q. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

R. A licensee who files a complaint pursuant to subsection Q of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

S. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection Q of this section.

T. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Investigation committee; complaints; termination; review

A. If established by the board, the investigation committee may terminate a complaint if the investigation committee's review indicates that the complaint is without merit and that termination is appropriate.

B. The investigation committee may not terminate a complaint if a court has entered a medical malpractice judgment against a licensee.

C. At each regularly scheduled board meeting, the investigation committee shall provide to the board a list of each complaint the investigation committee terminated pursuant to subsection A of this section since the preceding board meeting. On review, the board shall approve, modify or reject the investigation committee's action.

D. A person who is aggrieved by an action taken by the investigation committee pursuant to subsection A of this section may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the investigation committee's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the investigation committee's action. On review, the board shall approve, modify or reject the investigation committee's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make legible permanent and contemporaneous written or electronic records concerning all diagnoses, evaluations and treatments of each patient of record. The owner of a dental practice or a registered business entity shall maintain all written and electronic records. Electronic records must be retrievable in paper form. These records shall include:

1. All treatment notes, including current health history and the results of clinical examinations.

2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.

3. A diagnosis and treatment plan.

4. Dental and periodontal charting. Charting must include existing restorations, areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.

5. Documentation of informed consent.

6. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.

C. On request, the licensee, registered business entity or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board free of charge as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

F. A person who is licensed or certified pursuant to this chapter and who is an associate or employee of a dental practice is not responsible for storing or retaining medical records but shall compile and record the records in the customary manner.

G. A licensee or business entity shall release treatment records to third parties, including current and former associates, employees or dentists of the practice, as required by sections 12-2294 and 12-2294.01.

H. When a dentist retires or sells a practice, or when a registered business entity closes or sells a practice, the dentist or registered business entity shall take reasonable measures to ensure that the patient records are retained pursuant to this section.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.

2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.

3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.

4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.

2. Fails to obey a summons or other order regularly and properly issued by the board.

3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

32-1272. Dental anesthesia; requirements

A. A dental office or dental clinic at which general anesthesia or sedation is administered must contain properly operating equipment and supplies as prescribed by the board in rule and have proper emergency response protocols in place, including advanced cardiac life support and airway management and pediatric advanced life support, as applicable, when administering general anesthesia or sedation as prescribed by the board in rule that is consistent with the standards and practices recommended by the American heart association.

B. A qualified anesthesia provider who is licensed by the board and who fails to comply with the requirements of this section or applicable board rules commits an act that constitutes a danger to the health, welfare or safety of the public pursuant to section 32-1201.01.

C. If a qualified anesthesia provider who is not licensed by the state board of dental examiners fails to comply with the requirements of this section or applicable board rules, the state board of dental examiners shall promptly report the qualified anesthesia provider's conduct to the regulatory board that licenses the qualified anesthesia provider. If an adverse anesthesia outcome involves a qualified

anesthesia provider who is not licensed by the state board of dental examiners, the state board of dental examiners shall promptly report the adverse anesthesia outcome to the regulatory board that licenses the qualified anesthesia provider.

D. If a death or an incident requiring emergency medical response occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia or sedation by a qualified anesthesia provider, the treating dentist shall submit a report of the incident to the state board of dental examiners within seven business days after the occurrence. If the incident involves a qualified anesthesia provider who is not licensed by the state board of dental examiners, the state board of dental examiners shall immediately forward a copy of the incident report to the regulatory board that licenses the qualified anesthesia provider.

Article 3.1 Licensing and Regulation of Dental Therapists

32-1276. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.

2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.

32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.

2. Verify under oath that all statements in the application are true to the applicant's knowledge.

3. Enclose with the application:

(a) A recent photograph of the applicant.

(b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.

2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.

3. Successfully passes, both of the following:

(a) Within five years before filing the application, a clinical examination in dental therapy administered by a state or testing agency in the United States.

(b) The Arizona dental jurisprudence examination.

4. Is not subject to any grounds for denial of the application under this chapter.

5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the

amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to $100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.

2. Perform comprehensive charting of the oral cavity.

3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.

4. Expose and process dental radiographic images.

5. Perform dental prophylaxis, scaling, root planing and polishing procedures.

6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.

7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.

8. Perform pulp vitality testing.

9. Apply desensitizing medicaments or resins.

10. Fabricate athletic mouth guards and soft occlusal guards.

11. Change periodontal dressings.

12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.

14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.

15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.

16. Prepare and place direct restorations in primary and permanent teeth.

17. Fabricate and place single-tooth temporary crowns.

18. Prepare and place preformed crowns on primary teeth.

19. Perform indirect and direct pulp capping on permanent teeth.

20. Perform indirect pulp capping on primary teeth.

21. Perform suturing and suture removal.

22. Provide minor adjustments and repairs on removable prostheses.

23. Place and remove space maintainers.

24. Perform all functions of a dental assistant and expanded function dental assistant.

25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.

26. Provide referrals.

27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.

2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.

2. A health center program that has received a federal look-alike designation.

3. A community health center.

4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.

5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.

2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.

3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.

4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.

5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.

6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.

2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.

2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.

2. Scaling.

3. Closed subgingival curettage.

4. Root planing.

5. Administering local anesthetics and nitrous oxide.

6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.

7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.

10. Exposing and processing dental radiographs.

11. Dental hygiene assessment and dental hygiene treatment planning as components of a diagnosis and treatment plan developed by a dentist.

12. All functions authorized and deemed appropriate for dental assistants.

13. Except as provided in paragraph 14 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

14. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Dental hygiene assessment" means identifying an existing or potential oral health problem that dental hygienists are educationally qualified and licensed to treat.

3. "Dental hygiene treatment planning" means performing a prioritized sequence of dental hygiene interventions that is predicated on the dental hygiene assessment and that is limited to those services included in the scope of practice for dental hygienists.

4. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

5. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

6. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

7. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of $100. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.

2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.

3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

(a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

(c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

(d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.

3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 13 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.

4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.

3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.

3. Knowingly made a false statement in the application.

4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing

agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the

purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Hold a high school diploma or its equivalent.

2. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

3. Pass a board-approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.

2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birth month every third year. On or before the last day of the certificate holder's birth month every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than $300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the certificate holder's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birth month of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the

renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a $50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.

2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.

3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.

2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.

3. Fails to obey a summons or other order regularly and properly issued by the board.

4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

Article 6 Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs and devices are dispensed in packages labeled with the following information:

(a) The dispensing dentist's name, address and telephone number.

(b) The date the drug or device is dispensed.

(c) The patient's name.

(d) The name and strength of the drug or device, directions for its use and any cautionary statements required by law.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug or device dispensed, the date the drug or device is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs and devices in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Before dispensing a drug or device pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

C. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing

process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

D. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs and devices that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

E. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs or devices, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

Article 7 Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.

3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.

5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.

D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.

E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:

1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.

2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.

3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

Article 8 Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.

3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.

2. Services are provided by a federal, state or local government agency.

3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.

4. Services are provided to a patient by an accredited dental or dental hygiene school.

5. The licensee holds a valid permit to provide mobile dental anesthesia services.

6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in

paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.

(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.

2. The name of the dentist or dental hygienist, or both, who provided services.

3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.

4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.

2. Suspend or revoke a permit.

3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

STATE BOARD OF DENTAL EXAMINERS
Title 4, Chapter 11, Articles 1 & 6

Amend: R4-11-102

Repeal: R4-11-604; R4-11-605; R4-11-606; R4-11-607

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 13, 2025

SUBJECT: **STATE BOARD OF DENTAL EXAMINERS**
Title 4, Chapter 11, Articles 1 & 6

Amend: R4-11-102

Repeal: R4-11-604; R4-11-605; R4-11-606; R4-11-607

Summary:

This regular rulemaking from the State Board of Dental Examiners (Board) seeks to amend one (1) rule and repeal four (4) rules in Title 4, Chapter 11, Articles 1 and 6 regarding Definitions and Licensee Participation and Dental Hygienists, respectively. Specifically, the Board indicates it needs to amend its rules to allow all dental professionals to provide assistance and advice to the Board.

The Board states it currently has an outdated process by which an advisory committee would provide recommendations to the Board, but only as it relates to the dental hygiene profession. The Board does not believe keeping this committee is the best use of government, and therefore, believes these repeals are far better than keeping rules in place for the sake of mission creep. The Board states, unless these rule amendments are made, it will continue to operate against a set of rules that are unnecessary, burdensome and have worn out the need to exist.

Furthermore, the Board indicates it will be non-compliant with the Auditor General's findings, which then may require the Legislature to act if the Board fails to meet its statutory obligation of promulgating rules consistent with its statutes. The Auditor General's office found two other statutes having similar language that the Board adopt rules providing a method for them to receive assistance and advice. The Board believes that these rule changes allow them to receive assistance and advice from *all* dental professions, rather than just dental hygienists.

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

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

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

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

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

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

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

The Board indicates it needs to amend its rules to repeal outdated and unnecessary rules. The Board believes these repeals will also bring more transparency and offers all dental professions an opportunity to meet with the Board to provide advice or assistance. The Board states that intentionally, the persons directly affected by, bear the cost of, or directly benefit from the rulemaking are one and the same – the Board's licensees.

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

The Board believes that by amending its rules this will benefit the dental community and the public they serve.

6. What are the economic impacts on stakeholders?

The Board indicates there is little to no economic, small business, or consumer impact other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. The Board states there are no costs related to this rulemaking and the benefit is that all dental professions may now offer advice and assistance to the Board.

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

The Board indicates there were no changes between the Notice of Supplemental Proposed Rulemaking published in the Administrative Register on November 29, 2024 and the Notice of Final Rulemaking now before the Council for consideration.

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

The Board indicates it received no public comments related to this rulemaking.

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

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

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

Here, the Board indicates it issues general permits to licensees who meet the criteria established in statute and rule. Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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

The Board indicates there is no corresponding federal law.

11. Conclusion

This regular rulemaking from the Board seeks to amend one (1) rule and repeal four (4) rules in Title 4, Chapter 11, Articles 1 and 6 regarding Definitions and Licensee Participation and Dental Hygienists, respectively. The Board states it currently has an outdated process by which an advisory committee would provide recommendations to the Board, but only as it relates to the dental hygiene profession. The Board believes that these rule changes allow them to receive assistance and advice from all dental professions, rather than just dental hygienists.

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

Arizona State Board of Dental Examiners
"Caring for the Public's Dental Health
and Professional Standards"

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April 21, 2025

Ms. Jessica Klein, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations, Chapter 11. State Board of Dental Examiners – Advice and Assistance NFR

Dear Ms. Klein:

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

1. Close of record date: The rulemaking record was closed on January 27, 2025 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-Year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
8. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. Therefore, no notification was required to be provided to JLBC.
9. List of documents enclosed:
    a. Cover letter signed by the Board's Executive Director;
    b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
    c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Ryan Edmonson
Executive Director

The Americans with Disabilities Act: Persons with disabilities may request reasonable accommodations, such as sign language interpreters. Requests should be made as early as possible to allow time to arrange the accommodation. This document is available in alternative format upon request.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

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

February 22, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R4-11-102	Amend
R4-11-604	Repeal
R4-11-605	Repeal
R4-11-606	Repeal
R4-11-607	Repeal

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

Authorizing statute:	A.R.S. § 32-1207
Implementing statutes:	A.R.S. §§ 32-1201 et seq.

4. The effective date of the rule:

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

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

N/A

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

N/A

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 2718, August 30, 2024, Issue 35, File R24-163

Notice of Proposed Rulemaking: 30 A.A.R. 2671, August 30, 2024, Issue 35, File R24-158

Notice of Supplemental Proposed Rulemaking: 30 A.A.R. 3654, November 29, 2024, Issue 48, File R24-257

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

Name: Ryan Edmonson, Executive Director

Address: Arizona State Board of Dental Examiners
1740 W. Adams St., Ste. 2470
Phoenix, AZ 85007

Telephone: (602) 542-4493

E-Mail: ryan.edmonson@dentalboard.az.gov

Website: https://dentalboard.az.gov/home

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

The Board needs to amend its rules to allow all dental professionals to provide assistance and advice to the Board.

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

N/A

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

N/A

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

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. This rulemaking simply clarifies how dental professionals may provide assistance and advice to the Board.

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

N/A

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

The Board held an Oral Proceeding on January 27, 2025 for the Notice of Supplemental Proposed Rulemaking but did not receive any additional comments.

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

None

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

The Board issues general permits to licensees who meet the criteria established in statute and rule.

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

N/A

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

N/A

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

N/A

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

N/A

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS AND LICENSEE PARTICIPATION

Section

ARTICLE 6. DENTAL HYGIENISTS

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS AND LICENSEE PARTICIPATION

R4-11-102. ~~Renumbered~~ Licensee Participation

At least once per year, the Board shall provide an opportunity for any Licensee, Certificate Holder, or Business Entity to provide advice and/or assistance to the Board during a public meeting of the Board as indicated on the Board's meeting agendas.

ARTICLE 6. DENTAL HYGIENISTS

R4-11-604. ~~Selection Committee and Process~~ Repealed

~~**A.** The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.~~

~~**B.** Each selection committee member's term is one year.~~

~~**C.** By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.~~

R4-11-605. ~~Dental Hygiene Committee~~ Repealed

~~**A.** The Board shall appoint seven members to the dental hygiene committee as follows:~~

~~1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;~~

~~2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;~~

~~3. Four dental hygienists that possess the qualifications required in Article 6; and~~

~~4. One lay person.~~

~~**B.** Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.~~

~~C.~~ ~~The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.~~

R4-11-606. ~~Candidate Qualifications and Submissions~~ Repealed

~~A.~~ ~~A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.~~

~~B.~~ ~~A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.~~

~~C.~~ ~~The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:~~

~~1. Geographic representation,~~

~~2. Experience in postsecondary curriculum analysis and course development,~~

~~3. Public health experience, and~~

~~4. Dental hygiene clinical experience.~~

R4-11-607. ~~Duties of the Dental Hygiene Committee~~ Repealed

~~A.~~ ~~The committee shall advise the Board on all matters relating to the regulation of dental hygienists.~~

~~B.~~ ~~In performing the duty in subsection (A), the committee may:~~

~~1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;~~

~~2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in Local Anesthesia, Nitrous Oxide Analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;~~

~~3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;~~

~~4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;~~

~~5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;~~

~~6. Provide ad hoc committees to the Board upon request;~~

7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and

8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as dental hygiene examiners or Board consultants.

D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.

E. The Board may assign additional duties to the committee.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

1. Identification of the rulemaking:

   The Arizona State Board of Dental Examiners ("Board") needs to amend its rules to repeal outdated and unnecessary rules. These repeals will also bring more transparency and offers all dental professions an opportunity to meet with the Board to provide advice and/or assistance.

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

      The Board currently has an outdated process by which an advisory committee would provide recommendations to the Board, but only as it relates to the dental hygiene profession. It's been said that the reason why this advisory committee was created was to prevent the Legislature from creating a separate dental hygiene board. Since the inception of this committee, the need to change its priorities has changed to meet the needs of the current day. The Board does not believe keeping this committee is the best use of government, and therefore, believes these repeals are far better than keeping rules in place for the sake of mission creep.

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

      Unless these rule amendments are made, the Board will continue to operate against a set of rules that are unnecessary, burdensome and have worn out the need to exist. Furthermore, the Board will be non-compliant with the Auditor General's findings, which then may require the Legislature to act if the Board fails to meet its statutory obligation of promulgating rules consistent with its statutes. The Auditor General's office found two other statutes having similar language that the Board adopt rules providing a method for them to receive assistance and advice. The Board believes that these rule changes allow them to receive assistance and advice from *all* dental professions.

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

      As stated in the rulemaking, this would occur at least once per year.

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

As part of its statutory obligations, the Auditor General's Office conducted its Performance Audit and Sunset Review of the Board and finalized that report on September 29, 2022. Of the findings reported, one was that the Board had three statutory references that required the Board to create rules seeking assistance and advice from three of the Board's six professions. In two failed statutory attempts at repealing the statutes, the Board elected to work with the stakeholders and come to a consensus on how the Board should receive assistance and advice. The conclusion was to repeal the rules regarding the existing committee and its subsequent rules and to create a more thorough rule for *all* dental professions.

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

Name:	Ryan Edmonson, Executive Director
Address:	Arizona State Board of Dental Examiners
	1740 W. Adams St., Ste. 2470
	Phoenix, AZ 85007
Telephone:	(602) 542-4493
E-Mail:	ryan.edmonson@dentalboard.az.gov

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

Intentionally, the persons directly affected by, bear the costs of or directly benefit from the rulemaking are one and the same – the Board's licensees. For purposes of this EIS, licensee shall have the same meaning for all the Board's regulated professionals. All revenue received is used to license and regulate the dental profession in the State of Arizona. The Board's licensees obtain higher education degrees to be able to procure professional licenses and maintain them to practice in their respective dental professions. Therefore, and in an effort to avoid diminishing their value, or the value of the education they paid to receive, a license to practice is awarded. While the Board is keenly aware that they are a health board who licenses and regulates a health profession, they also understand their obligation to oversee its operations and to periodically review their fees to operate a zero-base budget.

Having said that, the Board does *not* anticipate any costs associated with this rulemaking, but believes that all its dental professions will benefit from opportunities to share advice and offer assistance.

5. Cost-benefit analysis:
    a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:
    The Board is the only state agency affected by the rulemaking amendment and there will *not* be any costs, including the hiring of more personnel to manage the effects of the amendment.
    b. Costs and benefits to political subdivisions directly affected by the rulemaking:
    N/A
    c. Costs and benefits to businesses directly affected by the rulemaking:
    No new costs will be incurred to businesses. In fact, this does not even affect the Board's business entity registration fees.

6. Impact on private and public employment:
    N/A

7. Impact on small businesses:
    a. Identification of the small business subject to the rulemaking:
    There is no financial impact to small businesses. The beneficial impact is that now all dental professions, including dental practices, have an opportunity to provide advice and offer assistance to the dental board.

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

    c. Description of methods that may be used to reduce the impact on small businesses:
    There are no costs to small businesses with this rulemaking.

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8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
   There are no costs related to this rulemaking and the benefit is that all dental professions may now offer advice and assistance to the dental board.

9. Probable effects on state revenues:
   No new expenses are expected at this time. However, all revenue received by the Board is shared with the State's general fund.

10. Less intrusive or less costly alternative methods considered:
    The Board believes that by amending its rules this will be a benefit the dental community and the public they serve.

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ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide and oxygen with or without Local Anesthesia.

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard, mineralized deposit attached to the teeth.

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental, dental therapy, or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a Recognized Continuing Dental Education program.

"Deep sedation" is a Drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental therapist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

"Documentation of attendance" means documents that contain the following information:

Name of sponsoring entity;
Course title;
Number of Credit Hours;
Name of speaker; and
Date, time, and location of the course.

"Drug" means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

"Emerging scientific technology" means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental, dental therapy, or dental hygiene school and use of the technology poses material risks.

"Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival sulcus along the tooth, forming an organic attachment.

"Ex-parte communication" means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

"General anesthesia" is a Drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or Drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

"Homebound patient" means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

"Irreversible procedure" means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

"Licensee" means a dentist, dental therapist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

"Local anesthesia" is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic Drug.

"Minimal sedation" is a minimally depressed level of consciousness that retains a patient's ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

"Mobile dental permit holder" means a Licensee or denturist who holds a mobile permit under R4-11-1301, R4-11-1302, or R4-11-1303.

"Moderate sedation" is Drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a Drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

"Nitrous oxide analgesia" means nitrous oxide used as an inhalation analgesic.

"Official compendium" means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

"Oral sedation" is the enteral administration of a Drug or non-Drug substance or combination inhalation and enterally administered Drug or non-Drug substance in a dental office or dental clinic to achieve Minimal Sedation or Moderate Sedation.

"Parenteral sedation" is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the Drug bypasses the gastrointestinal tract.

"Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the Epithelial Attachment.

"Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

"Polishing" means a procedure limited to the removal of Plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and Polishing agent. A Licensee or dental assistant shall not represent that this procedure alone constitutes an oral Prophylaxis.

"Prescription-only device" means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only Drug" does not include a Controlled Substance but does include:

Any Drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any Drug that is limited by an approved new Drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful Drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any Drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a Scaling and Polishing procedure performed on patients with healthy tissues to remove coronal Plaque, Calculus, and stains.

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school, or sponsored by a national or state dental, dental therapy, dental hygiene, or denturist association, American Dental Association Continuing Education Recognition Program or Academy of General Dentistry, Program Approval for Continuing Education approved provider, dental, dental therapy, dental hygiene, or denturist Study Club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237, or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental therapist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with Calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove Plaque, Calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer General Anesthesia and Deep Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist under Article 13.

"Section 1302 permit" means a permit to administer Parenteral Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist under Article 13.

"Section 1303 permit" means a permit to administer Oral Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental therapists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

New Article 2, consisting of Sections R4-11-201 through R4-11-205, made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240, 32-1276.07, or 32-1292.01, the Board shall ensure that the applicant has passed the clinical examination of A.R.S. §§ 32-1233(2) for dentists, or 32-1276.01(B)(3)(a) for dental therapists, or 32-1285(2) for dental hygienists, notwithstanding each respective statute's timing stipulation. Satisfactory completion of the clinical examination may be demonstrated by certified documentation, sent directly from another state, United States territory, District of Columbia or a testing agency that meets the requirements of A.R.S. §§ 32-1233(2) for dentists, or 32-1276.01(B)(3)(a) for dental therapists, or 32-1285(2) for dental hygienists, notwithstanding each respective statute's timing stipulation, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240 shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240 shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed;

4. Provide evidence regarding the clinical examination by complying with R4-11-201(A); and
5. Pass the Arizona jurisprudence examination with a minimum score of 75%.

C. For any application submitted under A.R.S. § 32-1240, the Board may request additional clarifying evidence required under R4-11-201(A).

D. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
1. Underserved areas, such as declared or eligible Health Professional Shortage Areas; or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

E. An applicant for dental licensure by credential who works in areas or facilities described in subsection (D) shall:
1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

F. A Licensee's failure to comply with the requirements in subsection (E) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01 shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01 shall:
1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed;
4. Provide evidence regarding the clinical examination by complying with R4-11-201(A); and
5. Pass the Arizona jurisprudence examination with a minimum score of 75%.

C. For any application submitted under A.R.S. § 32-1292.01, the Board may request additional clarifying evidence as required under R4-11-201(A).

D. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
1. Underserved areas such as declared or eligible Health Professional Shortage Areas; or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

E. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (D) shall:
1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

F. A Licensee's failure to comply with the requirements in R4-11-203(E) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former

Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:
1. A sworn statement of the applicant's eligibility, and
2. A letter from the issuing institution that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant's documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

R4-11-206. Dental Therapist Licensure by Credential; Application

A. A dental therapist applying under A.R.S. § 32-1276.07 shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental therapist applying under A.R.S. § 32-1276.07 shall:
1. Have a current dental therapy license in another state, territory or district of the United States with substantially the same scope of practice as defined in A.R.S. § 32-1276.03;
2. Submit a written affidavit affirming that the applicant has practiced as a dental therapist for a minimum of 3000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental therapy practice includes experience as a dental therapy educator at a dental program accredited by the Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dental therapist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental therapy education requirement of the state in which the applicant is currently licensed;
4. Provide evidence showing that five years or more before applying for licensure under this Section, the applicant completed the clinical examination by complying with R4-11-201(A);
5. Submit official transcripts to the Board directly from a recognized dental therapy school as defined by A.R.S. § 32-1201(21) or an approved third party showing a degree was conferred to the applicant; and
6. Not be required to obtain an Arizona dental hygienist license, if the dental therapist submits one of the following:
   a. Certified documentation of a current or past dental hygiene license sent directly from the applicable state, United States territory, District of Columbia to the Board; or
   b. Official transcripts sent to the Board directly from a recognized dental hygiene school as defined by A.R.S. § 32-1201(19) or an approved third party showing a degree was conferred to the applicant; or
   c. A written affidavit from a recognized dental therapy school as defined in A.R.S. § 32-1201(21) affirming that all dental hygiene procedures defined in A.R.S. § 32-1281 were part of the education the applicant received.

C. For any application submitted under A.R.S. § 32-1276.07, the Board may request additional clarifying evidence required under R4-11-201(A).

D. If an applicant meets all the requirements set forth in this Section except that their current dental therapy license is from a state, territory, or district of the United States that does not include one or more of the following procedures in its legally defined scope, then the applicant must provide evidence of competency before being granted a dental therapy license by credential:
1. Fabricating soft occlusal guards;
2. Administering Nitrous Oxide Analgesia;
3. Performing nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal;
4. Suturing; or
5. Placing space maintainers.

E. The Board will accept the any of following as evidence of competency in the aforementioned procedures:
1. A certificate or credential in the procedure or procedures issued by a state licensing jurisdiction; or
2. A signed affidavit from a recognized dental therapy school, recognized dental hygiene school, or recognized dental school, affirming that the applicant successfully completed academic coursework that included both theory and supervised clinical practice in the procedure or procedures.

F. Subject to A.R.S. § 32-1276.04, an applicant for licensure under this Section shall pay the fee prescribed in A.R.S. § 32-1276.07, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
1. Underserved areas, such as declared or eligible Health Professional Shortage Areas; or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

G. An applicant for dental therapist licensure by credential who works in areas or facilities described in subsection (F) shall:
1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

H. A Licensee's failure to comply with the requirements in subsection (G) is considered unprofessional conduct and may

result in disciplinary action based on the circumstances of the case.

Historical Note
Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-207. Repealed

Historical Note
Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11-207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note
Former Section R4-11-20 repealed, new Section R4-11-20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note
Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note
Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note
Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note
Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note
Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIMEFRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:
1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
   a. The applicant's dental, dental therapy, dental hygiene, or denturist school, or
   b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, a dental, dental therapy, and dental hygiene license applicant shall provide proof of successfully completing a clinical examination by submitting:
   a. If applying for dental licensure by examination, a copy of the certificate or scorecard sent to the Board directly from a clinical examination administered by a state or testing agency that meets the requirements of A.R.S. § 32-1233(2), indicating that the applicant passed a state or regional testing agency examination that meets the requirements of A.R.S. § 32-

1233(2) within the five years immediately before the date the application is filed with the Board;

b. If applying for dental therapy licensure by examination, a copy of the certificate or scorecard sent to the Board directly from a clinical examination administered by a state, United States territory, District of Columbia or testing agency that meets the requirements of A.R.S. § 32-1276.01(B)(3)(a). The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board. The application must also include the applicant's Arizona dental hygiene license number;

c. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard sent to the Board directly from a clinical examination administered by a state, United States territory, District of Columbia or testing agency that meets the requirements of A.R.S. § 32-1285(2). The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board;

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official scorecard sent directly from the National Board examination to the Board;
6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for cardiopulmonary resuscitation training and certification as the American Red Cross or American Heart Association;
7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
8. If an applicant has been licensed or certified in another jurisdiction, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30 calendar days old;
9. If the applicant is in the military or employed by the United States government, a letter sent to the Board directly from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government; and
10. The jurisprudence examination fee paid by a method authorized by law.

B. The Board may request that an applicant provide:

1. An official copy of the applicant's dental, dental therapy, dental hygiene, or denturist school diploma from the issuing institution;
2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names;
3. Written verification of the applicant's work history; and
4. A copy of a high school diploma or equivalent certificate.

C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-302. Repealed

Historical Note

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental therapy license, dental hygiene license, dental consultant license, denturist certificate, Business Entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 30 calendar days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 30 calendar days, that

the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
   b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
   c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
   d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 30 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

A. Within 30 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The notice of denial shall inform the applicant of the following:

1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation

Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or Certified Registered Nurse Anesthetist

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.
1. Within 30 calendar days of receiving an initial or renewal application for a General Anesthesia and Deep Sedation permit, parenteral sedation permit, Oral Sedation permit or permit to employ a physician anesthesiologist or Certified Registered Nurse Anesthetist the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.
1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
   a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
   b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
   c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
   d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a Retired Licensee or Disabled Licensee is $15 and shall be paid by a method authorized by law.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-402. Business Entity Fees

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services paid by credit card on the Board's website or by money order or cashier's check:
1. Initial triennial registration, $300 per location;
2. Renewal of triennial registration, $300 per location; and
3. Late triennial registration renewal, $100 per location in addition to the fee under subsection (2).

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered

from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, 32-1297.06, and 32-1299.23, the Board establishes and shall collect up to the following licensing fees paid by a method authorized by law:
1. Dentist triennial renewal fee: $650;
2. Dentist prorated initial license fee: $110;
3. Dental therapist triennial renewal fee: $375;
4. Dental therapist prorated initial license fee: $80;
5. Dental hygienist triennial renewal fee: $325;
6. Dental hygienist prorated initial license fee: $55;
7. Denturist triennial renewal fee: $300;
8. Denturist prorated initial license fee: $46; and
9. Mobile dental facility permit initial license or annual renewal fee: $200.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the following fees paid by a method authorized by law:
1. Jurisprudence examination fee:
   a. Dentists: $300;
   b. Dental therapists: $200;
   c. Dental hygienists: $100; and
   d. Denturists: $250.
2. Licensure by credential fee:
   a. Dentists: $2,000; and
   b. Dental therapists: $1,500;
   c. Dental hygienists: $1,000.
3. Penalty to reinstate an expired license or certificate: $100 for a dentist, mobile dental facility permit, dental therapist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, mobile dental facility permit, dental therapist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
   a. Failure after 10 days: $50; and
   b. Failure after 30 days: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2). Amended by final rulemaking at 29 A.A.R. 3791 (December 15, 2023), effective January 29, 2024 (Supp. 23-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1_. Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Charges for Board Services

The Board shall charge the following fees for the services provided paid by credit card on the Board's website or by money order or cashier's check:
1. Duplicate license: $25;
2. Duplicate certificate: $25;
3. License verification: $25;
4. Copy of audio recording: $10;
5. Photocopies (per page): $.25;
6. Mailing lists of Licensees in digital format: $100

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-406. Anesthesia and Sedation Permit Fees

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:
1. Section 1301 permit fee: $300 plus $25 for each additional location;
2. Section 1302 permit fee: $300 plus $25 for each additional location;
3. Section 1303 permit fee: $300 plus $25 for each additional location; and
4. Section 1304 permit fee: $300 plus $25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.

C. Permit renewal fees:
1. Section 1301 permit renewal fee: $300 plus $25 for each additional location;
2. Section 1302 permit renewal fee: $300 plus $25 for each additional location;
3. Section 1303 permit renewal fee: $300 plus $25 for each additional location; and

4. Section 1304 permit renewal fee: $300 plus $25 for each additional location.

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note
Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.

B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.

C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.

D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.

E. A dentist of record shall:
1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32-1289 at one time.

B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.

C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(E), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 29 A.A.R. 3793 (December 15, 2023), effective January 29, 2024 (Supp. 23-4).

R4-11-503. Repealed

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective

July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note
Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply Preventative and Therapeutic Agents under the general supervision of a licensed dentist.
B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:
1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. A dental hygienist shall not perform an Irreversible Procedure.
D. To qualify to use Emerging Scientific Technology as authorized by A.R.S. § 32-1281(C)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:
1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201, a recognized dental hygiene school as defined in A.R.S. § 32-1201, or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note
Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.
B. Each selection committee member's term is one year.
C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note
New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

A. The Board shall appoint seven members to the dental hygiene committee as follows:
1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.
C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note
New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:
1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

Historical Note
New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.

B. In performing the duty in subsection (A), the committee may:
1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in Local Anesthesia, Nitrous Oxide Analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as dental hygiene examiners or Board consultants.

D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.

E. The Board may assign additional duties to the committee.

Historical Note
New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:
1. Act as dental hygiene examiners for the clinical portion of the dental hygiene examination;
2. Act as dental hygiene examiners for the Local Anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including Clinical Evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note
New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289.01, a dental hygienist shall:
1. Provide evidence to the Board of successfully completing a total of 12 hours of Recognized Continuing Dental Education that consists of the following subject areas:
   a. A minimum of four hours in medical emergencies; and
   b. A minimum of eight hours in at least two of the following areas:
      i. Pediatric or other special health care needs,
      ii. Preventative dentistry, or
      iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation.

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1287(B) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

E. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the Direct Supervision of a licensed dentist or a licensed dental therapist:

1. Place dental material into a patient's mouth in response to a licensed dentist's or licensed dental therapist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
   a. The placement of bands, crowns, and restorations;
   b. Dental dam application;
   c. Acid etch procedures; and
   d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;
9. Apply topical fluorides;
10. Take final digital impressions for any activating orthodontic appliance, fixed, or removable prosthesis;
11. Prepare a patient for Nitrous Oxide Analgesia administration upon the direct instruction and presence of a dentist or licensed dental therapist; or
12. Observe a patient during Nitrous Oxide Analgesia as instructed by the dentist or licensed dental therapist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist or a licensed dental therapist:
1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and Plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:
1. A procedure which by law only licensed dentists, licensed dental therapists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions, other than digital impressions, for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An Irreversible Procedure.

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-703. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5

A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed

Historical Note
Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS

R4-11-801. Expired

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-802. Expired

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-803. Renumbered

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note
Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note
Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note
Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:
1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter from any other jurisdiction in which an applicant is licensed or certified verifying that the applicant is licensed or certified in that jurisdiction, sent directly from that jurisdiction to the Board;
4. If the applicant is in the military or employed by the United States government, a letter from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a Charitable Dental Clinic or Organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note
Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11-902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic or Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11-903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 29 A.A.R. 3793 (December 15, 2023), effective January 29, 2024 (Supp. 23-4).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11-904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904 renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Expired

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11-905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-906. Expired

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11-406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11-1001 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1001 renumbered to R4-11-901, new Section R4-11-1001 renumbered from R4-11-602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1002. Expired

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11-1002 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1002 renumbered to R4-11-902, new Section R4-11-1002 renumbered from R4-11-603 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11-1003 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11-1004 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note
Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11-1005 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note
Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase "Services provided by an Arizona licensed general dentist." A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase "Services provided by an Arizona licensed dental hygienist." A denturist may advertise specific denture services only if the advertisement includes the phrase "Services provided by an Arizona certified denturist."

Historical Note
Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on "Management of Craniomandibular Disorders" and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services only if the dentist limits the dentist's practice exclusively to one or more specialty area that are:
1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):
1. Endodontics,
2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:
1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
   a. Has established examination requirements and standards,
   b. Appraised an applicant's qualifications,
   c. Administered comprehensive examinations, and
   d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note
Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note
Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note
Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:
1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note
Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a Licensee, denturist, or Restricted Permit Holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each Licensee or denturist shall possess a current form of one of the following:
1. A cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A Licensee or denturist shall include an affidavit affirming the Licensee's or denturist's completion of the prescribed Credit Hours of Recognized Continuing Dental Education with a renewal application. A Licensee or denturist shall include on the affidavit the Licensee's or denturist's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A Licensee or denturist shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a Licensee or denturist fails to meet the Credit Hours requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the Recognized Continuing Dental Education Credit Hour requirement.

E. The Board shall:
1. Only accept Recognized Continuing Dental Education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow Recognized Continuing Dental Education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A Licensee or denturist shall maintain Documentation of Attendance for each program for which credit is claimed that verifies the Recognized Continuing Dental Education Credit Hours the Licensee or denturist participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a Licensee or denturist may not be in compliance with this Article. A Licensee or denturist selected for audit shall provide the Board with Documentation of Attendance that shows compliance with the continuing dental education requirements within 35 calendar days from the date the Board issues notice of the audit by certified mail.

H. If a Licensee or denturist is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note
Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022

(Supp. 22-3).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 36 Credit Hours in any one or more of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in opioid education;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 45 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 25 Credit Hours in any one or more of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies, pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 11 Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three Credit Hours in infectious diseases or infectious disease control; and
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills.

B. A Licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those Credit Hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1205. Denturists

Denturists shall complete 27 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 15 Credit Hours in any one or more of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than three Credit Hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one Credit Hour in chemical dependency, which may include tobacco cessation;
4. At least two Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental Restricted Permit Holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed 15 Credit Hours of Recognized Continuing Dental Education yearly.

2. To determine whether to grant the renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental Restricted Permit Holder shall complete the 15 hours of Recognized Continuing Dental Education before renewal as follows:
   a. At least six Credit Hours in one or more of the subjects enumerated in R4-11-1203(1);
   b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1203(2);
   c. At least one Credit Hour in the subjects enumerated in R4-11-1203(3);
   d. At least one Credit Hour in the subjects enumerated in R4-11-1203(4).
   e. At least three Credit Hours in the subjects enumerated in R4-11-1203(5); and
   f. At least one Credit Hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene Restricted Permit Holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed nine Credit Hours of Recognized Continuing Dental Education yearly.
2. To determine whether to grant renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene Restricted Permit Holder shall complete the nine hours of Recognized Continuing Dental Education before renewal as follows:
   a. At least three Credit Hours in one or more of the subjects enumerated in R4-11-1204(1);
   b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1204(2);
   c. At least one Credit Hour in the subjects enumerated in R4-11-1204(3);
   d. At least two Credit Hours in the subjects enumerated in R4-11-1204(4) and
   e. At least three Credit Hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1208. Retired Licensees or Retired Denturists

A Retired Licensee or Retired denturist shall:

1. Except for the number of Credit Hours required, comply with the requirements in R4-11-1202; and
2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1276.02 for a dental therapist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the Retired Licensee or Retired denturist has completed the following Credit Hours of Recognized Continuing Dental Education per renewal period:
   a. Dentist - 24 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation-healthcare provider level;
   b. Dental therapist - 21 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation- healthcare provider level;
   c. Dental hygienist - 18 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation-healthcare provider level; and
   d. Denturist - six Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation-healthcare provider level.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1209. Types of Courses

A. A Licensee or denturist shall obtain Recognized Continuing Dental Education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the Licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
   a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the Licensee or denturist passes the examination;
   b. Participation on the Board, in Board complaint investigations including Clinical Evaluations or anesthesia and sedation permit evaluations;

c. Participation in peer review of a national or state dental, dental therapy, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
d. Providing dental-related instruction to dental, dental therapy, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental therapy, dental hygiene, or denturist association;
e. Publication or presentation of a dental paper, report, or book authored by the Licensee or denturist that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A Licensee or denturist may claim Credit Hours:
i. Only once for materials presented;
ii. Only if the date of publication or original presentation was during the applicable renewal period; and
iii. One Credit Hour for each hour of preparation, writing, and presentation; or
f. Providing dental, dental therapy, dental hygiene, or denturist services in a Board-recognized Charitable Dental Clinic or Organization.

B. The following limitations apply to the total number of Credit Hours earned per renewal period in any combination of the activities listed in subsection (A)(4):
1. Dentists, no more than 21 hours;
2. Dental therapists, no more than 18 hours;
3. Dental hygienists, no more than 15 hours;
4. Denturists, no more than nine hours;
5. Retired or Restricted Permit Holder dentists, dental therapists, or dental hygienists, no more than two hours; and
6. Retired denturists, no more than two hours.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1210. Dental Therapists

Dental therapists shall complete 54 hours of Recognized Continuing Dental Education in each renewal period as follows:
1. At least 31 Credit Hours in any one or more of the following areas: Dental and medical health, dental therapy services, dental therapy treatment planning, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry;
2. No more than 14 Credit Hours in any one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in infectious diseases or infectious disease control;
4. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
5. At least three Credit Hours in any one or more of the following areas: ethics, risk management, chemical dependency, tobacco cessation, or Arizona dental jurisprudence.

Historical Note
New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering General Anesthesia, or Deep Sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 Permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
a. General information about the applicant such as:
i. Name;
ii. Home and office addresses and telephone numbers;
iii. Limitations of practice;
iv. Hospital affiliations;
v. Denial, curtailment, revocation, or suspension of hospital privileges;
vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
i. Emergency Drugs;
ii. Electrocardiograph monitor;
iii. Pulse oximeter;
iv. Cardiac defibrillator or automated external defibrillator;
v. Positive pressure oxygen and supplemental oxygen;
vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;

vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
viii. Endotracheal tubes and appropriate connectors;
ix. Magill forceps;
x. Oropharyngeal and nasopharyngeal airways;
xi. Auxiliary lighting;
xii. Stethoscope; and
xiii. Blood pressure monitoring device; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered General Anesthesia or Deep Sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
   b. A copy of the General Anesthesia or Deep Sedation permit in effect in another state or certification of military training in General Anesthesia or Deep Sedation from the applicant's commanding officer; and
   c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.
1. The onsite evaluation team shall consist of:
   a. Two dentists who are Board members, or Board designees for initial applications; or
   b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
   c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
   d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
   e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
   f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing edu-

cation with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1301 mobile permit may be issued if a Section 1301 Permit holder travels to dental offices or dental clinics to provide anesthesia or Deep Sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
   b. Compliance with subsection (B)(2)(b).

E. A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:

1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
4. A list of all medications given, with dosage and time intervals, and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and
8. Time of discharge and status, including name of escort.

F. The Section 1301 Permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.

G. The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure.

H. The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 Permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:

1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
2. A Certified Registered Nurse Anesthesiology currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.

J. A Section 1301 Permit holder may also administer parenteral sedation without obtaining a Section 1302 Permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 Permit every five years by complying with R4-11-1307.

1. A Section 1301 Permit holder may also administer parenteral sedation.
2. A Section 1302 Permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.

B. To obtain or renew a Section 1302 Permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
   b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
   a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or General Anesthesia

or Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist:
i. Emergency Drugs;
ii. Positive pressure oxygen and supplemental oxygen;
iii. Stethoscope;
iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
v. Oropharyngeal and nasopharyngeal airways;
vi. Pulse oximeter;
vii. Auxiliary lighting;
viii. Blood pressure monitoring device; and
ix. Cardiac defibrillator or automated external defibrillator; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
i. Holds a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;
ii. Is present during the parenteral sedation procedure; and
iii. After the procedure, monitors the patient until discharge;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support in a practice treating pediatric patients; or
c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
a. Sixty didactic hours of basic parenteral sedation to include:
i. Physical evaluation;
ii. Management of medical emergencies;
iii. The importance of and techniques for maintaining proper documentation; and
iv. Monitoring and the use of monitoring equipment; and
b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).

D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.
1. The onsite evaluation team shall consist of:
a. Two dentists who are Board members, or Board designees for initial applications, or
b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation;
b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the

failed evaluation. An example is failure to recognize and manage more than one emergency; or

e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.

4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11-1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
   b. Compliance with R4-11-1302(B)(2)(b).

E. A Section 1302 Permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   c. A list of all medications given, with dosage and time intervals and route and site of administration;
   d. Type of catheter or portal with gauge;
   e. Indicate nothing by mouth or time of last intake of food or water;
   f. Consent form; and
   g. Time of discharge and status, including name of escort; and
2. May include pre-operative and post-operative electrocardiograph report.

F. The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.

G. The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.

H. The Section 1302 Permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1303. Oral Sedation

A. Before administering Oral Sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every five years by complying with R4-11-1307.
1. A Section 1301 Permit holder or Section 1302 Permit holder may also administer Oral Sedation without obtaining a Section 1303 Permit.
2. The administration of a single Drug for Minimal Sedation does not require a Section 1303 Permit if:
   a. The administered dose is within the Food and Drug Administration's maximum recommended dose as printed in the Food and Drug Administration's approved labeling for unmonitored home use;
      i. Incremental multiple doses of the Drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
      ii. During Minimal Sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the Food and Drug Administration's maximum recommended dose on the date of treatment; and
   b. Nitrous oxide/oxygen may be administered in addition to the oral Drug as long as the combination does not exceed Minimal Sedation.

B. To obtain or renew a Section 1303 Permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
   a. General information about the applicant such as:
      i. Name;
      ii. Home and office addresses and telephone numbers;
      iii. Limitations of practice;
      iv. Hospital affiliations;
      v. Denial, curtailment, revocation, or suspension of hospital privileges;
      vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
   b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Oral Sedation:
   a. Contains the following properly operating equipment and supplies during the provision of sedation:
      i. Emergency Drugs;
      ii. Cardiac defibrillator or automated external defibrillator;
      iii. Positive pressure oxygen and supplemental oxygen;
      iv. Stethoscope;

v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
vi. Pulse oximeter;
vii. Blood pressure monitoring device; and
viii. Auxiliary lighting; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
i. Holds a current certificate in cardiopulmonary resuscitation healthcare provider level;
ii. Is present during the Oral Sedation procedure; and
iii. After the procedure, monitors the patient until discharge;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
a. Cardiopulmonary resuscitation healthcare provider level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
b. Pediatric advanced life support in a practice treating pediatric patients; or
c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Complete a Board-recognized post-doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or
2. Complete a Board recognized post-doctoral residency program that includes documented training in Oral Sedation more than three years before submitting the permit application shall provide the following documentation:
a. On a form provided by the Board, a written affidavit affirming that the applicant has administered Oral Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
b. A copy of the Oral Sedation permit in effect in another state or certification of military training in Oral Sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
3. Provide proof of participation in 30 clock hours of Board-recognized undergraduate, graduate, or post-graduate education in Oral Sedation within the three years before submitting the permit application that includes:
a. Training in basic Oral Sedation,
b. Pharmacology,
c. Physical evaluation,
d. Management of medical emergencies,
e. The importance of and techniques for maintaining proper documentation, and
f. Monitoring and the use of monitoring equipment.

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.
1. The onsite evaluation team shall consist of:
a. For initial applications, two dentists who are Board members, or Board designees.
b. For renewal applications, one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the Oral Sedation record; and
e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation;
b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
4. The onsite evaluation of an additional dental office or dental clinic in which Oral Sedation is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The applicant must submit a completed affidavit verifying:

a. That the equipment and supplies for the provision of Oral Sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where Oral Sedation is provided, and
b. Compliance with R4-11-1303(B)(2)(b).

E. A Section 1303 Permit holder shall keep an Oral Sedation record for each Oral Sedation procedure that:
1. Includes the following entries:
a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
b. Pre-operative and post-operative blood pressure;
c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
d. List of all medications given, including dosage and time intervals;
e. Patient's weight;
f. Consent form;
g. Special notes, such as, nothing by mouth or last intake of food or water; and
h. Time of discharge and status, including name of escort; and
2. May include the following entries:
a. Pre-operative and post-operative electrocardiograph report; and
b. Intra-operative blood pressures.

F. The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Oral Sedation for the duration of the procedure.

G. The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Oral Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 Permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);
2. The Section 1303 Permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:
a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support in a practice treating pediatric patients;
c. A recognized continuing education course in advanced airway management;
3. The Section 1303 Permit holder ensures that:
a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;
b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1303 renumbered to R4-11-1304; new Section R4-11-1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
a. General information about the applicant such as:
i. Name;
ii. Home and office addresses and telephone numbers;
iii. Limitations of practice;
iv. Hospital affiliations;
v. Denial, curtailment, revocation, or suspension of hospital privileges;
vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist

has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
   a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
      i. Emergency drugs;
      ii. Electrocardiograph monitor;
      iii. Pulse oximeter;
      iv. Cardiac defibrillator or automated external defibrillator (AED);
      v. Positive pressure oxygen and supplemental continuous flow oxygen;
      vi. Suction equipment, including endotrachael, tonsillar or pharyngeal and emergency backup medical suction device;
      vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
      viii. Endotracheal tubes and appropriate connectors;
      ix. Magill forceps;
      x. Oropharyngeal and nasopharyngeal airways;
      xi. Auxiliary lighting;
      xii. Stethoscope; and
      xiii. Blood pressure monitoring device; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
3. Hold a valid license to practice dentistry in this state; and
4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
   a. The availability of equipment and personnel as specified in subsection (B)(2);
   b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
   c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation; or
   b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).

D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
4. A list of all medications given, with dosage and time intervals and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and
8. Time of discharge and status, including name of escort.

E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.

F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.

G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1304 renumbered to R4-11-1305; new Section R4-11-1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of

or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1305 renumbered to R4-11-1306; new Section R4-11-1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.

1. The program shall include instruction in the following subject areas:
   a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
   b. Physiological and psychological risks for the use of various modalities of pain control;
   c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
   d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
   e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
   a. Be the same for all dentists, whether general practitioners or specialists; and
   b. Include each subject area listed in subsection (A)(1).
3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).

B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:

1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
   a. General anesthesia,
   b. Parenteral sedation,
   c. Physical evaluation,
   d. Medical emergencies,
   e. Monitoring and use of monitoring equipment, or
   f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
   a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management;
3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:

1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
   a. Oral sedation,
   b. Physical evaluation,
   c. Medical emergencies,
   d. Monitoring and use of monitoring equipment, or
   e. Pharmacology of oral sedation drugs and non-drug substances; and
2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
   a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
   b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   c. Pediatric advanced life support (PALS);
   d. A recognized continuing education course in advanced airway management; and
3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:

1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.

B. To renew a Section 1304 permit, the permit holder shall:

1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and

2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.

C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.

D. The Board may stagger due dates for renewal applications.

Historical Note
Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
1. Date of issuance;
2. Name and address of the patient to whom the prescription is issued;
3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
4. Name and address of the dentist prescribing the drug; and
5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.

B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1402. Labeling and Dispensing

A. A dentist shall include the following information on the label of all drugs and devices dispensed:
1. The dentist's name, address, and telephone number;
2. The serial number;
3. The date the drug or device is dispensed;
4. The patient's name;
5. Name, strength, and quantity of drug or name and quantity of device dispensed;
6. The name of the drug or device manufacturer or distributor;
7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.

C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.

D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
   a. A patient's allergies,
   b. Incompatibilities with a patient's currently-taken medications,
   c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
   d. The frequency of refills;
2. Verify that the dosage is within proper limits;
3. Interpret the prescription order;
4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:
1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85º F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
   a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
   b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the sup-

plier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:
1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
2. Sequentially file orders separately from patient records, as follows:
   a. File Schedule II drug orders separately from all other prescription orders;
   b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
   c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
5. Record the date the drug or device is dispensed on each prescription order and label.

B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.

C. A dentist shall maintain:
1. Purchase records of all drugs and devices for three years from the date purchased; and
2. Dispensing records of all drugs and devices for three years from the date dispensed.

D. A dentist who dispenses controlled substances:
1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
3. Shall maintain the inventory for three years from the inventory date;
4. May use one inventory book for all controlled substances;
5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.

E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).

F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

A. A dentist who determines that there has been a theft or loss of Drugs or Controlled Substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
1. For non-Controlled Substance Drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
2. For Controlled Substance theft or loss, complete a Drug Enforcement Administration's 106 form; and
3. Provide copies of the Drug Enforcement Administration's 106 form to the Drug Enforcement Administration and the Board within one day of the discovery.

B. A dentist who dispenses Drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1406. Dispensing for Profit Registration and Renewal

A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing the Board the following information:
1. A completed registration form that includes the following information:
   a. The dentist's name and dental license number;
   b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
   c. Locations where the dentist desires to dispense the drugs and devices for profit; and
2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.

B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.

C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note
Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4-11-1406 renumbered to R4-11-1205, new Section R4-11-1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note
Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note
New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications

A dentist, dental therapist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note
New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:

1. The Board shall notify the Licensee, denturist, Business Entity or Mobile Dental Permit Holder by certified U.S. Mail when the following occurs:
   a. A formal interview is scheduled, and
   b. A subpoena, notice, or order is issued.
2. The Board shall notify the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder by U.S. mail or email when the following occurs:
   a. The complaint is tabled, and
   b. The Board grants a postponement or continuance.
3. Board shall provide the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder with a copy of the complaint.
4. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to Clinical Evaluation are:

1. Except as provided in subsection (B)(1)(a), the President's Designee shall appoint one or more dental consultants to perform a Clinical Evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
   a. If the complaint involves a dental hygienist, denturist, dental therapist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the President's Designee shall appoint a dental consultant from that area of practice or specialty.
   b. The Board shall disclose the identity of the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder to a dental consultant performing a Clinical Evaluation before the Board receives the dental consultant's report.
2. The dental consultant shall prepare and submit a Clinical Evaluation report. The President's Designee shall provide a copy of the Clinical Evaluation report to the Licensee or denturist. The Licensee or denturist may submit a written response to the Clinical Evaluation report.

C. Notwithstanding any other provision, the Board may take immediate action consistent with A.R.S. §§ 32-1201.01 or 32-1263 in order to protect public health and safety.

Historical Note
New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2). Amended by final rulemaking at 29 A.A.R. 3793 (December 15, 2023), effective January 29, 2024 (Supp. 23-4).

R4-11-1504. Postponement of Interview

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the

licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:
1. Is made in writing,
2. States the reason for the postponement, and
3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:
1. Review and either deny or approve the request for postponement; and
2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. DENTAL THERAPISTS

R4-11-1601. Duties and Qualifications

A. A dental therapist may perform a procedure not specifically authorized by A.R.S. § 32-1276.03 when all of the following conditions are satisfied:
1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental therapist has received training by a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school, as defined under A.R.S. § 32-1201, to perform the procedure in a safe manner; and
3. The procedure is performed under the Direct Supervision of, or according to, a written collaborative practice agreement with a licensed dentist.

B. A dental therapist may administer Nitrous Oxide Analgesia as authorized by A.R.S. § 32-1276.03(B)(12) if the dental therapist submits proof directly from an issuing institution of completing courses in the administration of Nitrous Oxide Analgesia offered by a recognized dental school, recognized dental therapy school, or recognized dental hygiene school, as defined under A.R.S. § 32-1201, that include both theory and supervised clinical practice in the procedures.

C. A dental therapist may perform suturing and suture removal as authorized by A.R.S. § 32-1276.03(B)(21) if the dental therapist submits proof directly from an issuing institution of completing courses in suturing and suture removal offered by a recognized dental school, recognized dental therapy school, or recognized dental hygiene school, as defined under A.R.S. § 32-1201, that include both theory and supervised clinical practice in the procedures.

D. A dental therapist may perform an Irreversible Procedure only if it is specifically authorized by A.R.S. § 32-1276.03 or meets the conditions of R4-11-1601(A).

Historical Note

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008. New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-1602. Limitation on Number Supervised

A dentist shall not provide direct supervision for more than three dental therapists while the dental therapists are providing services or performing procedures under A.R.S. § 32-1276.03 or R4-11-1601.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-1603. Dental Therapy Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental therapy consultants may:
1. Participate in Board-related procedures, including a Clinical Evaluation, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's or denturist's quality of care; and
2. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

R4-11-1604. Written Collaborative Practice Agreements; Collaborative Practice Relationships

A. A dental therapist shall submit a signed affidavit to the Board affirming that:
1. The Collaborative Practice Agreement complies with all the requirements listed in A.R.S. § 32-1276.04.
2. The dental therapist is and will be continuously certified in basic life support, including healthcare provider level cardiopulmonary resuscitation and training in automated external defibrillator.
3. The dental therapist is in compliance with the continuing dental education requirements of this state.

B. Each dentist who enters into a Collaborative Practice Agreement shall be available telephonically or electronically during the business hours of the dental therapist to provide an appropriate level of contact, communication, and consultation.

C. A Collaborative Practice Agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the dental therapist.

D. A Collaborative Practice Agreement shall include a signed and dated statement from the dentist providing Direct Supervision, verifying the dental therapist's completion of 1000 hours of dental therapy clinical practice according to A.R.S. § 32-1276.04(B).

E. A Collaborative Practice Agreement shall be between one dentist and one dental therapist.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 1330 (June 9, 2023), effective July 10, 2023 (Supp. 23-2).

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure

A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review

with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:

1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Excessive or insufficient penalties;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
7. That the findings of fact of decision is not justified by the evidence or is contrary to law; or
8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.

D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

A. A business entity shall ensure that the receipt for the current registration period is:

1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

ARIZONA
STATE BOARD OF DENTAL EXAMINERS

Statutes & Rules

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Article 1 Dental Board

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.

2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.

3. "Board" means the state board of dental examiners.

4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.

5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.

6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.

7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.

8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.

9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.

10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography, including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.

11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.

12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

(a) Imposition of an administrative penalty in an amount not to exceed $2,000 for each violation of this chapter or rules adopted under this chapter.

(b) Imposition of restrictions on the scope of practice.

(c) Imposition of peer review and professional education requirements.

(d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:

(a) Charges for services not rendered.

(b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.

(c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.

(d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.

(e) Any statement that is material to the claim and that the licensee knows is false or misleading.

(f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.

(g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.

16. "Licensed" means licensed pursuant to this chapter.

17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.

18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

19. "Qualified anesthesia provider" means any of the following:

(a) A licensee who holds a permit to administer anesthesia and sedation from the board pursuant to section 32-1207.

(b) A physician who has completed residency training in anesthesiology, who is licensed pursuant to chapter 13 or 17 of this title and who is registered with the Arizona medical board or the Arizona board of osteopathic examiners in medicine and surgery to administer anesthesia in dental offices and dental clinics pursuant to section 32-1403 or 32-1803.

(c) A certified registered nurse anesthetist who has a national board certification in anesthesiology, who is licensed pursuant to chapter 15 of this title and who is registered with the Arizona state board of nursing to administer anesthesia in dental offices and dental clinics pursuant to section 32-1606.

20. "Recognized continuing dental education" means continuing dental education as prescribed by the board in rule.

21. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

22. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.

23. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.

24. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.

25. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.

26. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.

3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's needs and in conjunction with the scope of practice prescribed in section 32-1202.

4. Committing gross malpractice or repeated acts constituting malpractice.

5. Acting or assuming to act as a member of the board if this is not true.

6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.

7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.

8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.

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

10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in treating a condition, disease, injury, ailment or infirmity.

11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.

12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

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

16. Committing repeated irregularities in billing.

17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in performing work that can be done legally only by licensed persons.

18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.

19. Wilfully or intentionally causing or allowing supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that allowed under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.

20. Committing the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.

22. Failing to comply with a board order, including an order of censure or probation.

23. Failing to comply with a board subpoena in a timely manner.

24. Failing or refusing to maintain adequate patient records.

25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.

26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.

27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.

28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

(a) Professionally incompetent.

(b) Engaging in unprofessional conduct.

(c) Impaired by drugs or alcohol.

(d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues of the oral maxillofacial facial complex, including removing stains, discolorations and concretions and administering botulinum toxin type A and dermal fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes.

32-1203. State board of dental examiners; qualifications of members; terms

A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The business entity member and the public members may participate in all board proceedings and determinations, except in preparing, giving or grading examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in preparing, giving and grading examinations that do not relate to dental hygiene procedures.

D. A board member shall not serve more than two consecutive terms.

E. For the purposes of this section, the business entity member must be an employee or owner of a registered business entity pursuant to section 32-1213 and may not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board members; investigation committee members

A. Members of the board are entitled to receive compensation in the amount of $250 for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

B. Members of an investigation committee established by the board may receive compensation in the amount of $100 for each committee meeting.

32-1207. Powers and duties; executive director; immunity; fees; definitions

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided that:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for administering intravenous or intramuscular drugs for the purpose of sedation or for using general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

7. Establish an investigation committee consisting of not more than eleven licensees who are in good standing, who are appointed by the board and who serve at the pleasure of the board to investigate any

complaint submitted to the board, initiated by the board or delegated by the board to the investigation committee pursuant to this chapter.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for applying general anesthesia and sedation, shall establish and collect a fee of not more than $300 to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section:

1. "Good standing" means that a person holds an unrestricted and unencumbered license that has not been suspended or revoked pursuant to this chapter.

2. "Record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report; posting

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding fiscal year that includes the following information:

1. The number of licensed dentists, dental therapists and hygienists in this state.

2. The number of certified denturists in this state.

3. The number of registered business entities in this state.

4. The number of licenses, certificates and registrations issued during the preceding fiscal year for each license type, certificate and registration.

5. The outcomes with respect to complaints filed with the board and of any formal hearings held in connection with those complaints and the results of those hearings.

6. The facts with respect to persons charged with violations of this chapter.

7. A full and complete statement of financial transactions of the board.

8. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor, the board shall submit a supplemental report.

C. The reports made pursuant to this section shall be posted on the board's public website.

32-1212. Dental board fund

(L24, Ch. 222, sec. 13. Eff. until 7/1/28)

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit fifteen percent of all fees, fines and other revenue received by the board in the state general fund and deposit the remaining eighty-five percent in the dental board fund.

B. Monies deposited in the dental board fund are subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1212. Dental board fund; Version 2

(L24, Ch. 222, sec. 14. Eff. 7/1/28)

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten percent of all fees, fines and other revenue received by the board in the state general fund and deposit the remaining ninety percent in the dental board fund.

B. Monies deposited in the dental board fund are subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The business entity is registered with the board pursuant to this section.

2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the business entity's services offered to the public.

2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.

3. The names and addresses of the officers and directors of the business entity.

4. The name of the business entity's custodian of records.

5. A registration fee prescribed by the board in rule.

C. A business entity must file a separate registration application and pay a fee for each branch office in this state.

D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. A business entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.

E. The business entity must notify the board in writing within thirty days after any change:

1. In the business entity's name, address or telephone number.

2. In the officers or directors of the business entity.

3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.

4. The name of the business entity's custodian of records who will accept subpoenas and respond to patient records requests.

F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.

2. Disposing of unclaimed dental records.

3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the business entity's procedure by which its patients may obtain their records.

H. The board may do any of the following pursuant to its disciplinary procedures if a business entity violates the board's statutes or rules:

1. Refuse to issue a registration.

2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than $2,000 for each violation.

4. Enter a decree of censure.

5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.

6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.

I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

J. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.

2. Any of the following entities licensed under title 20:

(a) A service corporation.

(b) An insurer authorized to transact disability insurance.

(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.

(d) A health care services organization that does not provide directly for dental services.

3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.

4. A facility regulated by the federal government or a state, district or territory of the United States.

5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.

K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:

1. Owned by a dentist who is licensed pursuant to this chapter.

2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for a business entity registered pursuant to this section to disregard or interfere with a policy or practice established by the business entity for the operation and management of the business.

2. Authorize a business entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the business entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.

Article 2 Licensing

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

(a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

(b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, recognized dental therapy school, recognized dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director's administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist from practicing for educational purposes on behalf of a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

9. A dentist who holds an active and unrestricted license in another state, territory or possession of the United States from practicing for educational purposes in connection with recognized continuing dental education. A dentist who practices under this paragraph:

(a) May not receive compensation for dental services provided in connection with recognized continuing dental education.

(b) Is subject to the jurisdiction and discipline of the board to the same extent as dentists who are licensed in this state.

(c) May not provide any dental care or services in this state to a person who is either:

(i) Physically unable to safely receive the dental care or services.

(ii) Not mentally competent to knowingly and voluntarily consent to the dental care or services.

(d) Shall file a restricted permit application on a form approved by the board with the provider of the recognized continuing dental education before providing any dental care or services in this state. The provider of the recognized continuing dental education shall retain the dentist's restricted permit application for a period of at least five years.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.

B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of $300. The board shall waive this fee for candidates who are applying for a restricted permit. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia but is not currently licensed to practice dentistry in Arizona.

2. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

3. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

4. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Meets the applicable requirements of section 32-1232.

6. Meets the requirements of section 32-1233, paragraph 1. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.

7. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section does not require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of $50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A. A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization or will be practicing for educational purposes in connection with and while enrolled in recognized continuing dental education that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization or in connection with the recognized continuing dental education.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for at least three years immediately preceding the application:

(a) The practice of dentistry.

(b) An approved dental residency training program.

(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

B. For the purposes of meeting the requirements of subsection A of this section, the provider of the recognized continuing dental education, before the commencement of the recognized continuing dental education, shall notify the board of the restricted permit applicants the provider has accepted that meet the requirements of section 32-1231, paragraph 9. The board shall acknowledge receipt of the notification within five business days after the later of receiving either:

1. The notification.

2. A copy of the applicants' valid fingerprint clearance cards.

32-1238. Issuance of restricted permit

A. The board shall issue a restricted permit within thirty days after the date the board receives a complete application that meets the requirements of section 32-1232, subsection B from an applicant that meets the requirements of section 32-1237.

B. A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

C. For the purposes of this section, the acknowledgment from the board pursuant to section 32-1237, subsection B serves as the issuance of a restricted permit to an applicant who will be practicing for educational purposes in connection with and while enrolled in recognized continuing dental education.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued may practice dentistry only in the course of the person's employment by a recognized charitable dental clinic or organization or for educational purposes in connection with and while enrolled in recognized continuing dental education as approved by the board. The person shall file a copy of the person's employment contract or confirmation of enrollment with recognized continuing dental education with the board, and the contract or confirmation shall contain the following provisions:

1. The applicant understands and acknowledges that if the applicant's employment by the charitable dental clinic or organization or enrollment in the recognized continuing dental education is terminated before the expiration of the applicant's restricted permit, the applicant's restricted permit will be automatically revoked and the applicant will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until the applicant has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

2. The person must be either:

(a) Employed by a dental clinic or organization that is organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision includes the performance of dental services without compensation.

(b) Enrolled in recognized continuing dental education and providing charitable dental services, for which the person may not receive any compensation, in connection with recognized continuing dental education with an organization that is exempt from taxation pursuant to section 501(c)(3) of the internal revenue code.

3. The person is subject to all the provisions of this chapter applicable to licensed dentists and to the jurisdiction and discipline of the board for all dental care and services provided under the restricted permit.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

Article 3 Regulation

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.

C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.

D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address, a change in the dentists providing services or a change in the custodian of records pursuant to section 32-1213, subsection E.

8. Failing to maintain or provide patient records pursuant to section 32-1264.

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

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a complete or timely manner.

13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

18. Failing to provide medical records or payment records to a third party, including current or former associates, employees or dentists of the practice, as required by sections 12-2294 and 12-2294.01.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its own motion, or the investigation committee if established by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board or investigation committee may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a licensee occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board or investigation committee shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or investigation committee shall conduct necessary investigations, including interviews between representatives of the board or investigation committee and the licensee with respect to any information obtained by or filed with the board under subsection A of this section or obtained by the board or investigation committee during the course of an investigation. The results of the investigation conducted by the investigation committee, including any recommendations from the investigation committee for disciplinary action against any licensee, shall be forwarded to the board for its review.

D. The board or investigation committee may designate one or more persons of appropriate competence to assist the board or investigation committee with any aspect of an investigation.

E. If, based on the information the board receives under subsection A or C of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a licensee's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

F. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board or the investigation committee.

G. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is insufficient to merit disciplinary action against a licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed $500 if the complaint involves the licensee's failure to respond to a board subpoena.

H. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is sufficient to merit disciplinary action against a licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

I. If, after completing a formal interview, the board finds that the information provided under subsection A or C of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.

2. Order disciplinary action pursuant to section 32-1263.01, subsection A.

3. Enter into a consent agreement with the licensee for disciplinary action.

4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.

5. Issue a nondisciplinary letter of concern to the licensee.

J. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.

K. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

L. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

N. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

O. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

P. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

Q. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

R. A licensee who files a complaint pursuant to subsection Q of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

S. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection Q of this section.

T. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Investigation committee; complaints; termination; review

A. If established by the board, the investigation committee may terminate a complaint if the investigation committee's review indicates that the complaint is without merit and that termination is appropriate.

B. The investigation committee may not terminate a complaint if a court has entered a medical malpractice judgment against a licensee.

C. At each regularly scheduled board meeting, the investigation committee shall provide to the board a list of each complaint the investigation committee terminated pursuant to subsection A of this section since the preceding board meeting. On review, the board shall approve, modify or reject the investigation committee's action.

D. A person who is aggrieved by an action taken by the investigation committee pursuant to subsection A of this section may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the investigation committee's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the investigation committee's action. On review, the board shall approve, modify or reject the investigation committee's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make legible permanent and contemporaneous written or electronic records concerning all diagnoses, evaluations and treatments of each patient of record. The owner of a dental practice or a registered business entity shall maintain all written and electronic records. Electronic records must be retrievable in paper form. These records shall include:

1. All treatment notes, including current health history and the results of clinical examinations.

2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.

3. A diagnosis and treatment plan.

4. Dental and periodontal charting. Charting must include existing restorations, areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.

5. Documentation of informed consent.

6. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.

C. On request, the licensee, registered business entity or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board free of charge as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

F. A person who is licensed or certified pursuant to this chapter and who is an associate or employee of a dental practice is not responsible for storing or retaining medical records but shall compile and record the records in the customary manner.

G. A licensee or business entity shall release treatment records to third parties, including current and former associates, employees or dentists of the practice, as required by sections 12-2294 and 12-2294.01.

H. When a dentist retires or sells a practice, or when a registered business entity closes or sells a practice, the dentist or registered business entity shall take reasonable measures to ensure that the patient records are retained pursuant to this section.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.

2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.

3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.

4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.

2. Fails to obey a summons or other order regularly and properly issued by the board.

3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

32-1272. Dental anesthesia; requirements

A. A dental office or dental clinic at which general anesthesia or sedation is administered must contain properly operating equipment and supplies as prescribed by the board in rule and have proper emergency response protocols in place, including advanced cardiac life support and airway management and pediatric advanced life support, as applicable, when administering general anesthesia or sedation as prescribed by the board in rule that is consistent with the standards and practices recommended by the American heart association.

B. A qualified anesthesia provider who is licensed by the board and who fails to comply with the requirements of this section or applicable board rules commits an act that constitutes a danger to the health, welfare or safety of the public pursuant to section 32-1201.01.

C. If a qualified anesthesia provider who is not licensed by the state board of dental examiners fails to comply with the requirements of this section or applicable board rules, the state board of dental examiners shall promptly report the qualified anesthesia provider's conduct to the regulatory board that licenses the qualified anesthesia provider. If an adverse anesthesia outcome involves a qualified

anesthesia provider who is not licensed by the state board of dental examiners, the state board of dental examiners shall promptly report the adverse anesthesia outcome to the regulatory board that licenses the qualified anesthesia provider.

D. If a death or an incident requiring emergency medical response occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia or sedation by a qualified anesthesia provider, the treating dentist shall submit a report of the incident to the state board of dental examiners within seven business days after the occurrence. If the incident involves a qualified anesthesia provider who is not licensed by the state board of dental examiners, the state board of dental examiners shall immediately forward a copy of the incident report to the regulatory board that licenses the qualified anesthesia provider.

Article 3.1 Licensing and Regulation of Dental Therapists

32-1276. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.

2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.

32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.

2. Verify under oath that all statements in the application are true to the applicant's knowledge.

3. Enclose with the application:

(a) A recent photograph of the applicant.

(b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.

2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.

3. Successfully passes, both of the following:

(a) Within five years before filing the application, a clinical examination in dental therapy administered by a state or testing agency in the United States.

(b) The Arizona dental jurisprudence examination.

4. Is not subject to any grounds for denial of the application under this chapter.

5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the

amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to $100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.

2. Perform comprehensive charting of the oral cavity.

3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.

4. Expose and process dental radiographic images.

5. Perform dental prophylaxis, scaling, root planing and polishing procedures.

6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.

7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.

8. Perform pulp vitality testing.

9. Apply desensitizing medicaments or resins.

10. Fabricate athletic mouth guards and soft occlusal guards.

11. Change periodontal dressings.

12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.

14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.

15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.

16. Prepare and place direct restorations in primary and permanent teeth.

17. Fabricate and place single-tooth temporary crowns.

18. Prepare and place preformed crowns on primary teeth.

19. Perform indirect and direct pulp capping on permanent teeth.

20. Perform indirect pulp capping on primary teeth.

21. Perform suturing and suture removal.

22. Provide minor adjustments and repairs on removable prostheses.

23. Place and remove space maintainers.

24. Perform all functions of a dental assistant and expanded function dental assistant.

25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.

26. Provide referrals.

27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.

2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.

2. A health center program that has received a federal look-alike designation.

3. A community health center.

4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.

5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.

2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.

3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.

4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.

5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.

6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.

2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.

2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.

2. Scaling.

3. Closed subgingival curettage.

4. Root planing.

5. Administering local anesthetics and nitrous oxide.

6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.

7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.

10. Exposing and processing dental radiographs.

11. Dental hygiene assessment and dental hygiene treatment planning as components of a diagnosis and treatment plan developed by a dentist.

12. All functions authorized and deemed appropriate for dental assistants.

13. Except as provided in paragraph 14 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

14. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Dental hygiene assessment" means identifying an existing or potential oral health problem that dental hygienists are educationally qualified and licensed to treat.

3. "Dental hygiene treatment planning" means performing a prioritized sequence of dental hygiene interventions that is predicated on the dental hygiene assessment and that is limited to those services included in the scope of practice for dental hygienists.

4. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

5. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

6. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

7. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of $100. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.

2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.

3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

(a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

(c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

(d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.

3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 13 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.

4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.

3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.

3. Knowingly made a false statement in the application.

4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing

agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the

purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Hold a high school diploma or its equivalent.

2. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

3. Pass a board-approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.

2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birth month every third year. On or before the last day of the certificate holder's birth month every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than $300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the certificate holder's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birth month of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the

renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a $50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.

2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.

3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.

2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.

3. Fails to obey a summons or other order regularly and properly issued by the board.

4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

Article 6 Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs and devices are dispensed in packages labeled with the following information:

(a) The dispensing dentist's name, address and telephone number.

(b) The date the drug or device is dispensed.

(c) The patient's name.

(d) The name and strength of the drug or device, directions for its use and any cautionary statements required by law.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug or device dispensed, the date the drug or device is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs and devices in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Before dispensing a drug or device pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

C. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing

process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

D. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs and devices that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

E. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs or devices, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

Article 7 Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.

3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.

5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.

D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.

E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:

1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.

2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.

3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

Article 8 Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.

3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.

2. Services are provided by a federal, state or local government agency.

3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.

4. Services are provided to a patient by an accredited dental or dental hygiene school.

5. The licensee holds a valid permit to provide mobile dental anesthesia services.

6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in

paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.

(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.

2. The name of the dentist or dental hygienist, or both, who provided services.

3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.

4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.

2. Suspend or revoke a permit.

3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 5, Articles 1-7

Amend: R9-5-101; R9-5-102; R9-5-201; R9-5-202; R9-5-203; R9-5-204; R9-5-205; R9-5-206; R9-5-208; R9-5-209; R9-5-301; R9-5-302; R9-5-303; R9-5-304; R9-5-305; R9-5-306; R9-5-310; R9-5-401; R9-5-403; R9-5-404; R9-5-501; R9-5-502; R9-5-503; R9-5-504; R9-5-505; R9-5-506; R9-5-507; R9-5-508; Table 5.1; R9-5-509; R9-5-510; R9-5-511; R9-5-514; R9-5-515; R9-5-517; R9-5-518; R9-5-601; R9-5-602; R9-5-603; R9-5-604; R9-5-605

New Section: R9-5-701; R9-5-702; R9-5-703; R9-5-704; R9-5-705; R9-5-706; R9-5-707; R9-5-708; R9-5-709; R9-5-710; R9-5-711; R9-5-712; R9-5-713; R9-5-714; R9-5-715; R9-5-716; R9-5-717; R9-5-718; R9-5-719; R9-5-720; R9-5-721; R9-5-722; R9-5-723; R9-5-724; R9-5-725; R9-5-726; R9-5-727; R9-5-728; R9-5-729; R9-5-730; R9-5-731; R9-5-732; R9-5-733; R9-5-734; R9-5-735; R9-5-736; R9-5-737; R9-5-738; R9-5-739; R9-5-740; R9-5-741; R9-5-742; R9-5-743; R9-5-744

New Table: Table 7.1; Table 7.2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 13, 2025

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 5, Articles 1-7

Amend: R9-5-101; R9-5-102; R9-5-201; R9-5-202; R9-5-203; R9-5-204; R9-5-205; R9-5-206; R9-5-208; R9-5-209; R9-5-301; R9-5-302; R9-5-303; R9-5-304; R9-5-305; R9-5-306; R9-5-310; R9-5-401; R9-5-403; R9-5-404; R9-5-501; R9-5-502; R9-5-503; R9-5-504; R9-5-505; R9-5-506; R9-5-507; R9-5-508; Table 5.1; R9-5-509; R9-5-510; R9-5-511; R9-5-514; R9-5-515; R9-5-517; R9-5-518; R9-5-601; R9-5-602; R9-5-603; R9-5-604; R9-5-605

New Section: R9-5-701; R9-5-702; R9-5-703; R9-5-704; R9-5-705; R9-5-706; R9-5-707; R9-5-708; R9-5-709; R9-5-710; R9-5-711; R9-5-712; R9-5-713; R9-5-714; R9-5-715; R9-5-716; R9-5-717; R9-5-718; R9-5-719; R9-5-720; R9-5-721; R9-5-722; R9-5-723; R9-5-724; R9-5-725; R9-5-726; R9-5-727; R9-5-728; R9-5-729; R9-5-730; R9-5-731; R9-5-732; R9-5-733; R9-5-734; R9-5-735; R9-5-736; R9-5-737; R9-5-738; R9-5-739; R9-5-740; R9-5-741; R9-5-742; R9-5-743; R9-5-744

New Table: Table 7.1; Table 7.2

Summary:

This regular rulemaking from the Department of Health Services (Department) seeks to amend forty (40) rules and one (1) table and add forty-four (44) new sections and two (2) tables to Title 9, Chapter 5 regarding Child Care Facilities. Specifically, the Department, in its 2022 Child Care Facilities Five-Year Review Report, identified that the rules' effectiveness could be improved by making the rules more clear, concise, and understandable by updating cross-references, correcting grammatical errors, clarifying the language throughout the rules, and removing obsolete definitions and requirements.

Additionally, the Department plans to amend and establish rules for school-age children being cared for in a child care facility that only cares for school-age children. This rulemaking also makes changes to improve consistency with the Child Care and Development Block Grant (CCDBG). The Department is creating a new Article 7, consisting of forty-four (44) new Sections and two (2) Tables, specifically tailored for school-age out-of-school time programs. The requirements in Article 7 mirror the exact language applicable to school-age children in Articles 1 through 6. While these rules may be duplicative, they were included in Chapter 5 based on stakeholder feedback to enhance clarity and effectiveness. Consequently, the Department anticipates no additional costs for facilities and believes that the new Article 7 will be highly beneficial for child care facilities.

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

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

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

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

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

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

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

The Department states that the purpose of this rulemaking is to update and amend the licensing requirements for Child Care Facilities licensed under Arizona Revised Statutes (A.R.S.) Title 36, Chapter 7.1, Article 1. A.R.S. § 36-883 requires the Department to adopt reasonable rules necessary to ensure the health, safety, and well-being of children cared for in a child care facility. The Department indicates that the rules' effectiveness could be improved by making the rules more clear, concise, and understandable by updating cross-references, correcting grammatical errors, clarifying the language throughout the rules, and removing obsolete definitions and requirements. Additionally, the Department states, in this rulemaking, it

plans to amend and establish rules for school-age children being cared for in a child care facility that only cares for school-age children. The amended rules for school-aged children, according to the Department, are expected to broaden the types of afterschool, summer, and enrichment programs eligible for licensure by creating a separate childcare license for "out-of-school" programs. Stakeholders include the Department; Child Care Facilities and Staff; Infants and children enrolled in a Child Care Facility and parents; and the general public.

The Department states that as of November 2024, it licenses 2,380 child care facilities in Arizona, which have a combined licensed capacity of over 280,291 children. In fiscal year 2024, the Department conducted 115 initial inspections and 2,055 compliance inspections. The Department also received 873 complaints, issued 58 initial and 1,299 renewal licenses, and processed 210 enforcement actions.

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

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

6. What are the economic impacts on stakeholders?

The Department states that, overall, it expects that some licensed childcare facilities may incur minimal one-time costs for having to revise administrative policies and procedures related to the new rules. In addition, the Department anticipates that the amended rules may have a significant benefit for child care facilities and staff for providing excellent care that increases the health and safety of child care facilities and enrolled children.

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

Between the Notice of Proposed Rulemaking published in the Administrative Register on November 29, 2024 and the Notice of Supplemental Proposed Rulemaking published in the Administrative Register on February 21, 2025, the Department implemented the following changes:

- R9-5-101(75) and R9-5-701(72)
    - Changed the term mentioned in the definition of "modification" from "child care group home" to "child care facility."
- R9-5-101(110) and R9-5-701(105)
    - Amended the definition of "separation" to read clearer and removed the word "their" and replaced it with "them self."
- R9-5-102 and R9-5-702:
    - Changed the "or" to an "and" because a fingerprint clearance card is required by the licensee.
- R9-5-201(A)(5) and R9-5-703(A)(5)

    - Removed new language that required architectural plans for new or remodeled buildings to be reviewed and approved by the Department, the local fire department, and the local building department for appropriateness, adequacy, and suitability for child care functions.
- R9-5-301(A)(2) and R9-5-713(A)(2)
    - Corrected a grammatical error by adding the word "in."
- R9-5-302(19) and R9-5-714(19)
    - Added policies and procedures addressing suspension, in addition to those for expulsion.
- R9-5-404
    - Reinstated the allowance of a "bonus baby" under staff-to-child ratios for infants and 1-year-old children.
- R9-5-506(A)(3) and R9-5-728(A)(3)
    - Removed the requirement for toys, materials, and equipment to be in each activity area because not all activity areas are utilized for play.
- R9-5-509(C)(21) and R9-5-731(C)(20)
    - Clarified that the thermometer is required to be kept in the refrigerator and in the freezer.
- R9-5-518(H) and R9-5-739(H)
    - Simplified the rules to permit licensees to use the written permission outlined in subsection (A) for multiple field trips to the same destination on an annual basis.
- R9-5-701(107)(e)
    - Corrected incorrect numbering.
- R9-5-714
    - For consistency with the rules in R9-5-302, the Department updated the title from "Statement of Services" to "Statement of School-Age Child Care Services."
- R9-5-726(C)(1)(a)
    - Updated a cross-reference for accuracy.
- R9-5-740(2)
    - Corrected incorrect numbering.

The Department did not make any changes between the Notice of Supplemental Proposed Rulemaking published in the Administrative Register on February 21, 2025 and the Notice of Final Rulemaking now before the Council for consideration.

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

After filing the Notice of Proposed Rulemaking, the Department indicates it received eight (8) written comments during the formal comment period. Additionally, at the oral proceeding on January 7, 2025, the Department indicates twenty (20) stakeholders attended, and five (5) individuals provided formal oral comments on the rulemaking.

Subsequently, the Department filed a Notice of Supplemental Proposed Rulemaking. After filing the Notice of Supplemental Proposed Rulemaking, the Department indicates it

received two formal comments. Furthermore, at the oral proceeding held on March 25, 2025, twelve (12) stakeholders were in attendance and two (2) individuals provided formal oral comments on the rulemaking

Summaries of the comments and the Department's responses are found in Section 12 of the Preamble to the Notice of Final Rulemaking. Copies of the comments and the Department's responses are also included in the final materials for the Council's reference.

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

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

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

The Department indicates, pursuant to A.R.S. § 36-882, it is required to provide licensure for child care facilities and, pursuant to A.R.S. § 36-888, the Department retains the authority to deny, revoke, or suspend an applicant or a child care facility licensee's ability to operate. The Department states it does not use a general permit. Specifically, the Department indicates it believes that under A.R.S. § 41-1037(A)(3) a general permit is not applicable in that "[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements." Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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

The Department indicates there is no corresponding federal law for these rules. However, the Department states some child care facilities receive funding from the Child Care and Development Block Grant (CCDBG). The CCDBG is a federal program in the United States that provides funding to states to help low-income families access affordable and high-quality child care. This block grant supports working parents and those attending job training or educational programs by subsidizing child care costs. Additionally, it aims to improve the overall quality of child care, ensure health and safety standards in child care settings, and enhance the development and well-being of children. CCDBG regulates entities that receive funding with requirements set forth according to 45 CFR Part 98. The Arizona Department of Economic Security is the lead agency to enforce CCDBG requirements. The Department

indicates some of the rules in Title 9, Chapter 5 that are the least burdensome and promote health and safety are consistent with the CCDBG requirements.

11. Conclusion

This regular rulemaking from the Department seeks to amend forty (40) rules and one (1) table and add forty-four (44) new sections and two (2) tables to Title 9, Chapter 5 regarding Child Care Facilities. Specifically, the Department, in its 2022 Child Care Facilities Five-Year Review Report, identified that the rules' effectiveness could be improved by making the rules more clear, concise, and understandable by updating cross-references, correcting grammatical errors, clarifying the language throughout the rules, and removing obsolete definitions and requirements. Additionally, the Department plans to amend and establish rules for school-age children being cared for in a child care facility that only cares for school-age children. This rulemaking also makes changes to improve consistency with the Child Care and Development Block Grant (CCDBG). The Department is creating a new Article 7, consisting of forty-four (44) new Sections and two (2) Tables, specifically tailored for school-age out-of-school time programs.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A).

Council staff recommends approval of this rulemaking.

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

April 22, 2025

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

RE: Department of Health Services, 9 A.A.C. 5

Dear Ms. Klein:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council (Council). The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-202:

1. The close of record date: March 25, 2025

2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 5 relates to a five-year review report approved by the Council on January 4, 2023.

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

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

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

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

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee there are no new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of each rule;
2. Formal comments received during both formal comment periods;
3. Rulemaking approvals pursuant to A.R.S. § 41-1039(A) and (B)
4. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055; and
5. General and specific statutes authorizing the rules, including relevant statutory definitions.

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

Sincerely,

Stacie Gravito
Director's Designee

SG: ls

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES –

CHILD CARE FACILITIES

PREAMBLE

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

April 21, 2025

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R9-5-101	Amend
R9-5-102	Amend
R9-5-201	Amend
R9-5-202	Amend
R9-5-203	Amend
R9-5-204	Amend
R9-5-205	Amend
R9-5-206	Amend
R9-5-208	Amend
R9-5-209	Amend
R9-5-301	Amend
R9-5-302	Amend
R9-5-303	Amend
R9-5-304	Amend
R9-5-305	Amend
R9-5-306	Amend
R9-5-310	Amend
R9-5-401	Amend
R9-5-403	Amend
R9-5-404	Amend
R9-5-501	Amend
R9-5-502	Amend
R9-5-503	Amend
R9-5-504	Amend
R9-5-505	Amend
R9-5-506	Amend
R9-5-507	Amend
R9-5-508	Amend
Table 5.1	Amend
R9-5-509	Amend
R9-5-510	Amend
R9-5-511	Amend
R9-5-514	Amend
R9-5-515	Amend
R9-5-517	Amend

R9-5-518	Amend
R9-5-601	Amend
R9-5-602	Amend
R9-5-603	Amend
R9-5-604	Amend
R9-5-605	Amend
R9-5-701	New Section
R9-5-702	New Section
R9-5-703	New Section
R9-5-704	New Section
Table 7.1	New Table
R9-5-705	New Section
R9-5-706	New Section
R9-5-707	New Section
R9-5-708	New Section
R9-5-709	New Section
R9-5-710	New Section
R9-5-711	New Section
R9-5-712	New Section
R9-5-713	New Section
R9-5-714	New Section
R9-5-715	New Section
R9-5-716	New Section
R9-5-717	New Section
R9-5-718	New Section
R9-5-719	New Section
R9-5-720	New Section
R9-5-721	New Section
R9-5-722	New Section
R9-5-723	New Section
R9-5-724	New Section
R9-5-725	New Section
R9-5-726	New Section
R9-5-727	New Section
R9-5-728	New Section
R9-5-729	New Section
R9-5-730	New Section
Table 7.2	New Table
R9-5-731	New Section
R9-5-732	New Section
R9-5-733	New Section
R9-5-734	New Section
R9-5-735	New Section
R9-5-736	New Section
R9-5-737	New Section
R9-5-738	New Section
R9-5-739	New Section
R9-5-740	New Section

R9-5-741	New Section
R9-5-742	New Section
R9-5-743	New Section
R9-5-744	New Section

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

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

Implementing statute: A.R.S. §§ 36-883 through 36-894.01

4. The effective date of the rule:

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

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

Not applicable

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

Answer or not applicable

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

Notice of Rulemaking Docket Opening: 29 A.A.R. 1366, June 16, 2023, Issue Number: 24, File Number: [R23-80]

Notice of Rulemaking Docket Opening: 30 A.A.R. 2055, June 14, 2024, Issue Number: 24, File Number: [R24-101]

Notice of Proposed Rulemaking: 30 A.A.R. 3586, November 29, 2024, Issue Number: 48, File number: [R24-256]

Notice of Supplemental Proposed Rulemaking: 31 A.A.R. 565, February 21, 2025, Issue Number: 8, File number: [R25-16]

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

Name: Margaret Bernal
Title: Bureau Chief
Division: Division of Public Health Licensing Services
Address: Arizona Department of Health Services
Bureau of Child Care Licensing
150 N. 18th Avenue, Suite 400
Phoenix, AZ 85007
Telephone: (602) 364-2539
Email: Margaret.Bernal@azdhs.gov

or

Name: Stacie Gravito
Title: Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules

150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
Email: Stacie.Gravito@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-883 requires the Arizona Department of Health Services (Department) to "define and prescribe reasonable rules regarding the health, safety, and well-being of the children to be cared for in a child care facility." The Department adopted rules in Arizona Administrative Code Title 9, Chapter 5 to implement A.R.S. §§ 36-883 through 36-883.04. The rules provide definitions; application requirements for licensure, including fingerprinting; facility administration requirements; facility staff and training requirements; facility program and equipment requirements; and requirements for the physical plant of a facility. The Department, in its 2022 Child Care Facilities five-year report (Report), identified that the rules' effectiveness could be improved by making the rules more clear, concise, and understandable by updating cross-references, correcting grammatical errors, clarifying the language throughout the rules, and removing obsolete definitions and requirements. Additionally, the Department plans to amend and establish rules for school-age children being cared for in a child care facility that only cares for school-age children. This rulemaking may also make changes to improve consistency with the Child Care and Development Block Grant (CCDBG). The Department has received rulemaking approval pursuant to A.R.S. § 41-1039, to amend the rules on May 4, 2023. This rulemaking, which began in July of 2023 and continued through the fall of 2024, included multiple drafts, extensive comments from stakeholders, and many stakeholder meetings to develop the proposed rules. There may still be some more complex issues, identified during the rulemaking process, that the Department is working with stakeholders to resolve, including, but not limited to questions regarding certain CCDBG requirements (e.g. group sizes, square footage requirements, etc.). To prevent further delays to the present rulemaking package, the Department has been approved to initiate another, separate rulemaking to address these issues, to enable the changes for which consensus has been reached to be made through this rulemaking. The Department is committed to fostering ongoing collaboration with stakeholders through the second rulemaking process, ensuring that insights and feedback from affected communities, child care providers, and other interested parties guide the development and refinement of these regulations. The proposed amendments will conform to the rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

Not applicable

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

Not applicable

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

Arizona Revised Statutes (A.R.S.) § 36-883 requires the Department to "define and prescribe reasonable rules regarding the health, safety, and well-being of the children to be cared for in a child care facility." A.R.S. § 36-883.04 requires the Department to

"prescribe reasonable rules and standards regarding the health, safety, and well-being of children cared for in any public school child care program." Accordingly, the Department implemented A.R.S. §§ 36-883 and 36-883.04 and promulgated rules specifying licensure requirements for child care facilities at A.A.C. Title 9, Chapter 5, Articles 1 through 6. The rules provide definitions; application requirements for licensure, including fingerprinting; facility administration requirements; facility staff and training requirements; facility program and equipment requirements; and requirements for the physical plant of a facility. The purpose of the rules is to protect the health, safety, and well-being of the children to be cared for in an Arizona licensed child care facility, including public school child care programs, and to establish licensure requirements for a person or a governmental agency requesting a license to operate a child care facility. The Department anticipates that persons affected by the rulemaking include the Department, child care facilities and staff, infants and children enrolled in a child care facility, parents, and the general public. Annual cost/revenue changes are designated as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

As of November 2024, the Department licenses 2,380 child care facilities in Arizona, which have a combined licensed capacity of over 280,291 children. Some of these facilities may have since closed but were active during fiscal year 2024. In fiscal year 2024, the Department conducted 115 initial inspections and 2,055 compliance inspections. The Department also received 873 complaints, issued 58 initial and 1299 renewal licenses, and processed 210 enforcement actions. The Department estimates the cost associated with the rulemaking to be moderate for a rules analyst and program staff to amend rules in 9 A.A.C. 5, as well as spending time to meet with stakeholders to ensure that the Department is aware of stakeholder concerns and when appropriate, make changes to the draft rules.

Through this rulemaking, the Department is amending 40 Sections and 1 Table, throughout Chapter 5, Articles 1 through 6 to make the rules clearer, concise, and understandable by updating cross-references, correcting grammatical errors, clarifying the language throughout the rules, and removing obsolete definitions and requirements. Additional changes in the rules are to be more consistent with statutory requirements and improve consistency with the CCDBG requirements. The Department expects to receive a significant benefit, greater than the cost incurred for drafting amended rules, for providing more clear, concise, and understandable rules for child care facilities that comply with CCDBG requirements. In addition, the Department is creating a new Article 7 with 44 new Sections and two new Tables for school-aged children.

Amendments were introduced in Article 2, Facility Licensure, aimed at enhancing language consistency and clarity, particularly to accommodate online application processes. Changes include transitioning to the ability to submit applications, attestations, and other required documentation electronically, facilitating more efficient data collection and analysis. Online applications are expected to increase accessibility and streamline processing for both the Department and childcare facilities. Additionally, amendments were made to simplify identification documentation requirements and minimize training obligations. These changes, along with clarifications regarding facility closure notifications, are anticipated to optimize operational efficiency while incurring minimal costs. Overall, these amendments aim to create a simpler, more inclusive, and efficient regulatory framework for childcare facility licensing.

The Department is implementing changes in compliance with CCDBG requirements, including adjustments to background check requirements for staff and volunteers in childcare facilities, resulting in more frequent fingerprint clearance card renewals. These changes aim to enhance safety measures with minimal to no additional costs for facilities. Additionally, throughout Article 2, the Department is updating language for clarity and consistency, particularly for online application processes, which can reduce administrative costs and provide a user-friendly experience for applicants. Furthermore, the Department is removing requirements

for architectural plan review and approval, to increase flexibility for providers and improve the application process. These changes are anticipated to significantly benefit childcare facilities by reducing the financial burden and providing clearer, more concise, and understandable rules.

In R9-5-301, the Department is reducing tuberculosis testing requirements by allowing staff to complete a self-screening form, reducing costs for both staff and child care facilities. Subsection (J) regarding influenza vaccination recommendations for parents is being removed to save time and resources for child care facilities, aligning better with statutory authority. These amendments aim to streamline processes and reduce burdens without imposing extra costs on facilities. In R9-5-302, the Department is updating language and adding two new subsections to the statement of child care services, covering positive discipline guidelines and suspension and expulsion policies. While this change may impose a minimal administrative burden, it offers significant benefits through updated rules. In R9-5-304, the Department is eliminating the Department-provided "blue card" for emergency information and immunization records, instead requiring the information to be collected on a two-page notice readily available at the facility. The rule amendment simplifies contact information requirements and allows for electronic record-keeping, offering flexibility and updating information collection methods. This change is expected to save facilities a moderate amount of costs by using their own methods for collecting and documenting information. Also, in Article 3, The Department is updating child care rules to allow a 30-day grace period for homeless children to get immunizations, with immediate doses required otherwise, unless exempt. Other changes include simplifying attendance records and allowing electronic sign-in/out with a unique identifier to save costs for facilities.

The Department is making grammatical corrections and ensuring consistency in Article 4, Facility Staff. In R9-5-401, the Department is reducing the required experience for staff working with school-aged children from six to three months, aiming to help facilities hire qualified staff more quickly. Amendments in R9-5-403 include clarifying language, increasing annual training hours from 18 to 24, and requiring six hours of training for school-aged child educators within three months of hire. In R9-5-403, new training requirements include topics like prevention of sudden infant death syndrome and safe sleeping practices. Staff may incur minimal costs for training but will benefit from an expanded list of topics relevant to health and safety.

In Article 5, the Department is simplifying rules, removing obsolete requirements, and clarifying expectations. For example, in R9-5-501, the Department is clarifying that enrolled children should not mix with non-enrolled children, which is already standard practice. The Department expects no costs for facilities, but clearer rules and reduced inspection costs. They are also updating rules related to the lighting during nap time and prohibiting smoking or vaping on premises, expecting no costs for facilities but improved health and safety standards. The Department is aligning rules with national standards by removing the requirement for a "top sheet or a blanket" in cribs to reduce the risk of sleep-related infant deaths. Changes also include specifying cleaning crib sheets before reuse and prohibiting shaking infants. These changes may save facilities money on bedding and promote clearer documentation practices. In R9-5-506, the Department is updating rules to include out-of-school time programs, benefiting these programs and expanding services offered in Arizona. This change may also create jobs and new small businesses in the state by expanding the opportunity for out-of-school time programs to be licensed child care facilities.

In R9-5-507, the Department is changing the title to "Supplemental Standards for Children with a Special Health Care Need or a Disability" for inclusivity. The terms "special needs" and "disability" have specific but slightly different meanings, with "special needs" being broader and more inclusive, while "disability" refers to a specific impairment affecting daily activities. These updates aim to benefit those affected by the rules by providing clearer and more inclusive language. In R9-5-510, the Department is updating and clarifying rules on positive discipline, emphasizing its importance for maintaining order and fostering a secure, structured environment in child care settings. The term "discipline" is being changed to "positive discipline" to remove negative

connotations. These changes are expected to benefit child care facilities by providing clearer, more positive, and inclusive rules on discipline without incurring additional costs. In R9-5-514, the Department is adding new subsections for emergency preparedness planning, including procedures for various emergencies and training for staff and volunteers, to comply with federal and state requirements[1]. These changes may impose minimal costs but are expected to significantly benefit facilities by improving public health and safety. Also, in Article 5, the Department is amending R9-5-518 to clarify that two staff members must be in a vehicle with six or more children during field trips. This change is not expected to incur additional costs for facilities but will provide clearer and easier-to-understand rules.

In Article 6, the Department is updating rules to correct grammar, simplify language, and improve clarity. In R9-5-601, they clarify that rules apply "as applicable," exempting facilities serving only school-aged children from certain requirements. In R9-5-602, requirements for outdoor activity spaces are relaxed for facilities with children in care for less than four consecutive hours. These changes aim to provide more flexibility and may reduce costs for facilities, benefiting them significantly.

As mentioned earlier, the Department is creating a new Article 7, consisting of 44 new Sections and two Tables, specifically tailored for school-age out-of-school time programs. The requirements in Article 7 mirror the exact language applicable to school-age children in Articles 1 through 6. While these rules are duplicative, they were included in Chapter 5 based on stakeholder feedback to enhance clarity and effectiveness. Consequently, the Department anticipates no additional costs for facilities and believes that the new Article 7 will be highly beneficial for child care facilities.

Overall, the Department expects that some licensed child care facilities may incur a minimal one-time cost for having to revise administrative policies and procedures related to the new rules. In addition, the Department anticipates that the amended rules may have a significant benefit for child care facilities and staff for providing excellent care that increases the health and safety of child care facilities enrolled children.

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

Between the Notice of Proposed Rulemaking and the Notice of Supplemental Proposed Rulemaking, the Department implemented the following changes:

- **R9-5-101(75) and R9-5-701(72):** Changed the term mentioned in the definition of "modification" from "child care group home" to "child care facility."
- **R9-5-101(110) and R9-5-701(105):** Amended the definition of "separation" to read clearer and removed the word "their" and replaced it with "them self."
- **R9-5-102 and R9-5-702:** Changed the "or" to an "and" because a fingerprint clearance card is required by the licensee.
- **R9-5-201(A)(5) and R9-5-703(A)(5):** Removed new language that required architectural plans for new or remodeled buildings to be reviewed and approved by the Department, the local fire department, and the local building department for appropriateness, adequacy, and suitability for child care functions.
- **R9-5-301(A)(2) and R9-5-713(A)(2):** Corrected a grammatical error by adding the word "in."
- **R9-5-302(19) and R9-5-714(19):** Added policies and procedures addressing suspension, in addition to those for expulsion.
- **R9-5-404:** Reinstated the allowance of a "bonus baby" under staff-to-child ratios for infants and 1-year-old children.

[1] https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98/subpart-E/section-98.41#p-98.41(a)(1)(vii)

- **R9-5-506(A)(3) and R9-5-728(A)(3):** Removed the requirement for toys, materials, and equipment to be in each activity area because not all activity areas are utilized for play.
- **R9-5-509(C)(21) and R9-5-731(C)(20):** Clarified that the thermometer is required to be kept in the refrigerator and in the freezer.
- **R9-5-518(H) and R9-5-739(H):** Simplified the rules to permit licensees to use the written permission outlined in subsection (A) for multiple field trips to the same destination on an annual basis.
- **R9-5-701(107)(e):** Corrected incorrect numbering.
- **R9-5-714:** For consistency with the rules in R9-5-302, the Department updated the title from "Statement of Services" to "Statement of School-Age Child Care Services."
- **R9-5-726(C)(1)(a):** Updated a cross-reference for accuracy.
- **R9-5-740(2):** Corrected incorrect numbering.

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

The Department received eight written comments during the formal comment period. In the table below is a summary of the formal written comments and a summary of the Department's response to the comment.

Comment	Department's Response
Ralph M. Shenefelt, Senior Vice President of the Health and Safety Institute (HSI), submitted a comment requesting an amendment to the proposed rules to only require pediatric CPR and first aid certification for childcare providers. It was explained that pediatric CPR already includes elements of adult CPR for individuals showing signs of puberty and it was emphasized that pediatric-specific training is sufficient and that requiring separate adult CPR certification would impose unnecessary burdens on providers.	In response to Shenefelt's comments, the Department emphasized the importance of retaining the requirement for both adult and pediatric CPR certification. The Department highlighted that most CPR programs include adult CPR as a standard and often add pediatric CPR, ensuring comprehensive training without imposing significant burdens on childcare providers. This dual certification ensures staff are equipped to handle emergencies involving individuals of all ages, including children who may require adult CPR techniques due to their size. The Department thanked Mr. Shenefelt for his input and engagement in the rulemaking process.
Karen Gresham, Governing Board President of the Madison Elementary School District, commented in support of replacing the TB test with an attestation and reducing the time of service required for staff to work alone with school-age children, noting these changes would alleviate hiring challenges and reduce waitlists. However, Gresham opposes increasing required training hours to 24 per year, citing its disproportionate impact on part-time staff and irrelevant topics, advocating instead to keep the current 18-hour requirement. Gresham recommended streamlining background check and qualification requirements to align with school district standards to improve hiring and program access while maintaining student safety.	The Department thanked Gresham for their feedback on the proposed rules and expressed appreciation for their support in replacing the tuberculosis test with an attestation and reducing service time for staff working alone with school-age children. In addition, the Department acknowledged the concerns regarding the increase in training hours from 18 to 24 per year, explaining that this is intended to enhance staff training for student safety while accommodating lowered qualifications for school-age staff. Furthermore, the Department clarified that background check requirements align with Block Grant requirements.
The Arizona Alliance of Boys & Girls Clubs (BGC), representing 70 sites statewide commented on the following rules with concerns: 1. Bathroom Supervision (R9-5-506 & R9-5-728): Suggests more flexibility for school-age children to use the bathroom without continuous supervision. 2. Architectural Plan Approval (R9-5-703): Recommends replacing "approval" with "review" to avoid delays in facility changes while retaining oversight. 3. Documentation of Presence (R9-5-718): Proposes simplifying documentation requirements by allowing facility-wide tracking instead of real-time activity area tracking. Therefore, attendance would only be taken	The Department thanked the BCG for their comments and suggestions on the proposed child care rules, particularly for school-age children. The Department emphasized that the supervision requirement ensures child safety while allowing flexibility, as it does not mandate staff to escort each child but requires maintaining awareness of the child's location and actions, along with the ability to intervene when necessary. The Department plans to amend the rules as requested regarding the architectural plans to allow for more flexibility. Furthermore, the Department emphasizes that the requirements for documenting children's presence in activity areas, and the supplemental standards for school-age children are consistent with existing rules and minimum health and safety standards. Lastly, the Department plans to amend the rules regarding field

when children arrive at the facility. 4. Supplemental Standards (R9-5-728): Suggests removing redundant supplemental standards for school-aged children. 5. Field Trip Permissions (R9-5-739): Recommends allowing routine park use without date and times planned.	trips to be more flexible, in R9-5-739(H)
Christine M. Thompson, Vice President of the Madison Elementary School District Governing Board, submitted a comment on the proposed rulemaking expressing her appreciation for changes that ease staffing challenges, such as reduced tuberculosis testing requirements (R9-5-301) and shorter experience requirements for child educators (R9-5-401). However, she raised concerns about the annual training requirement (R9-5-403) for part-time staff and the 1:20 caregiver-to-child ratio (R9-5-726), noting the disparity with public school classroom ratios and the challenges these rules pose for aftercare programs in public schools. Thompson encouraged the Department to consider exemptions or modified rules for state-funded public school districts to better align with their unique operational constraints and governance structure.	The Department thanked Christine M. Thompson for her feedback and explained that the increased annual training requirement (R9-5-403) aligns with reduced experience qualifications for child educators, aiming to enhance child safety and program effectiveness. While acknowledging concerns about the 1:20 caregiver-to-child ratio (R9-5-726), the Department stated that the ratio aligns with existing requirements and that changes to ratios may be addressed in a future rulemaking with additional stakeholder input.
Tali Stewart, a franchise owner of The Learning Experience, expressed concerns about the proposed changes to R9-5-404 regarding removal of the “bonus baby.” This may reduce access to child care due to enrollment limits, increased tuition costs from revenue loss, reduced employment opportunities for educators, and potential closures of franchised centers impacted by lower classroom ratios. Stewart also requested clarification on whether existing facilities could be grandfathered in to avoid compliance burdens and how classroom conversions would be handled, noting that the associated costs could significantly impact franchise operations.	The Department appreciates Tali Stewart’s feedback on the proposed changes to R9-5-404 and acknowledges concerns about the potential impacts on child care facilities, including reduced classroom capacities, financial challenges, and revenue loss. While the Department initially proposed removing the "bonus baby" provision to align with national standards and enhance child safety, the Department plans to amend the rules to reinstate the "bonus baby." However, since many stakeholders, including DES, expressed support for removing the "bonus baby," the Department intends to discuss this, along with the other ratio and group size issues in the next rulemaking. We hope that having robust conversations about these focused topics, and inviting input from all of our stakeholders will lead to a more comprehensive solution to address these related issues.
Danielle Iverson, Director of Government Relations for The Learning Experience (TLE), submitted comments on the proposed changes to R9-5-404 regarding staff-to-child ratios. Representing over 1,300 children and 250 employees across 11 TLE centers in Arizona, Iverson expressed concern over removing the "bonus baby" allowance, which would reduce infant care capacity, disenroll families, and limit access to quality childcare. She highlighted TLE’s safety practices and the financial strain the change could impose, including higher tuition and operational challenges, urging the Department to retain the "bonus baby" provision to avoid unintended negative consequences.	The Department thanked Iverson for the comment and acknowledged the concerns. While the Department initially proposed removing the "bonus baby" provision to align with national standards and enhance child safety, the Department plans to amend the rules to reinstate the "bonus baby." However, since many stakeholders, including DES, expressed support for removing the "bonus baby," the Department intends to discuss this, along with the other ratio and group size issues in the next rulemaking. We hope that having robust conversations about these focused topics, and inviting input from all of our stakeholders will lead to a more comprehensive solution to address these related issues.
Ginger Sandweg, representing First Things First, highlighted several areas for improvement in the proposed rules, including: • R9-5-301(I)(2) Suggested that the current codified language regarding who needs to participate in fire drills be clarified to specify whether it pertains to those on-site or all listed individuals, regardless of their presence during the drill. • R9-5-403(A)(14) Recommended to add specific topics to be included in the sun safety training including signs of dehydration, heat exhaustion, and heat stroke. • R9-5-403(B)(1)(b)(xv) Suggested adding a cross-reference to R9-5-510(D) since physical restraint is in the positive discipline and guidance section. • R9-5-501(B)(5)(d) Suggested creating rules for	The Department acknowledged and thanked Sandweg for the comment and feedback on the proposed rule changes for child care facilities, as well as addressed the concerns raised: • Fire Drill Participation: Clarification that all staff members on-site during fire drills are required to participate, with further guidance to be provided post-rule approval. • Sun Safety Training: While recognizing the importance of including signs of dehydration and heat-related illnesses in training, the Department believes that adding such specifics might limit other essential sun safety topics. This may be covered in future guidance documents. • Physical Restraint Training: The suggestion to link training on physical restraint techniques to existing

weather permitting and air quality • R9-5-502(B)(2) and R-9-5-504(A)(1) Recommended to reduce the time limit for confined children from 30 minutes to 15 minutes twice daily, or to specify adult interaction during the longer duration. • R9-5-503 Suggested to clarify that a nonabsorbent paper liner is not acceptable. Additionally, Sandweg recommended adding a specific form to the resources available on the Department's website.	rules is acknowledged, but may not be appropriate for the rules since physical restraint is not defined in R9-5-510(D). The Department may clarify in guidance documents that the training for physical restraints in R9-5-403(B)(1)(b)(xv) is applicable to positive discipline and guidance in R9-5-510(D). • Weather and Air Quality: The Department acknowledged the need for rules and clarity on weather permitting and air quality for safe outdoor activities and plans to incorporate this into guidance documents. • Physical Activity Requirements: The current rule's minimum requirement of 30 consecutive minutes of physical activity is maintained, but facilities are encouraged to implement more stringent practices if desired. • Clarification on Paper Liners: The Department plans to clarify in the guidance documents that a nonabsorbent paper liner is not acceptable.
Amita Gairola, the owner of two locations of The Learning Experience, expressed concern about the proposed removal of the "bonus baby" allowance, stating that it would lead to disenrollment of current families and reduced access to quality child care for others. She emphasized that the current staff-to-child ratios allow for individualized attention essential for children's development and safety. Eliminating this allowance could increase operational costs and tuition fees, making it harder for providers to remain competitive. Gairola asked the Department to consider the unintended consequences of this rule change and retain the allowance to ensure high-quality care for as many children as possible. Gairola appreciates the Department's collaborative approach and requests that her feedback be considered in finalizing the rule.	The Department thanked Gairola for the comment and acknowledged the concerns. While the Department initially proposed removing the "bonus baby" provision to align with national standards and enhance child safety, the Department plans to amend the rules to reinstate the "bonus baby." However, since many stakeholders, including DES, expressed support for removing the "bonus baby," the Department intends to discuss this, along with the other ratio and group size issues in the next rulemaking. We hope that having robust conversations about these focused topics, and inviting input from all of our stakeholders will lead to a more comprehensive solution to address these related issues.

At the Oral Proceeding on January 7, 2025, 20 stakeholders attended, and five individuals provided formal oral comments on the rulemaking. Josh Stine, representing the Boys and Girls Club, summarized his written comment, expressing concerns about overly stringent requirements for school-age children. Tali Stewart, from The Learning Experience, noted that removing the “bonus baby” provision would result in an annual financial loss of $50,000 to $75,000 for her facility. Eric Bucher, representing the Children’s Equity Project at Arizona State University, recommended adding "suspension" to the list of child care services described in R9-5-302(19). Barbie Prinster, on behalf of AZECE, thanked the Department for its hard work and efforts throughout the rulemaking process. Lastly, Kristin Gray, representing the YMCA, suggested revising the requirement for age-appropriate toys in each activity area to reflect that not all rooms or areas are designated for play.

After filing the Notice of Supplemental Proposed Rulemaking, the Department received two formal comments. At the Oral Proceeding held on March 25, 2025, 12 stakeholders were in attendance. During the Oral Proceeding, Eric Bucher, representing the Children’s Equity Project at Arizona State University, thanked the Department for amending R9-5-302(19) and R9-5-714(19) to add policies and procedures addressing suspension, in addition to those for expulsion. Bucher also recommended the Department amend R9-5-404 in a subsequent rulemaking and remove bonus baby allowance, and ensure that group size does not exceed double the ratios. The Department thanked Bucher for the comments, suggestions, and support in the current rulemaking. Twila Ibarra, representing Early Childhood Development asked if the Department would continue to provide guidance in implementing the rules. The Department let Ibarra know that there would be guidance and frequently asked questions posted on the Program’s webpage.

In the table below is a summary of the formal written comments and a summary of the Department’s response to the comment.

Comment	**Department’s Response**

Ginger Sandweg, representing First Things First, recommended the Department further amend the rules to reduce the caregiver-to-child ratios and add group sizes. The current ratios are overwhelming for caregivers, making it difficult to provide quality, individualized care. Sandweg emphasize the importance of responsive caregiving for the social-emotional, physical, and language development of children and highlights that smaller ratios allow for more positive interactions. Concerns were noted about incidents in Arizona where children were not properly supervised, stressing the need for safer, more manageable group sizes to ensure children's well-being.	In response to Sandweg's comments, the Department acknowledged the importance of caregiver-to-child ratios for children's safety and well-being and expressed appreciation for the feedback on the current ratios. The Department explained that a separate rulemaking has been initiated regarding group sizes to allow for more robust and thorough discussion. The Department also thanked Sandweg for the comment and looks forward to continued collaboration in this process.
Josh Stine, representing the Arizona Alliance of Boys & Girls Clubs (BGC) commented on R9-5-718(B)(1) regarding attendance and rosters. The BGC believes that the requirement to document a child's presence in each activity area is overly burdensome. BGC suggests the Department adjust the rule to using front desk attendance records, age-based group tracking, staff head counts, and a hall pass system.	In response, the Department thanked the BGC for their comments on the proposed child care rules. The requirements for documenting children's presence in activity areas and the supplemental standards for school-age children align with existing regulations in A.A.C. R9-5-306(B), which applies to all licensed child care facilities. The Department considers this a necessary health and safety standard to ensure children's whereabouts are always accounted for.

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

Not applicable

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

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

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

The rules are not related to federal laws. However, some child care facilities receive funding from the Child Care and Development Block Grant (CCDBG). The CCDBG is a federal program in the United States that provides funding to states to help low-income families access affordable and high-quality child care. This block grant supports working parents and those attending job training or educational programs by subsidizing child care costs. Additionally, it aims to improve the overall quality of child care, ensure health and safety standards in child care settings, and enhance the development and well-being of children. CCDBG regulates entities that receive funding with requirements set forth according to 45 CFR Part 98. The Arizona Department of Economic Security is the lead agency to enforce CCDBG requirements. Some of the rules in 9 A.A.C. 5 that are the least burdensome and promote health and safety are consistent with the CCDBG requirements.

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

Not applicable

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

Not applicable

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

Not applicable

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES –

CHILD CARE FACILITIES

ARTICLE 1. GENERAL

ARTICLE 2. FACILITY LICENSURE

ARTICLE 3. FACILITY ADMINISTRATION

ARTICLE 4. FACILITY STAFF

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

ARTICLE 6. PHYSICAL PLANT OF A FACILITY

ARTICLE 7. SCHOOL-AGE OUT-OF-SCHOOL TIME PROGRAMS

ARTICLE 1. GENERAL

R9-5-101. Definitions

In addition to the definitions in A.R.S. § 36-881, the following definitions apply in this Chapter unless otherwise specified:

1. "Abuse" has the same meaning as in A.R.S. § 8-201.
2. "Accident" means an unexpected occurrence that:
   a. Causes injury to an enrolled child,
   b. Requires attention from a staff member, and
   c. May or may not be an emergency.
3. "Accommodation school" has the same meaning as in A.R.S. § 15-101.
4. "Accredited" means approved by the US Department of Education and recognized by the Council for Higher Education Accreditation~~:~~.
   ~~a. New England Commission of Institution of Higher Education,~~
   ~~b. Middle States Commission of Higher Education,~~
   ~~c. North Central the Higher Learning Commission,~~
   ~~d. Northwest Commission on Colleges and Universities,~~
   ~~e. Commission on Colleges, or~~
   ~~f. Western Association of Schools and Colleges.~~
5. "Activity" means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. "Activity area" means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. "Adaptive device" means equipment used to augment an individual's use of the individual's arms, legs, sight, hearing, or other physical part or function.
8. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
9. "Adult" means an individual who is at least 18 years of age.
10. "Age-appropriate" means ~~consistent with a~~ suitable with the developmental and social maturity of the child's age~~, and age-related stage of~~ based on physical growth, language, and emotional, social, behavioral, and ~~mental~~ cognitive development.
11. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. "Applicant" means a person or governmental agency requesting one of the following:
    a. A license, or
    b. Approval of a change affecting a license under R9-5-208.
13. "Application" means the documents that an applicant is required to electronically submit to the Department for licensure or approval of a request for a change affecting a license.
14. "Assistant ~~teacher-caregiver~~ child educator" means a staff member who aids a ~~teacher-caregiver~~ child educator in planning, developing, or conducting child care activities.
15. "Association" means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.
16. "Background check" means results identified in searches according to A.R.S.§ 46-811(A) and consistent with the Child Care and Development Block Grant Act of 2014 (Public Law 113-186):
    a. The state sex offender registry within this state and each state where a staff member resided during the preceding five years;

b. The state-based child abuse and neglect registries and databases within this state and each state where a staff member resided during the preceding five years;

c. The state criminal history checks within this state and each state where a staff member resided during the preceding five years;

d. The National FBI criminal history check, with FBI fingerprint check; and

~~c.~~e. The National Crime Information Center~~; and~~, including the

~~d.~~ ~~The~~ National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 A.S.C. 16901 et seq).

17. "Beverage" means a liquid for drinking, including water.

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

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

20. "Calendar week" means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.

21. "C.C.P." means Certified Childcare Professional, a credential awarded by the National Early Childhood Program Accreditation.

22. "C.D.A." means Child Development Associate, a credential awarded by the Council for Professional Recognition.

~~23. "Change in ownership" means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.~~

~~24.~~23. "Charter school" has the same meaning as in A.R.S. § 15-101.

~~25.~~24. "Child care experience" means an individual's documented work with children in:

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

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

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

d. One of the following professional fields:

i. Nursing,

ii. Social work,

iii. Psychology,

iv. Child development, or

v. A closely-related field.

~~26.~~25. "Child care services" means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.

26. "Child educator" means a staff member responsible for developing, planning, and conducting child care activities.

27. "Child educator aide" means a staff member who provides child care services under the supervision of a child educator.

28. "Child with a disability" means the same as

a. A child with a "developmental disability" as defined in A.R.S. § 36-551; or

b. A "child with a disability" as defined in A.R.S. § 15-761.

~~27.~~29. "Child with a special ~~needs~~ health care needs" means a~~:~~

~~a.~~ ~~A~~ child with a health care provider's diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning~~;~~.

~~b.~~ ~~A child with a "developmental disability" as defined in A.R.S. § 36-551; or~~

~~c.~~ ~~A "child with a disability" as defined in A.R.S. § 15-761.~~

~~28.~~30. "Clean" means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.

~~29.~~31. "Closely-related field" means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.

~~30.~~32. "Communicable disease" has the same meaning as in A.A.C. R9-6-101.

~~31.~~33. "Compensation" means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.

~~32. "Corporal punishment" means any physical action used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.~~

~~33.~~34. "CPR" means cardiopulmonary resuscitation.

~~34.~~35. "Credit hour" means an academic unit earned at an accredited college or university ~~and~~:

a. By attending a ~~one-hour~~ class session, which is equivalent to 15 clock hours, each calendar week during a semester or equivalent shorter course term, or

b. Completing practical work for a course as determined by the accredited college or university.

~~35.~~36. "Designated agent" means an individual who meets the requirements in A.R.S. § 36-889(D).

~~36.~~37. "Developmentally-appropriate" means consistent with a child's physical, emotional, social, cultural, linguistic, and cognitive development, based on the child's age and family background and the child's personality, learning style, and pattern and timing of growth.

~~37. "Discipline" means the on-going process of helping a child develop self-control and assume responsibility for the child's own actions.~~

38. "Documentation" means information in written, photographic, electronic, or other permanent form.

39. "Electronic signature" has the same meaning as in ~~A.R.S. § 41-351(4)~~ A.R.S. § 41-251.

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

41. "Endanger" means to expose an individual to a situation where physical injury or mental injury to the individual may occur.

42. "Enrolled" means placed by a parent and accepted by a licensee for child care services.

43. "Evening and nighttime care" means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.

44. "Facility" has the same meaning as "child care facility" in A.R.S. § 36-881.

45. "Facility director" means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.

46. "Facility premises" means property that is:

a. Designated on an application for a license by the applicant; and

b. Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.

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

48. "Field trip" means an activity planned by a staff member for an enrolled child at a:

a. ~~At a location~~ Location or area that is not licensed for child care services by the Department, or

b. ~~At a child~~ Child care facility in which the child is not enrolled.

49. "Final construction drawings" means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by the local government for the construction, alteration, or addition of a facility.
50. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
51. "Food preparation" means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
52. "Full-day care" means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.
53. "Governmental agency" has the same meaning as in A.R.S. § 44-7002.
54. "Guidance" means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the ~~self-control~~ self-regulation, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
55. "Hazard" means a source of endangerment.
56. "Health care provider" means a physician, physician assistant, or registered nurse practitioner.
57. "High school equivalency diploma" means a document issued by:
    a. ~~A document issued by the~~ The State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
    b. ~~A document issued by another~~ Another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
    c. ~~A document issued by another~~ Another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental agencies.
58. "Hours of operation" means the specific time during a day for which a licensee is licensed to provide child care services.
59. "Illness" means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.
60. "Immediate" or "immediately" means without restriction, delay, or hesitation.
61. "Inaccessible" means:
    a. Out of an enrolled child's reach, or
    b. Locked.
62. "Individual plan" means a written description of the daily activities required for an enrolled child with a special health care need or disability.
~~62.~~63. "Infant" means a child:
    a. ~~A child~~ 12 months of age or younger, or
    b. ~~A child~~ 18 months of age or younger who is not yet walking.
~~63.~~64. "Infant care" means child care services provided to an infant.
~~64.~~65. "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
~~65.~~66. "Inspection" means:
    a. Examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
    b. Review of facility documents, records, or reports by the Department; or
    c. Examination of a facility by a local governmental agency.

~~66.~~67. "Lesson plan" means a written description of the activities scheduled in each activity area for a day.

~~67.~~68. "License" means the written authorization issued by the Department to operate a facility in Arizona.

~~68. "Licensed applicator" who complies with A.A.C. R3-8-201(C).~~

69. "Licensed capacity" means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.

70. "Licensee" means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.

71. "Local" means under the jurisdiction of a city or county in Arizona.

72. "Mat" means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child's body.

73. "Medication" means a substance prescribed by a ~~physician, physician assistant, or registered nurse practitioner~~ health care provider or available without a prescription for the treatment or prevention of illness or infestation.

74. "Menu" means:

a. A written description of the food that a facility provides and serves as a meal or snack, or

b. The combination of food that a facility provides and serves as a meal or snack.

75. "Modification" means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a child care facility.

~~75.~~76. "Motor vehicle" has the same meaning as in A.R.S. § 28-101.

~~76.~~77. "N.A.C." means the National Administrator Credential, a credential issued by the National Institute of Child Care Management.

~~77.~~78. "Name" means, for an individual, the individual's first name and the individual's last name.

~~78.~~79. "Naptime" means any time during hours of operation, other than evening and nighttime hours, that is designated by a licensee for the rest or sleep of enrolled children.

~~79.~~80. "Neglect" has the same meaning as in A.R.S. § 8-201.

~~80.~~81. "One-year-old" means a child who is not an infant and is at least 12 months of age but not yet two years of age.

~~81.~~82. "Outbreak" has the same meaning as in A.A.C. R9-6-101.

~~82.~~83. "Out-of-school time" means a program, as described in Article 7 of this Chapter, that is licensed with the Department and operates when school is not in session, such as before school, after school, or during school breaks, and serves school-aged children enrolled in school.

~~82.~~84. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.

~~83.~~85 "Parent" means:

a. A natural or adoptive mother or father,

b. A legal guardian appointed by a court of competent jurisdiction, or

c. A "custodian" as defined in A.R.S. § 8-201.

~~84.~~86. "Part-day care" means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.

~~85. "Perishable food" means food that becomes unfit for human consumption if not stored to prevent spoilage.~~

87. "Pediatric abusive head trauma" means an injury to the skull or intracranial contents of an infant or a child due to inflicted blunt impact and/or violent shaking.

~~86.~~88. "Pesticide" has the same meaning as in ~~A.R.S. § 32-3601~~ A.R.S. § 3-3601.

~~87. "Pesticide label" means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.~~

~~88.~~89. "Physical injury" means temporary or permanent damage or impairment to a child's body.

~~89.~~90. "Physical plant" means a building that houses a facility, or the licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.

91. "Physical restraint" means a restriction that immobilizes or prevents freedom of movement of all or part of a person's body, or restricting normal access to the person's body.

~~90.~~92. "Physician" means an individual licensed as a doctor of:

a. Allopathic medicine under A.R.S. Title 32, Chapter 13;

b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;

c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;

d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or

e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.

~~91.~~93. "Physician assistant" means an individual who is licensed:

a. ~~An individual who is licensed under~~ Under A.R.S. Title 32, Chapter 25; or

b. ~~An individual who is licensed as~~ As a physician assistant under the law of another state.

94. "Positive Discipline" means the on-going process of teaching a child self-regulation and assuming responsibility for the child's own actions, as well as providing guidance that focuses on preventing behavior problems by supporting children in learning appropriate social skills and emotional responses.

~~92.~~95. "Private pool" has the same meaning as "private residential swimming pool" in A.A.C. R18-5-201.

~~93.~~96. "Private school" has the same meaning as in A.R.S. § 15-101.

~~94.~~97. "Program" means a variety of activities organized and conducted by a staff member.

~~95.~~98. "Public pool" has the same meaning as "public swimming pool" in A.A.C. R18-5-201.

~~96.~~99. "Public school" has the same meaning ~~as "school"~~ in A.R.S. § 15-101.

100. "Punishment" means a negative physical or emotional action taken by adults in the classroom for a child's behavior that is not deemed acceptable.

~~97. "Registered nurse practitioner" means:~~

~~a. An individual who is licensed and certified as a "registered nurse practitioner" under A.R.S. § 32-1601, or~~

~~b. An individual who is licensed or certified as a registered nurse practitioner under the law of another state.~~

~~98.~~101. "Regular basis" means at recurring, fixed, or uniform intervals.

~~99.~~102. "Responsible party" means an individual or a group of individuals who:

a. Is assigned by a public school, charter school, or governmental agency; and

b. Has general oversight of the child care facility.

~~100.~~103. "Sanitize" means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.

~~101.~~104. "School-age child" means a child who:

a. Meets one of the following:

i. Is five years old on or before January 1 of the current school year, or

ii. Is five years old on or before January 1 of the most recent school year; and

b. Meets one of the following:

i. Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;

ii. Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;

iii. Is home-schooled at a kindergarten or higher level during the current school year; or

iv. Was home-schooled at a kindergarten or higher level during the most recent school year.

~~102.~~105. "School-age child care" means child care services provided to a school-age child.

~~103.~~106. "School campus" means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.

~~104.~~107. "School governing board" has the same meaning as "governing board" in A.R.S. § 15-101.

~~105.~~108. "Screen time" means the use of electronic media to watch television or to watch a video~~, a DVD, or a movie~~ at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.

~~106.~~109. "Semi-public pool" has the same meaning as "semipublic swimming pool" in A.A.C. R18-5-201.

110. "Separation" means removing an enrolled child from a group setting when the enrolled child needs support to gain control of them self under the supervision of a familiar and supportive adult until the enrolled child has regained regulation.

111. "Serious physical injury" has the same meaning as in A.R.S. § 8-201.

~~107.~~112. "Service classification" means one of the following:

a. Full-day care;

b. Part-day care;

c. Evening and nighttime care;

d. Infant care;

e. One-year-old child care;

f. Two-year-old child care;

g. Three-year-old, four-year-old, and five-year-old child care;

h. School-age child care; or

i. Weekend care.

~~108.~~113. "Signatory" means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.

~~109.~~114. "Signed" means affixed with an individual's signature or with a symbol representing an individual's signature if the individual is unable to write the individual's name.

~~110. "Sippy cup" means a lidded drinking container that is designed to be leak-proof or leak-resistant and from which a child drinks through a spout or straw.~~

~~111.~~115. "Space utilization" means the designated use of an area within a facility for specific child care services or activities.

~~112.~~116. "Staff" or "staff member" means the same as "child care personnel" as defined in A.R.S. § 36-883.02.

~~113.~~117. "Student-aide" means an individual ~~less than 16~~ between 15 and 18 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.

~~114.~~118. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.

~~115.~~119. "Supervision" means:

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

b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in

the presence of an enrolled child and the ability to intervene in the individual's actions to prevent harm to enrolled children.

~~116.~~120. "Swimming pool" has the same meaning as in A.A.C. R18-5-201.

~~117. "Teacher-caregiver" means a staff member responsible for developing, planning, and conducting child care activities.~~

~~118. "Teacher-caregiver-aide" means a staff member who provides child care services under the supervision of a teacher-caregiver.~~

~~119.~~121. "Training" means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.

~~120.~~122. "Tummy time" means a limited period-of-time no more than 20 minutes used to allow a non-crawling infant to:

a. ~~To strengthen~~ Strengthen the infant's head, neck, and upper body muscles; and

b. ~~To increase~~ Increase the infant's sensory perception, visual and hearing acuity, and social and emotional interaction.

~~121.~~123. "Volunteer" means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.

~~122.~~124. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday, federal holiday, or a statewide furlough day.

125. "Written notice" means a message in written, typed, or printed characters sent or otherwise proved to have been received.

R9-5-102. ~~Individuals to Act~~ Designated Person for Applicant or Licensee ~~Regarding Document, Fingerprinting, and Department-provided Training~~ Requirements

When an applicant or licensee is required by this Chapter to provide information on or sign documents, and possess a fingerprint clearance card, ~~or complete Department-provided training,~~ the following shall satisfy the requirement on behalf of the applicant or licensee, if the applicant or licensee is:

1. ~~If the applicant or licensee is an~~ An individual, the individual;
2. ~~If the applicant or licensee is a~~ A business organization, a designated agent who meets the requirements in A.R.S. § 36-889(D);
3. ~~If the applicant or licensee is a~~ A public school, an individual designated in writing as a signatory for the public school by the school district governing board or school district superintendent;
4. ~~If the applicant or licensee is a~~ A charter school, the person approved to operate the charter school by the school district governing board, the Arizona State Board of Education, or the Arizona State Board for Charter Schools; and
5. ~~If the applicant or licensee is a~~ A governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing as a signatory by that individual.

ARTICLE 2. FACILITY LICENSURE

R9-5-201. Application for a License

A. An applicant for a license shall:

1. Be at least 21 years of age;
2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
5. Submit to the Department an application ~~packet~~ containing:

a. ~~An application on a form provided by the Department that contains~~ The following information in a Department-provided format:

i. The applicant's name;

ii. The applicant's date of birth;

iii. The facility's name, street address, city, state, zip code, mailing address, and telephone number;

iv. The requested service classifications;

v. Whether the applicant agrees to allow the Department to submit supplemental requests for information;

vi. ~~A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;~~ An attestation that the:

(1) Applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter; and

(2) Information provided on the application is accurate and complete; and

~~vii. A statement that the information provided in the application packet is accurate and complete; and~~

~~viii.~~ vii. The applicant's signature and date ~~the applicant signed the application~~ of signature;

b. ~~A copy of the applicant's:~~ Documentation for the applicant that complies with A.R.S. § 41-1080;

~~i. U.S. passport,~~

~~ii. Birth certificate,~~

~~iii. Naturalization documents, or~~

~~iv. Documentation of legal resident alien status;~~

c. A copy of the applicant's valid fingerprint clearance card, both front and back, issued according to A.R.S. Title 41, Chapter 12, Article 3.1;

d. A copy of the applicant's valid background check document according to A.R.S. § 46-811(A);

e. A copy of the form required in A.R.S. § 36-883.02(C);

~~f. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department's role in licensing and regulating child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;~~

~~g.~~f. Except as provided in subsection (A)(5)(j), a site plan of the facility drawn to scale by an architect, draftsman, or contractor showing:

~~i. The drawing scale;~~

~~ii.~~i. The boundary ~~dimensions~~ square footage of the property upon which the facility's physical plant is located;

~~iii.~~ii. If more than one building is used for the facility, the location and perimeter ~~dimensions~~ square footage of each building;

~~iv.~~iii. The location of each driveway on the property;

~~v.~~iv. The location and boundary ~~dimensions~~ square footage of each parking lot on the property;

~~vi.~~v. The location and perimeter ~~dimensions~~ square footage of each outdoor activity area;

~~vii.~~vi. The location, type, and height of each fence and gate; and

~~viii.~~vii. If applicable, the location of any swimming pool on the property;

~~h.~~g. Except as provided in subsection (A)(5)(j), a floor plan of each building to be used for child care services drawn to scale by an architect, draftsman, or contractor showing:

~~i. The drawing scale;~~

~~ii.~~i. The length and width ~~dimensions~~ square footage for each indoor activity area;

~~iii.~~ii. The requested licensed capacity and applicable service classification for each indoor activity area;

~~iv.~~iii. The location of each diaper changing area;

~~v.~~iv. The location of each hand washing, utility, and three-compartment sink, toilet, urinal, and drinking fountain; and

~~vi.~~v. The location and type of fire alarm system;

~~i.~~h. Except as provided in subsection (A)(5)(j):

i. A copy of a certificate of occupancy issued for the facility by the local jurisdiction;

ii. Documentation from the local jurisdiction that the facility was approved for occupancy; or

iii. If the documents in subsections (A)(5)(i)(i) and (ii) are not available, a statement from the local jurisdiction stating that the certificate of occupancy is not available~~, the seal of an architect registered as prescribed in A.R.S. § 32-121 on the site plan required in subsection (A)(5)(g) and the floor plan required in subsection (A)(5)(h) verifying compliance with current local building and fire codes, local zoning requirements, and this Chapter~~;

~~j.~~i. For an applicant providing child care services ~~to three-year-old, four-year-old, five-year-old, or school-age children~~ in a facility located in a public school, a set of final construction drawings or a school map showing the:

i. ~~The location~~ Location of each school building;

ii. ~~The location~~ Location and ~~dimensions~~ square footage of each outdoor activity area to be used by enrolled children;

iii. ~~The length~~ Length and width ~~dimensions~~ square footage for each indoor activity area;

iv. ~~The requested~~ Requested licensed capacity and applicable service classification for each indoor activity area; and

v. ~~The location~~ Location of each hand-washing sink, toilet, urinal, ~~and~~ drinking fountain, and, if applicable, diaper changing area to be used by enrolled children;

~~k.~~j. If the facility is located within one-fourth of a mile of agricultural land:

i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the facility, and

ii. ~~A copy of an agreement complying~~ An attestation signed and dated by the applicant agreeing with compliance of A.R.S. § 36-882 for each parcel of agricultural land;

~~l.~~k. The applicable fee in R9-5-206;

~~m.~~l. If the applicant is a business organization, a form provided by the Department that contains:

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

ii. The type of business organization;

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

iv. ~~A copy~~ Documentation of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable;

v. Documentation of good standing issued by the Arizona Corporation Commission ~~and dated no earlier than three months before the date of the application~~; and

vi. A statement signed by the applicant stating that each controlling person has not:

(1) ~~That each controlling person has not been~~ Been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) ~~That each controlling person has not had~~ Had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children;

~~n.~~m. If the applicant is a public school, a form provided by the Department that contains:

i. The name of the school district;

ii. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

iii. A statement signed by the applicant stating that each individual in subsection (A)(5)(n)(ii) has not:

(1) ~~That each individual in subsection (A)(5)(n)(ii) has not been~~ Been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) ~~That each individual in subsection (A)(5)(n)(ii) has not had~~ Had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iv. A letter from the school district governing board or school district superintendent designating a signatory, if applicable;

~~o.~~n. If the applicant is a charter school, a form provided by the Department that contains:

i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

ii. A statement signed by the applicant stating that each individual in subsection (A)(5)(o)(i) has not:

(1) ~~That each individual in subsection (A)(5)(o)(i) has not been~~ Been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) ~~That each individual in subsection (A)(5)(o)(i) has not had~~ Had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iii. A letter from the school district governing board in which the charter school is located, the Arizona State Board of Education, or the Arizona State Board for Charter Schools, approving the applicant to operate the charter school; and

~~p.~~o. If the applicant is a governmental agency, a form provided by the Department that contains:

i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

ii. A statement signed by the applicant stating that each individual in subsection (A)(5)(p)(i) has not:

(1) ~~That each individual in subsection (A)(5)(p)(i) has not been~~ Been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) ~~That each individual in subsection (A)(5)(p)(i) has not had~~ Had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iii. A letter from the individual in the senior leadership position with the agency designating a signatory.

B. The Department requires a separate license and a separate application for each facility owned by:

1. ~~Each facility owned by the~~ The same person at a different location, and

2. ~~Each facility owned by a~~ A different person at the same location.

C. The Department does not require a separate application and license for a structure that is:

1. Located so that the structure and the facility:
   a. Share the same street address, or
   b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another,
2. Under the same ownership as the facility, ~~and~~ or
3. Intended to be used as a part of the facility.

D. A licensee shall provide written notice to the Department that the licensed facility is no longer operating and requests to void the license.

R9-5-202. Time-frames

~~**A.** The overall time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.~~

~~B.~~A. The administrative completeness review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date that the Department receives an application ~~packet~~.

1. An application ~~packet~~ for a license is not complete until the date, provided to the Department with the application ~~packet~~ or by written notice, that the child care facility is ready for an onsite licensing inspection.
2. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
   a. A notice of deficiencies shall list each deficiency and the items needed to complete the application ~~packet~~.
   b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is issued until the date that the Department receives all of the missing items from the applicant.
   c. If an applicant for a license or an approval of a change affecting a license fails to submit to the Department all of the items listed in the notice of deficiencies within 180 calendar days after the date that the Department sent the notice of deficiencies, the Department shall consider the application or request for approval withdrawn.
3. If the Department issues a license or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

~~C.~~B. The substantive review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date of the notice of administrative completeness.

1. As part of the substantive review for a license application, the Department shall conduct an inspection that may require more than one visit to the facility.
2. As part of the substantive review for a request for approval of a change affecting a license that requires a change in the use of physical space at the facility, the Department shall conduct an evaluation of the request to determine compliance with applicable rules and statutes that may include an onsite inspection.
3. The Department shall send a license, a written notice of approval, or denial of a license or other request for approval to an applicant within the substantive review time-frame.
4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
   a. If the Department determines that an applicant or a facility is not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, the Department shall send a comprehensive written request for

additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.

b. An applicant shall submit to the Department all of the information requested in the comprehensive written request for additional information and documentation of the corrections required in the statement of deficiencies, if applicable within 120 calendar days after the date of the comprehensive written request for additional information.

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

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

5. The Department shall issue a license or other approval if the Department determines that the applicant and facility are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, and the applicant submits documentation of corrections that is acceptable to the Department for any deficiencies.

6. If the Department determines that a license or other approval is to be denied, the Department shall send to the applicant a written notice of denial complying with A.R.S. § 36-888 and stating the reasons for denial and all other information required by A.R.S. §§ 36-888 and 41-1076.

R9-5-203. Fingerprinting and Background Check

A. A licensee shall ensure that a staff member completes, signs, dates, and submits to the licensee, before the staff member's starting date of employment or volunteer service:

1. The form required in A.R.S. § 36-883.02(C); and
2. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I).

B. A licensee shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03 and a valid background check document issued under ~~in~~ A.R.S. § 46-811.

C. Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member, before starting date of employment or volunteer service, submits to the licensee a copy of the staff member's valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1.

D. A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed every ~~six~~ five years.

E. If a staff member possesses a fingerprint clearance card that was issued before the staff member became a staff member at the facility, a licensee shall:

1. Contact the Department of Public Safety before the individual becomes a staff member to determine whether the fingerprint clearance card is valid; and
2. Document this determination, including the name of the staff member, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.

F. A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid background check document:

1. ~~Background check document issued~~ Issued under A.R.S. § 46-811(A) ~~within 10 working days after~~ before the starting date of employment or volunteer service; and
2. ~~Background check document each~~ Each time a background check is issued or renewed every five years.

G. ~~If~~ As required by A.R.S. § 8-804, before an individual's starting date of employment or volunteer service, a licensee shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.

H. A licensee shall not allow an individual to be a staff member if the individual:

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

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

~~**J.** Beginning November 1, 2021, staff members shall comply with A.R.S. § 46-811(A) and subsection (F) by November 1, 2022.~~

R9-5-204. Child Care Service Classifications

A. The Department licenses child care facilities using the following service classifications:

1. Full-day care;
2. Part-day care;
3. Evening and nighttime care;
4. Infant care;
5. One-year-old child care;
6. Two-year-old child care;
7. Three-year-old, four-year-old, and five-year-old child care;
8. School-age ~~child care~~ Out-of-school time programs; and
9. Weekend care.

B. The Department shall designate on a facility's license each service classification that the facility is licensed to provide.

C. A licensee shall submit an application to the Department to add or change a service classification. A licensee shall not provide child care services in a service classification for which the licensee is not licensed.

R9-5-205. Submission of Licensure Fees

A licensee shall submit the following to the Department, on an annual basis, ~~and~~ no more than 60 calendar days before the anniversary date of the facility's license:

1. ~~A form provided by the Department~~ An application, in a Department-provided format that contains:
   a. The licensee's name,
   b. The facility's name and license number, and
   c. Whether the licensee intends to submit the applicable fee:

i. With the form, or

ii. According to the payment plan in subsection (2)(b), and

2. Either:

a. The applicable fee, as specified in R9-5-206, or

b. One-half of the applicable fee in R9-5-206 with the ~~form~~ application and the remainder of the applicable fee due no later than 120 calendar days after the anniversary date of the facility's license.

R9-5-206. Licensure Fees

A. Except as provided in subsection (B), the annual fees, as specified in A.R.S § 36-882, for an applicant submitting an application or a licensee submitting licensure fees are the following for a child care facility with a licensed capacity of:

1. ~~For a child care facility with a licensed capacity of five~~ Five to 10 children, $330;

2. ~~For a child care facility with a licensed capacity of~~ 11 to 59 children, $1330; and

3. ~~For a child care facility with a licensed capacity of~~ 60 or more children, $2575.

B. The Department may discount the fee in subsection (A), based on available funding or if the applicant or licensee participates in a Department-approved program.

C. The fee for a licensee requesting an increase in a facility's licensed capacity is the difference between the applicable fee in this Section for the new licensed capacity and the applicable fee in this Section for the current licensed capacity, prorated from the date the licensee submitted the request for the increase for the number of months remaining before the facility's license anniversary date specified in R9-5-205.

R9-5-208. Changes Affecting a License

A. At least 30 calendar days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change ~~and the Department shall issue an amended license that incorporates the name change but retains the anniversary date of the current license~~.

B. At least 30 calendar days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the intended change to the Department that includes:

1. The licensee's name;

2. The facility's name, street address, city, state, zip code, mailing address, and telephone number;

3. The name, telephone number, and fax number of a point of contact for the request;

4. The facility's license number;

5. The type of change intended:

a. Service classification,

b. Space utilization, or

c. Licensed capacity;

6. A narrative description of the intended change; and

7. The following additional information, as applicable, if the intended change:

a. ~~If the intended change affects~~ Affects an activity area, the following information about each affected activity area, as applicable:

i. Identification of the activity area,

ii. Current and intended square footage,

iii. Current and intended operating hours,

iv. Current and intended service classification,

v. Current and intended licensed capacity, and

vi. Whether the activity area has or will have a diaper changing area;

b. ~~If the intended change is~~ Is to increase licensed capacity, the square footage of the outdoor activity area; and

c. ~~If the intended change includes~~ Includes an alteration or addition to the physical plant of a licensed facility, the following, as applicable, if the facility is:

i. ~~If the facility is not~~ Not located in a public school or if providing child care services to infants, one-year-old children, or two-year-old children in a facility located in a public school, the information required in R9-5-201(A)(5)(g) and (h) showing the intended change; or

ii. ~~If the facility is located~~ Located in a public school and provides child care only for three-year-old, four-year-old, or five-year-old, or school-age children, a set of final construction drawings or a school map, including the information required in R9-5-201(5)(j) showing the intended change.

C. If the intended change in subsection (B) includes an increase in the licensed capacity, a licensee shall submit the fee for an increase in licensed capacity in R9-5-206(C) with the written request for approval.

D. If requesting a diaper changing area outside an infant room or indoor activity area to allow privacy for diapering an enrolled child with a special ~~needs~~ health care need or a disability, submit a written request for an approval; and

1. For a license application, submit physical plant documents required by R9-5-201(A)(5)(h) that designate the location of the proposed diaper changing area;
2. For a licensed facility, submit a drawing of the proposed diaper changing area to the Department before installing the diaper changing area. Within 30 calendar days after the date of the receipt of the request, the Department shall send written notice to the licensee of approval or disapproval. If the proposed diaper changing area:
   a. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and provides privacy for the enrolled child with a special ~~needs~~ health care need or a disability, the Department shall approve the proposed diaper changing area; or
   b. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter or provide privacy for the enrolled child with a special ~~needs~~ health care need or a disability, the Department shall provide the licensee with the requirements necessary for the Department to approve the requested change; and
3. Not use a diaper changing area located outside of an activity area until the Department approves the use of the diaper changing area;

E. The Department ~~shall~~ will review a request submitted under subsection (B) according to R9-5-202. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and any applicable fee is submitted, the Department ~~shall~~ will send the licensee written approval of the requested change or an amended license that incorporates the change but retains the anniversary date of the current license.

F. A licensee shall not implement any change described under subsection (B) until the Department issues an approval or amended license.

G. At least 30 days before the date of a change in ownership of a facility, a licensee shall send the Department written notice of the change. For the purpose of this section, "change in ownership" means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility. A new owner shall obtain a new license as prescribed in R9-5-201 before the new owner begins operating the facility.

H. A licensee changing a facility's location shall apply for a new license as prescribed in R9-5-201.

I. Within 30 calendar days after a change in a controlling person, a licensee shall send the Department written notice of the change that includes:

1. The name of the licensee;
2. A description of the change made;
3. The name, title, street address, city, state, and zip code of each controlling person;
4. A statement that each controlling person has not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;

5. A statement that each controlling person has not had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to the endangerment of the health and safety of children;

6. A statement that the information provided in the written notice is accurate and complete; and

7. The signature of the licensee.

J. If the change in subsection (I) is a change in a controlling person who is a designated agent, a licensee shall include a copy of ~~one of the following~~ documentation for the designated agent~~:~~ that complies with A.R.S. § 41-1080.

~~1. A U.S. passport,~~

~~2. A birth certificate,~~

~~3. Naturalization documents, or~~

~~4. Documentation of legal resident alien status.~~

K. Within 30 calendar days after changing a responsible party, a licensee shall send the Department written notice of the change that includes:

1. The name of the licensee;

2. A description of the change made;

3. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals; and

4. A statement signed by the licensee stating that each individual in subsection (K)(3) has not:

   a. ~~That each individual in subsection (K)(3) has not been~~ Been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

   b. ~~That each individual in subsection (K)(3) has not had~~ Had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children.

R9-5-209. Inspections; Investigations

A licensee shall:

~~**A.**~~1. ~~A licensee shall allow~~ Allow the Department immediate access to all areas of the facility affecting the health, safety, or welfare of an enrolled child or to which an enrolled child has access during hours of operation, according to A.R.S. § 36-885~~.~~;

2. Notify the Department within 24 hours, prior to the next business day, of business closure; and

~~**B.**~~3. ~~A licensee shall permit~~ Permit the Department to interview each staff member or enrolled child as part of an investigation.

ARTICLE 3. FACILITY ADMINISTRATION

R9-5-301. General Licensee Responsibilities

A. A licensee shall:

1. Designate a facility director who acts on behalf of the licensee and is responsible for the daily onsite operation of a facility;

2. Submit the name of the designated facility director in ~~writing~~ a written notice to the Department before a license is issued;

3. Except as provided in subsection (A)(4), within 10 calendar days before changing a facility director, submit written notice of the change including the new designated facility director's name and starting date;

4. If the licensee is not aware of a change in the facility director 10 calendar days before the effective date of the change, submit written notice of the change to the Department including the new designated facility director's name and starting date within 72 hours after becoming aware of the change.

B. A licensee shall ensure that a facility director:

1. Designates, in writing, an individual who meets the requirements of R9-5-401(2) to act on behalf of the facility director when the facility director is not present in the facility;
2. Supervises or assigns a ~~teacher-caregiver~~ child educator to supervise each staff member who does not meet the qualifications of R9-5-401(3);
3. Prepares a dated attendance record for each day and ensures that each staff member documents on the attendance record the time of each arrival and departure of the staff member; and
4. Maintains on the facility premises, the dated attendance record required in subsection (B)(3) for 12 months after the date on the attendance record.

C. A licensee shall develop and implement written facility policies and procedures required for the daily onsite operation of the facility as prescribed in A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter.

D. A licensee shall ensure that the following individuals are allowed immediate access to facility premises during hours of operation:

1. A parent of an enrolled child or an individual designated in writing by the parent of an enrolled child; or
2. A representative of:
   a. The Department,
   b. The local health department,
   c. Arizona Department of Child Safety, or
   d. The local fire department or State Fire Marshal.

E. A licensee shall~~, with the exception of individuals listed in subsection (D)(2),~~ ensure that a staff member supervises any individual ~~that~~ who is not a staff member who is on facility premises where enrolled children are present.

F. A licensee shall ensure that a staff member submits, on or before the starting date of employment or volunteer services, ~~one of the following as evidence of freedom from infectious active tuberculosis~~ a completed self-screening form in a Department-provided format for tuberculosis screening purposes and follow recommendations for further tuberculosis testing, as applicable.~~:~~

~~1. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of employment or volunteer service, that includes the date and the type of tuberculosis screening test; or~~

~~2. If the staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the staff member is free from infectious active tuberculosis that is signed and dated by a health care provider within six months before the starting date of employment or volunteer service.~~

G. A licensee shall ensure that a staff member who has current ~~training~~ certification in adult and pediatric first aid and CPR, as required by R9-5-403(E), is present:

1. At all times during hours of operation on facility premises,
2. On field trips, and
3. While transporting enrolled children in the facility's motor vehicle or a vehicle designated by the licensee to transport enrolled children.

H. A licensee shall prohibit the use or possession of the following items when an enrolled child is on facility premises, during hours of operation, or in any motor vehicle used for transporting an enrolled child:

1. Any beverage containing alcohol;
2. A controlled substance as listed in A.R.S. Title 36, Chapter 27, Article 2, except where used as a prescription medication in the manner prescribed;
3. A dangerous drug as defined in A.R.S. § 13-3401, except where used as a prescription medication in the manner prescribed;
4. A prescription medication as defined in A.R.S. § 32-1901, except where used in the manner prescribed; or

5. A firearm as defined in A.R.S. § 13-105.

I. At least once a month, and at different times of the day, a licensee shall ensure that: ~~an unannounced fire and emergency evacuation drill is conducted and each staff member and enrolled child at the facility participates in the fire and emergency evacuation drill.~~

1. An unannounced practice drill that includes evacuation, relocation, shelter-in place, and lock downs are conducted;
2. Each staff member, volunteer, and enrolled child at the facility participates in the practice drill;
~~1.~~3. If applicable, accommodations are made for an enrolled child with a special need or disability ~~child care services for a child with special needs are provided at a facility, the licensee shall provide for the enrolled child's participation in each fire and emergency evacuation drill~~ according to the enrolled child's individualized plan as specified in R9-5-507(A)(1)~~.~~;
4. If applicable, accommodations are made for an enrolled child or infant who is not yet walking; and
~~2.~~5. ~~A licensee shall document~~ Document each ~~fire and emergency evacuation~~ practice drill and maintain the documentation on facility premises for 12 months after the date of the ~~fire and emergency evacuation~~ practice drill.

~~**J.** Every September, a licensee shall provide to parents of enrolled children information related to recommendations for influenza vaccinations for children.~~

~~**K.**~~**J.** A licensee shall not allow a staff member who lacks proof of immunity against a disease listed in ~~A.A.C. R9-6-702(A)~~ A.A.C. R9-6-702 to be present in the facility between the start and end of an outbreak of the disease at the facility.

~~**L.**~~**K.** A licensee shall ensure that the Department is notified orally or in writing within 24 hours after an enrolled child's death at the child care facility during hours of operation.

R9-5-302. Statement of Child Care Services

~~**A.**~~ A licensee shall prepare a written statement of child care services provided by the licensee that includes the following:

1. A description of the facility's child care services classifications in R9-5-204;
2. Hours of operation;
3. The facility's street address, city, state, zip code, mailing address, and telephone number;
4. Child enrollment and disenrollment procedures;
5. Charges, fees, and payment requirements for child care services;
6. Child admission and release requirements;
7. ~~Age-appropriate discipline guidelines and methods~~ Guidelines for positive discipline reflective of age-appropriate methods for children that include clear, appropriate, consistent expectations;
8. Transportation procedures;
9. Field trip requirements and procedures;
10. Responsibilities and participation of parents in facility activities;
11. A general description of activities and programs;
12. A description of the liability insurance required by R9-5-308 that is carried by the licensee and a statement that documentation of the liability insurance coverage is available for review on the facility premises;
13. Medication administration procedures;
14. Accident and emergency procedures;
15. A notice stating inspection reports are available onsite;
16. A provision stating that the facility is regulated by the Arizona Department of Health Services including the Department's local street address, city, state, zip code, and local telephone number;
17. The procedures for notifying a parent at least 48 hours before a pesticide is applied on a facility's premises; ~~and~~
18. A statement that a parent has access to the areas on facility premises where the parent's enrolled child is receiving child care services~~.~~; and

19. Policies and procedures for suspension and expulsion of children to include clear, appropriate, consistent expectations, including suspension and expulsion prevention strategies.

~~**B.** A licensee shall provide a copy of the written statement of child care services:~~

~~1. To the Department:~~

~~a. Before the facility receives a license, and~~

~~b. Every 12 months after the date of the license as required by A.R.S. § 36-883.01; and~~

~~2. To a parent when the parent requests a copy of the written statement of child care services.~~

R9-5-303. Posting of Notices

A. A licensee shall post in a place that can be conspicuously viewed by individuals entering or leaving the facility or activity area the:

1. Facility's license;
2. Name of the facility director;
3. Name of the individual designated to act on behalf of the facility director when the facility director is not present in the facility, as prescribed by R9-5-301(B)(1);
4. Schedule of child care services fees and policy for refunding fees as prescribed by A.R.S. § 36-882(P);
5. Breakfast, lunch, dinner, and snack menus for each calendar week at the beginning of the calendar week;
6. Notice of the presence of any communicable disease or infestation listed in 9 A.A.C. 6, Article 2, ~~Table 2~~ Table 2.2, from the date of discovery through the incubation period of the communicable disease or infestation;
7. Notice of the Department's intent to deny, revoke, or suspend as prescribed by A.R.S. § 36-888 at the expiration of time in the notice for the licensee to respond;
8. Notice of an intermediate sanction imposed as prescribed by A.R.S. § 36-891.01 within 10 calendar days after the licensee received notice of the intermediate sanction;
9. Notice of a legal injunction imposed as prescribed by A.R.S. § 36-886.01 when the licensee receives the legal injunction; and
10. Notice of the availability of facility inspection reports for public viewing at the facility premises.

B. A licensee shall ensure that the licensed capacity of each indoor activity area is posted in that activity area.

C. Except as prescribed in A.R.S. § 36-898(C), a licensee shall post a notification of pesticide application in each activity area and in each entrance of a facility, at least 48 hours before a pesticide is applied on the facility's premises, containing:

1. The date and time of the pesticide application, and
2. A statement that written pesticide information is available from the licensee upon request.

R9-5-304. Enrollment of Children

A. A licensee shall require that a child be enrolled by the child's parent or an individual authorized in writing by the child's parent.

B. Except as required in A.R.S. § 36-3009, before an enrolled child receives child care services, a licensee shall require the enrolled child's parent to complete ~~a Department-provided~~ an Emergency, Information, and Immunization Record ~~card~~, that is no more than a two-page written notice, ~~that~~ and is signed by the enrolled child's parent containing:

1. The child's name, home address, ~~city, state, zip code, home telephone number,~~ sex, and date of birth;
2. The date of the child's enrollment;
3. The name, home address, ~~city, state, zip code,~~ email address, and ~~contact~~ telephone number of each parent of the child;
4. The name and ~~contact~~ telephone number of at least two individuals authorized by the child's parent to collect the child from the facility in case of emergency, or if the child's parent cannot be contacted;
5. The name and ~~contact~~ telephone number of the child's health care provider;
6. The written authorization for emergency medical care of the enrolled child;
7. The name of the individual to be contacted in case of injury or sudden illness of the child;

8. The written instructions of a child's parent or health care provider for the nutritional and dietary needs of the child including, if applicable, the request in ~~R9-5-509(C)(9)~~ R9-5-509(C)(14); and

9. A written record completed by the child's parent or health care provider noting the child's susceptibility to illness, physical conditions of which a staff member should be aware, and any individual requirements for health maintenance.

C. A licensee shall maintain a current Emergency, Information, and Immunization Record ~~card~~ for each enrolled child on facility premises in a place that provides a staff member ready access to the ~~card~~ record in the event of an emergency at, or evacuation of, the facility.

D. When an enrolled child is disenrolled from a facility, the licensee shall:

1. Enter the date of disenrollment on the child's Emergency, Information, and Immunization Record ~~card~~; and

2. Maintain the records in subsection (D)(1) for 12 months after the date of disenrollment on facility premises in a place separate from the current Emergency, Information, and Immunization Record ~~cards~~. If a licensee is a school governing board, a charter school, or a person operating multiple child care facilities, the licensee may maintain disenrollment records in a single central administrative office located in the same city, town, or school attendance area as the facility.

R9-5-305. Child Immunization Requirements

A. A licensee shall not permit an enrolled child to attend a facility until the facility receives:

1. An immunization record for the enrolled child with the information required in 9 A.A.C. 6, Article 7, documenting that the enrolled child has received all current, age-appropriate immunizations required under 9 A.A.C. 6, Article 7:
   a. Provided by a health care provider, or
   b. Generated from the Arizona State Immunization Information System, which is the Department's child immunization reporting system established in A.R.S. § 36-135; or

2. An exemption affidavit for the enrolled child provided by the enrolled child's parent that contains a statement, signed by the enrolled child's:
   a. ~~A statement, signed by the enrolled child's health~~ Health care provider, that the immunizations required by 9 A.A.C. 6, Article 7 would endanger the enrolled child's health or medical condition; or
   b. ~~A statement, signed by the enrolled child's parent~~ Parent, that the enrolled child is being raised in a religion whose teachings are in opposition to immunization.

B. If an enrolled child has not had immunizations and is either homeless, as in "homeless children and youths" according to 42 USC 11434a, who is referred by DCS or Tribal Child Protective Services, initial doses should be administered within 30-calendar days, unless the enrolled child has a religious or medical exemption, as specified in subsections (A)(1) and (2). A child who is experiencing homelessness or who is referred by DCS or Tribal Child Protective Services is permitted to enroll in the program while required documentation is obtained.

~~B.~~C. A licensee shall attach an enrolled child's written immunization record or exemption affidavit, required in subsection (A), to the enrolled child's Emergency, Information, and Immunization Record ~~card~~, required in R9-5-304(B).

~~C.~~D. A licensee shall ensure that a staff member updates an enrolled child's written immunization record required in subsection (A)(1)(a) each time the enrolled child's parent provides the licensee with a written statement from the enrolled child's health care provider that the enrolled child has received an age-appropriate immunization required by 9 A.A.C. 6, Article 7.

~~D.~~E. If an enrolled child's immunization record indicates that the enrolled child has not received an age-appropriate immunization required by 9 A.A.C. 6, Article 7, a licensee shall ensure that a staff member:

1. Notifies the enrolled child's parent in writing that the enrolled child may attend the facility for not more than 15 calendar days after the date of the notification unless the enrolled child's parent complies with the immunization requirements in 9 A.A.C. 6, Article 7; and

2. Documents on the enrolled child's Emergency, Information, and Immunization Record ~~card~~ the date on which the enrolled child's parent is notified of an immunization required by the Department.

~~E.~~**F.** A licensee shall not allow an enrolled child who lacks proof of immunity against a disease listed in ~~A.A.C. R9-6-702(A)~~ A.A.C. R9-6-702 to attend the child care facility between the start and end of an outbreak of the disease at the facility.

~~F.~~**G.** If a parent of an enrolled child, excluded from a child care facility because of the lack of documented immunity to a disease during an outbreak of the disease at the child care facility, submits any of the documents in A.A.C. R9-6-704 as proof of the enrolled child's immunity to the disease, a licensee shall allow the enrolled child to attend the child care facility during the outbreak of the disease.

R9-5-306. Admission and Release of Children; Attendance Records

A. A licensee shall:

1. ~~maintain~~ Maintain a dated attendance form containing an enrolled child's name with the time of each admission and release ~~of the enrolled child~~, and the parent or staff member's signature or other unique identifier.

~~1. Except as provided in subsection (A)(2), a licensee shall ensure that the attendance form is signed with at least a first initial of an individual's first name and the individual's last name by each enrolled child's parent or individual designated by the enrolled child's parent, each time the enrolled child is admitted or released.~~

~~2. An electronic fingerprint verification or an electronic signature may be used in place of a signature of the enrolled child's parent or designated individual to admit or release the enrolled child.~~

~~3.~~2. If an electronic signature is used to admit or release the enrolled child, ~~the licensee shall~~ adopt policies and procedures to ensure that the individual whose signature the electronic or digital method of identification represents is accountable for the use of the electronic or digital method;

~~4.~~3. ~~A licensee shall develop~~ Develop, document, and implement policies and procedures to ensure that the identity of an individual is known to the staff member or is verified with picture identification before releasing an enrolled child to the individual.

~~5.~~4. ~~A licensee shall not~~ Not release the enrolled child to an individual other than the enrolled child's parent or other individual designated in writing by the enrolled child's parent except when the enrolled child's parent is unable to collect the enrolled child and authorizes the licensee by telephone to release the enrolled child to an individual not so designated.

~~a. The licensee shall verify the telephone authorization using a means of verification that has been agreed upon between the licensee and the enrolled child's parent at the time of enrollment.~~

~~b. The licensee shall document the means of verification in subsection (A)(5)(a) on the enrolled child's Emergency, Information, and Immunization Record card.~~

~~6.~~5. ~~A licensee shall not~~ Not permit the self-admission or self-release of an enrolled child unless the enrolled child is of ~~school age~~ school-age and the licensee has obtained and verified written permission from the enrolled child's parent.

~~7.~~6. ~~A licensee shall maintain~~ Maintain the attendance form on facility premises for 12 months after the date of attendance.

B. A licensee shall:

1. Develop, document, and implement policies and procedures to ensure that a staff member maintains daily documentation of the presence of an enrolled child in an activity area that includes a method to account for any temporary absences of the enrolled child from the activity area; and
2. Maintain the documentation of the presence of enrolled children in an activity area required in subsection (B)(1) on facility premises for 12 months after the date of the documentation.

R9-5-310. Pesticides

A. A licensee shall make written pesticide information available to a parent, upon a parent's request, at least 48 hours before a pesticide application occurs on facility premises, containing the:

1. ~~The brand~~ Brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide;

2. ~~The date~~ Date and time of the pesticide application;

3. ~~The pesticide~~ Pesticide label, which includes the written, printed, or graphic matter approved by the United States Environmental Protection Agency on or attached to, a pesticide container; and

4. ~~The name~~ Name and telephone number of the pesticide business licensee and the name of the licensed applicator, who complies with A.A.C. R3-8-201(C), providing pesticide services.

B. A licensee is exempt from the provisions in subsection (A), as prescribed by A.R.S. § 36-898(C).

ARTICLE 4. FACILITY STAFF

R9-5-401. Staff Qualifications

A licensee shall ensure that staff members meet the following qualifications for employment or volunteer service at a facility:

1. A facility director is 21 years of age or older and provides the licensee with documentation of one of the following:
   a. At least 24 months of child care experience, a high school or high school equivalency diploma, and
      i. Six credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or
      ii. At least 60 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field, and an additional 12 hours of instruction, provided in conferences, seminars, lectures, or workshops in the area of program administration, planning, development, or management;
   b. At least 18 months of child care experience; and
      i. An N.A.C., C.D.A., or C.C.P. credential; or
      ii. At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
   c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or
   d. At least three months of child care experience and a bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field;
2. A facility director's designee is 21 years of age or older and provides the licensee with documentation of one of the following:
   a. At least 12 months of child care experience, a high school or high school equivalency diploma; and
      i. Three credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or
      ii. At least 30 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field;
   b. At least 12 months of child care experience; and
      i. An N.A.C., C.D.A., or C.C.P. credential; or
      ii At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
   c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or
   d. At least three months of child care experience and a bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field;
3. A ~~teacher-caregiver~~ child educator is 18 years of age or older and provides the licensee with documentation of one of the following:
   a. Six months of child care experience if working with enrolled children five years old and younger, or three months of child care experience if working with school-aged children; and
      i. A high school diploma or high school equivalency diploma; or
      ii. At least 12 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;
   b. Associate or bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field; or

c. N.A.C., C.D.A., or C.C.P. credential;

4. An assistant ~~teacher-caregiver~~ child educator is 16 years of age or older and provides the licensee with documentation of one of the following:
   a. Current and continuous enrollment in high school or a high school equivalency class;
   b. High school or high school equivalency diploma;
   c. Enrollment in vocational rehabilitation, as defined in A.R.S. § 23-501; or
   d. Employment or service as a volunteer in a licensed child care facility ~~as a teacher-caregiver aide~~ for 12 months; ~~or~~
   ~~e. Service as a volunteer in a child care facility for 12 months;~~
5. A ~~teacher-caregiver~~ child educator aide is 16 years of age or older;
6. A student-aide provides the licensee with documentation of participation in:
   a. An educational, curriculum-based course in child development, parenting, or guidance counseling; or
   b. A vocational education or occupational development program; and
7. A volunteer is 15 years of age or older.

R9-5-403. Training Requirements

A. Within 10 calendar days of the starting date of employment or volunteer service, a licensee shall provide, and each staff member who provides child care services shall complete, training for new staff members that includes all of the following:

1. Facility philosophy and goals;
2. Names and ages of and developmental expectations for enrolled children for whom the staff member will provide child care services;
3. Health needs, nutritional requirements, any known allergies, and information about adaptive devices of enrolled children for whom the staff member will provide child care services;
4. Lesson plans;
5. Child guidance and methods of positive discipline, including separation;
6. Hand washing techniques;
7. Diapering techniques and toileting, if assigned to diaper changing duties;
8. Food preparation, service, sanitation, and storage, if assigned to food preparation;
9. If a staff member is assigned to feeding infants, the preparation, handling, and storage of infant formula and breast milk;
10. Recognition of signs of illness and infestation;
11. Child abuse or neglect detection, prevention, and reporting;
12. Accident and emergency procedures;
13. Staff responsibilities as required by A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
14. Sun safety policies and procedures;
15. Safety in outdoor activity areas;
16. Transportation procedures, if applicable; ~~and~~
17. Field trip procedures, if applicable~~.~~;
18. Infant tummy time, if applicable;
19. Prevention of sudden infant death syndrome and use of safe sleeping practices, if applicable; and
20. Prevention of shaken baby syndrome, pediatric abusive head trauma, and child maltreatment.

B. A licensee shall ensure that:

1. Each staff member who provides child care services completes ~~18~~ 24 or more ~~actual~~ clock hours of training every 12 months after the effective date of this Chapter or the staff member's starting date of employment or volunteer service in at least two topics listed ~~in this subsection~~ below:
    a. Child growth and development, including:
        i. Infant growth and development, ~~which may include~~ including sudden infant death syndrome prevention and safe sleeping practices;
        ii. Brain development;
        ~~ii.~~iii. ~~Developmental psychology~~ Basic child development, including cognitive, social, emotional, and physical, as well as approaches to learning;
        ~~iii.~~iv. Language development;
        ~~iv.~~v. Observation and child assessment;
        ~~v.~~vi. Developmentally-appropriate activities;
        ~~vi.~~vii. Child guidance and methods of positive discipline which may include ~~training on the appropriate techniques to prevent a child from harm or to prevent the child from harming others~~ techniques to promote healthy social-emotional development and reduce challenging behaviors; ~~and~~ or
        ~~vii.~~viii. Developmentally-appropriate activity areas~~;~~.
    b. Health and safety issues, including:
        i. Accident and emergency procedures, including CPR and first aid for infants and children;
        ii. Recognition of signs of illness and infestation;
        iii. Nutrition and developmentally-appropriate eating habits;
        iv. Child abuse detection, reporting, and prevention;
        v. Safety of indoor and outdoor activity areas; ~~and~~
        vi. Sun safety policies and procedures;
        vii. Water safety;
        viii. Prevention and control of infectious diseases, including immunization;
        ix. Prevention and response to emergencies due to food and allergic reactions, including anaphylactic shock;
        x. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
        xi. Emergency preparedness, response, and recovery planning for emergencies resulting from a natural disaster or a human-caused event;
        xii. Administration of medication, consistent with standards for parental or guardian consent;
        xiii. Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
        xiiii. Prevention of shaken baby syndrome, pediatric abusive head trauma, and child maltreatment; or
        xv. Physical restraint techniques.
    c. Program administration, planning, development, or management; and
    d. Availability of community services and resources, including those available to children with a special ~~needs~~ health care need or a disability; and
2. As part of the required ~~18~~ 24 hours of training in subsection (B)(1):
    a. A staff member who has less than 12 months of child care experience before the staff member's starting date, completes at least 12 hours in one or more of the topics in subsection (B)(1)(a) in the staff member's first 12 months at the facility;

b. A staff member who has 12 months or more of child care experience, completes at least six hours in one or more of the topics in subsection (B)(1)(a) every 12 months after the staff member's starting date;

c. A staff member who provides child care services to an infant completes at least six hours in subsection (B)(1)(a)(i) every 12 months after the staff member's starting date; and

d. A facility director completes at least six hours in subsection (B)(1)(c) every 12 months after the facility director's starting date.

e. A child educator for school-aged children shall complete six of the 24 hours of training within the first three months of hire.

C. A licensee shall ensure that documentation of a staff member's completion of training required by subsection (A) is signed by the facility director and dated.

D. A licensee shall ensure that a staff member submits to the licensee documentation of training received as required by subsection (B) to the licensee as the training is completed.

E. A licensee shall ensure that a staff member, as required by R9-5-301(G) ~~meets all of the following~~:

1. ~~The staff member obtains~~ Obtains adult and pediatric first aid ~~training~~ certification ~~specific to infants and children~~;
2. ~~The staff member obtains~~ Obtains adult and pediatric CPR ~~training~~ certification ~~specific to infants and children~~, which includes a demonstration of the staff member's ability to perform CPR;
3. ~~The staff member maintains~~ Maintains current ~~training~~ certification in adult and pediatric first aid and CPR; and
4. ~~The staff member provides~~ Provides the licensee with a copy of the front and back of the current card issued to the staff member upon completing adult and pediatric first aid and CPR training as proof of completion of the requirements of this subsection.

R9-5-404. Staff-to-Children Ratios

A. A licensee shall ensure that at least the following staff-to-children ratios are maintained at all times when providing child care services to enrolled children:

Age Group	*Staff: Children*
Infants	1:5 or 2:11
1-year-old children	1:6 or 2:13
2-year-old children	1:8
3-year-old children	1:13
4-year-old children	1:15
5-year-old children not school-age	1:20
School-age children	1:20

B. A licensee shall:

1. Determine and maintain the required staff-to-children ratio for each group of enrolled children based on the age of the youngest child in the group; and
2. ~~Allow a volunteer~~ Only allow an individual qualified as a director, ~~teacher-caregiver~~ child educator, or ~~assistant teacher-caregiver~~ an assistant child educator to be counted as staff in staff-to-children ratios~~; and~~
3. ~~Not allow a student aide or an individual qualified as a teacher-caregiver aide to be counted as staff in staff-to-children ratios~~.

C. A licensee shall ensure that when there are:

1. ~~When there are six~~ Six or more enrolled children present in a facility, the following individuals are present in the facility:
    a. A facility director or a director's designee who meets the requirements in R9-5-401 for a director's designee, and
    b. One additional staff member;
2. ~~When five~~ Five or fewer enrolled children are present in a facility, the facility director or director's designee who meets the requirements in R9-5-401 is present in the facility, and an additional staff member is available by telephone or other equally expeditious means and able to reach the facility within 15 minutes after notification; and
3. ~~When six~~ Six or more enrolled children are present in a facility, an infant is not placed for supervision with a child who is not an infant.

D. A licensee shall ensure that a staff member assigned to provide child care services to enrolled children does not perform duties that may affect the staff member's ability to provide child care services to the enrolled children.

E. In addition to maintaining the required staff-to-children ratios, a licensee shall ensure that:

1. Staff members are present on facility premises to perform facility administration, food preparation, food service, and maintenance responsibilities; and
2. Facility maintenance does not depend on the work of enrolled children.

F. If a licensee conducts swimming activities at a swimming pool, the licensee shall ensure that there is a lifeguard on the premises who has current lifeguard certification that includes a demonstration of the lifeguard's ability to perform CPR. If the lifeguard is a staff member, the staff member cannot be counted in the staff-to-children ratios required by subsection (A).

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

R9-5-501. General Child Care Program, Equipment, and Health and Safety Standards

A. A licensee shall ensure that:

1. In addition to complying with the requirements in this Chapter, the health, safety, or welfare of an enrolled child is not placed at risk of harm;
2. The facility does not allow enrolled children to mix with non-enrolled children on licensed facility premises;
~~2.~~3. ~~Except for an enrolled school-age child~~ For enrolled infants and children five-years or younger, drinking water is available to meet the needs of ~~provided sufficient for the needs of and accessible to~~ each enrolled child ~~in both indoor and outdoor activity areas~~;
~~3.~~4. For an enrolled school-age child, if drinking water is not accessible in an indoor or outdoor activity area, drinking water sufficient to meet the individual needs of each enrolled school-aged child is available;
~~4.~~5. An enrolled child is placed in an age-appropriate or developmentally-appropriate group;
~~5.~~6. Indoor activity areas used by enrolled children are decorated with age-appropriate articles such as mirrors, bulletin boards, pictures, and posters;
~~6.~~7. Age-appropriate toys, materials, and equipment are provided to enable each enrolled child to participate in an activity;
~~7.~~8. Storage space is provided in the facility for indoor and outdoor toys, materials, and equipment in areas accessible to enrolled children;
~~8.~~9. Clean clothing is available to an enrolled child when the enrolled child needs a change of clothing;
~~9.~~10. If a staff member places an enrolled child in a feeding chair when feeding the enrolled child the:
    a. ~~The feeding~~ Feeding chair is constructed to prevent toppling;
    b. ~~The tray~~ Tray or feeding surface of the feeding chair is smooth and free of cracks; and
    c. ~~The staff~~ Staff member:
        i. Cleans the feeding chair before and after each enrolled child's use;
        ii. Sanitizes the tray or feeding surface before and after each enrolled child's use; and
        iii. If the feeding chair was manufactured with a safety strap, fastens the feeding chair's safety strap while the enrolled child is in the feeding chair;
~~10.~~11. For enrolled children one to five years old, at ~~At~~ least one indoor activity area in the facility is equipped with at least one cot or mat, a sheet, and a blanket, where an enrolled child can rest quietly away from other enrolled children;
~~11. Outdoor activities are scheduled to allow not less than 75 square feet for each enrolled child occupying the facility's outdoor activity area or indoor activity area substituted for outdoor activity area at any time;~~
12. The facility premises, including the buildings, are maintained free from hazards;
13. Toys and play equipment, required in this Article, are maintained:
    a. Free from hazards, and
    b. In a condition that allows the toy or play equipment to be used for the original purpose of the toy or play equipment;
14. Temperatures are maintained between 68° F and 82° F in each room used by enrolled children;
~~15. Except when an enrolled child is napping or sleeping, each room used by an enrolled child is maintained at a minimum of 30 foot candles of illumination;~~
~~16.~~15. ~~When an enrolled child is napping or sleeping in a room, the room is maintained at a minimum of 5 foot candles of illumination~~ In rooms used for napping, the lighting must be dim during nap time to promote an atmosphere conducive to sleep but must be bright enough for supervision of children;

~~17.~~16. Each enrolled child's toothbrush, comb, washcloth, cloth towel, and clothing ~~is~~ are maintained in a clean condition and stored in an identified space separate from those of other enrolled children;

~~18.~~17. Each enrolled child's pacifier is labeled with an identifier that is specific to the enrolled child and maintained in a clean condition;

~~19.~~18. Except as provided in subsection (A)(20), the following are stored separate from food storage areas and are inaccessible to an enrolled child:

a. All materials and chemicals labeled as a toxic or flammable substance;

b. All substances that have a child warning label and may be a hazard to a child; and

c. Lawn mowers, ladders, toilet brushes, plungers, and other facility equipment that may be a hazard to a child;

~~20.~~19. Hand sanitizers when being:

a. ~~When being stored~~ Stored, are stored separate from food storage areas and are inaccessible to enrolled children; and

b. ~~When being provided~~ Provided for use, are accessible to enrolled children; and

~~21.~~20. Except when used as part of an activity, the following are stored in an area inaccessible to an enrolled child:

a. Garden tools, such as a rake, trowel, and shovel; and

b. Cleaning equipment and supplies, such as a mop and mop bucket.

~~**B.** A toy or piece of play equipment, which is free from hazards and in a condition that does not allow the toy or play equipment to be used for the toy or play equipment's original purpose, may be in an activity area but is not counted as one of the toys or play equipment required in this Article.~~

~~**C.**~~**B.** A licensee shall ensure that a staff member:

1. Supervises each enrolled child at all times;

2. Does not smoke, vape, or use tobacco:

a. On facility premises, except in designated areas separated from the children; or

b. On a field trip or when transporting an enrolled child;

3. Does not smoke marijuana or use marijuana, as specified in A.R.S. § 36-894;

~~3.~~4. Except for an enrolled child who can change the enrolled child's own clothing, changes an enrolled child's clothing when wet or soiled;

~~4.~~5. For enrolled children 12-months and older, except ~~Except~~ as provided in ~~subsection (D)~~ subsection (C), prepares, ~~and~~ posts, and implements in each indoor activity area, a current schedule of children's age-appropriate activities, including the times the following are provided:

a. Meals and snacks;

b. Naps;

c. Indoor activities;

d. ~~Outdoor~~ If weather and air quality permit, outdoor or large muscle development activities;

e. Quiet and active activities;

f. Teacher-directed activities;

g. Self-directed activities;

h. Activities for individuals, groups of five or fewer children, and groups of six or more children; and

i. Activities that develop small muscles;

~~5.~~6. For enrolled children five-years or younger, and except ~~Except~~ as provided in ~~subsection (D)~~ subsection (C), prepares, ~~and~~ posts, and implements a dated lesson plan in each indoor activity area for each calendar week, which is maintained on facility premises for 12 months after the lesson plan date and provides opportunities for each child to:

a. Gain a positive self-concept;

b. Develop and practice social skills;

c. Think, reason, question, and experiment;

d. Acquire language skills;

e. Develop physical coordination skills;

f. Participate in structured large muscle physical activity;

g. Develop habits that meet health, safety, and nutritional needs;

h. Express creativity;

i. Learn to respect cultural diversity of children and staff;

j. Learn self-help skills; and

k. Develop a sense of responsibility and independence;

~~6.~~7. If an activity in the lesson plan required in subsection (C)(5) includes screen time, include in the lesson plan the duration of the screen time in minutes;

~~7. Except as provided in subsection (C)(8), implements the schedule in subsection (C)(4) and lesson plan in subsection (C)(5);~~

8. If the schedule in subsection (C)(4) or lesson plan in subsection (C)(5) is not implemented, writes on the schedule or the lesson plan the activity that is implemented;

9. Does the following when a parent permits or asks a staff member to apply personal products on an enrolled child, such as petroleum jelly, diaper rash ointments, sun screen or sun block preparations, toothpaste, and baby diapering preparations:

a. Obtains the enrolled child's personal products from the enrolled child's parent or, if the licensee provides the personal products for use by the enrolled child, obtains written approval for use of the products from the enrolled child's parent;

b. Labels the personal products with the enrolled child's name; and

c. Keeps the personal products inaccessible to enrolled children;

~~10. When a parent permits, allows an enrolled school-age child to possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.~~

~~11.~~10. In an indoor activity area that does not have a diaper changing area:

a. Stores an enrolled child's wet or soiled clothing in a sealed plastic bag labeled with the enrolled child's name; and

b. Sends an enrolled child's wet or soiled clothing home with the enrolled child when the facility releases the enrolled child to the enrolled child's parent; and

~~12.~~11. Monitors an enrolled child for overheating or overexposure to the sun. If the enrolled child exhibits signs of overheating or overexposure to the sun, a staff member who has the first aid training required by R9-5-403(E) shall evaluate and treat the enrolled child.

~~**D.**~~**C.** A licensee is not required to have a schedule required in subsection (C)(4) or a lesson plan required in subsection (C)(5) for an indoor activity area that is approved and used:

1. By enrolled children only for:

a. Snacks or meals, or

b. A specific activity,

2. To provide child care services to infants, or

3. As a substitute for an outdoor activity area.

R9-5-502. Supplemental Standards for Infants

A. A licensee providing child care services for infants shall:

1. Provide a wall-enclosed room for infants that provides exits required by R9-5-601(1);
2. Provide age-appropriate active and quiet activities for each infant;
3. Provide age-appropriate indoor and outdoor activities for each infant;
4. Permit an infant to maintain the infant's pattern of sleeping and waking;
5. Develop, document, and implement tummy time policies and procedures that:
    a. Provide an opportunity for a non-crawling infant to experience tummy time each day:
        i. While the infant is awake, and
        ii. On the infant's stomach;
    b. Ensure a staff member who is supervising a non-crawling infant while the infant is flat on their stomach and on the floor:
        i. Is within reach of the infant;
        ii. Does not perform any other duties while supervising the infant;
        iii. Does not allow the use of pillows, comforters, sheepskins, stuffed toys, or other soft products in the same floor space as the infant; and
        iv. Does not allow any product specified in subsection (A)(5)(b)(iii) to be within reach of the infant;
    c. Require continuous interaction between a non-crawling infant and the staff member who is supervising the non-crawling infant during tummy time;
    d. Ensure, as an infant demonstrates ability and strength to control physical movement and greater sensory perception and social interaction, an assigned staff member provide a tummy-time period to a:
        i. ~~A~~ 2 - 3 month old infant of no more than 15 minutes;
        ii. ~~A~~ 3 - 4 month old infant of no more than 20 minutes; and
        iii. ~~A~~ 5 - 6 month old infant of 20 minutes; and
    e. Ensure a non-crawling infant's tummy time period specified in subsection (A)(5)(d):
        i. Is determined by the assigned staff member's assessment of the infant;
        ii. Is gradually increased as the infant's ability, strength, and perception increases; and
        iii. Does not exceed tummy time periods specified in subsection (5)(D)(i) through (iii).
6. Provide an outdoor activity area or an indoor activity area for large muscle development substituted for an outdoor activity area that is used by infants when enrolled children older than infants are not present;
7. Provide space, materials, and equipment in an infant room that includes the following:
    a. An area with nonabrasive flooring for sitting, crawling, and playing;
    b. Toys, materials, and equipment, that are too large for a child to swallow and free from sharp edges and points, in a quantity sufficient to meet the needs of the infants in attendance that include:
        i. Toys to enhance physical development such as toys for stacking, pulling, and grasping;
        ii. Soft toys;
        iii. Books;
        iv. Toys to enhance visual development such as crib mobiles and activity mats with an object or objects suspended above the infant's head; and
        v. Unbreakable mirrors; and
    c. At least one adult-size chair for use by a:
        i. Staff member when holding or feeding an infant, or
        ii. Nursing mother when breastfeeding her infant;
8. Provide a crib for each infant that:

a. Has bars or openings spaced no more than 2 3/8 inches apart and a crib mattress measured to fit not more than 1/2 inch from the crib side;

b. Has a commercially waterproofed mattress; and

c. Is furnished with only a clean, sanitized, crib-size ~~bedding, including a~~ bottom fitted sheet ~~and top sheet or a blanket~~;

9. Prohibit the use of stacked cribs;

10. Ensure that an occupied crib with a crib side that does not have a non-porous barrier is placed at least 2 feet from another occupied crib side that does not have a non-porous barrier; and

11. Label each food container received from the parent with the infant's name.

B. A licensee providing child care services for infants shall not:

1. Allow an infant room to be used as a passageway to another area of the facility;

2. Permit an infant who is awake to remain for more than 30 consecutive minutes in a crib, swing, feeding chair, infant seat, or any equipment that confines movement;

3. Permit an infant to use a walker; ~~or~~

4. Allow screen time in an infant room~~.~~;

5. Shake an infant or child, or cause pediatric abusive head trauma

6. Permit an infant to sleep with other children; or

7. Permit an infant to sleep in a playpen, pack and play, car seat, stroller, swing, bouncer, high chair, or other equipment not intended for sleep purposes.

C. A licensee shall ensure that:

1. A staff member providing child care services in an infant room:

a. Plays and talks with each infant;

b. Holds and rocks each infant;

c. Responds immediately to each infant's distress signals;

d. Keeps dated and timed, daily, documentation of each infant including:

i. A description of any activities the infant participated in,

ii. The infant's food consumption,

iii. Diaper changes, and

iv. Tummy time;

e. Maintains the documentation in subsection (C)(1)(d) on facility premises for 12 months after the date on the documentation;

f. Provides a copy of the documentation in subsection (C)(1)(d) to the infant's parent upon request;

g. Does not allow bumper pads, pillows, comforters, sheepskins, stuffed toys, or other soft products in a crib when an infant is in the crib;

h. Cleans and sanitizes each crib and mattress used by an infant when soiled;

i. Changes, cleans, and sanitizes each crib sheet ~~and blanket~~ before use by another infant, when soiled, or at least once every 24 hours;

~~j. Cleans and sanitizes all sheets and blankets before use by another infant;~~

~~k.~~j. Places an infant to sleep on the infant's back, unless the infant's parent submits written instructions from the infant's health care provider that states otherwise;

~~l.~~k. Obtains written, current, signed, and dated dietary instructions from a parent or health care provider regarding the method of feeding and types of foods to be prepared or fed to an infant at the facility;

~~m.~~l. Posts the current written dietary instructions in the infant room and the kitchen and maintains the instructions on facility premises for 12 months after the date of the instructions; and

~~n.~~m. Follows the current written dietary instructions of a parent when feeding the infant;

2. A staff member providing child care services in an infant room does not:
   a. Place an infant directly on a waterproof mattress cover; or
   b. Place an infant to sleep using a positioning device that restricts movement, unless the infant's health care provider has instructed otherwise in writing;
3. When preparing, using, or caring for an infant's feeding bottles, a staff member:
   a. Labels each bottle received from the parent with the infant's name;
   b. Ensures that a bottle is not:
      i. Heated in a microwave oven;
      ii. Propped for an infant feeding; or
      iii. Permitted in an infant's crib unless the written instructions required by subsection (C)(1)(l) state otherwise;
   c. Empties and rinses bottles previously used by an infant; and
   d. Cleans and sanitizes a bottle, bottle cover, and nipple before reuse; and
4. When feeding an infant, a staff member:
   a. Provides an infant with food for growth and development that includes:
      i. Formula provided by the infant's parent or the licensee or breast milk provided by the infant's parent, following written instructions required by subsection (C)(1)(l); and
      ii. Cereal as requested by the infant's parent or health care provider;
   b. If the staff member prepares an infant's formula, prepares the infant's formula in a sanitary manner;
   c. Stores formula and breast milk in a sanitary manner at the facility;
   d. Does not mix cereal with formula and feed it to an infant from a bottle or infant feeder unless the written instructions required by subsection (C)(1)(l) state otherwise;
   e. Except for finger food, feeds solid food to an infant by spoon from an individual container;
   f. Uses a separate container and spoon for each infant;
   g. Holds and feeds an infant under 6 months of age and an infant older than 6 months of age who cannot hold a bottle for feeding; and
   h. If an infant is no longer being held for feeding, ~~seats~~ seat the infant in a feeding chair or at a table with a chair that allows the infant to reach the food while sitting.

R9-5-503. Standards for Children Needing Diaper Changing

A. A licensee shall ensure that each diaper changing area required in R9-5-601(4) contains:

1. A nonabsorbent, sanitizable diaper changing surface that is:
   a. Seamless and smooth, and
   b. Kept clear of items not required for diaper changing;
2. A hand-washing sink next to the diaper changing surface for staff use when changing diapers and for washing an enrolled child during or after diapering, that provides:
   a. Running water between 86° F and 110° F,
   b. Soap from a dispenser, and
   c. Single-use paper hand towels from a dispenser;
3. At least one waterproof, sanitizable container with a waterproof liner and a tight fitting lid for soiled diapers; and
4. At least one waterproof, sanitizable container with a waterproof liner and a tight fitting lid for soiled clothing.

B. A licensee shall ensure that a staff member does not:

1. Permit a bottle, formula, food, eating utensil, or food preparation in a diaper changing area;
2. Draw water for human consumption from a diaper changing area sink; or
3. ~~Except as provided in subsection (C), if responsible for food preparation, change~~ Change diapers until food preparation duties have been completed for the day.

~~**C.** A staff member who provides child care services to an infant:~~

~~1. May throughout the time the staff member provides child care services to the infant:~~

~~a. Change the infant's diaper, and~~

~~b. Prepare the infant's formula or cereal; and~~

~~2. Is prohibited from other food preparation after changing the infant's diaper.~~

~~D.~~C. A licensee shall ensure that a written diaper changing procedure is posted and implemented in each diaper changing area.

~~E.~~D. A licensee shall ensure that the written diaper changing procedure in ~~subsection (D)~~ subsection (C) states that an enrolled child's diaper is changed as soon as it is soiled, and that a staff member, when diapering:

1. Uses a separate wash cloth and towel only once for each enrolled child;
2. Washes and dries the enrolled child using the enrolled child's individual personal products labeled with the enrolled child's name;
3. Uses single-use non-porous gloves;
4. Washes the staff member's own hands with soap and running water between 86° F and 110° F before and after each diaper change;
5. Washes each enrolled child's hands with soap and running water between 86° F and 110° F after each diaper change;
6. Cleans, sanitizes, and dries the diaper changing surface following each diaper change; and
7. Uses single-use paper towels from a dispenser to dry the diaper changing surface or the hands of the enrolled child or staff member.

~~F.~~E. A licensee shall ensure that in an activity area with a diaper changing area:

1. The ~~containers~~ container required in ~~subsections~~ subsection (A)(3) and (4) are inaccessible, and
2. A staff member:
   a. Documents each diaper change with the date and time, for an:
      i. ~~For an infant~~ Infant, in the infant's dated, daily, documentation required in R9-5-502(C)(1)(d); or
      ii. ~~For an enrolled~~ Enrolled child who is not an infant, in a dated diaper changing log.
   b. Maintains the diaper changing log on facility premises for 12 months after the date of the diaper changing log;
   c. Empties clothing soiled with feces into a flush toilet without rinsing;
   d. Places an enrolled child's clothing soiled by feces or urine in a plastic bag labeled with the enrolled child's name, stores the clothing in a container used for this purpose, and sends the clothing home with the enrolled child's parent; and
   e. Removes disposable diapers and disposable training pants from a diaper changing area as needed or at least twice every 24 hours to a waste receptacle outside the facility building.

R9-5-504. Supplemental Standards for 1-year-old and 2-year-old Children

A. A licensee providing child care services for 1-year-old and 2-year-old children shall:

1. Ensure that a staff member does not permit a 1-year-old or 2-year-old enrolled child who is awake to spend more than 30 minutes of consecutive time in a crib, feeding chair, or other place of confinement;
2. Consult with each enrolled child's parent to develop ~~a plan for~~ an individual plan for toilet training of the enrolled child and ensure that a staff member does not force toilet training on any enrolled child;

3. Ensure that each activity area has a supply of age-appropriate toys, materials, and equipment that are too large for a child to swallow and free from sharp edges and points, in a quantity sufficient to meet the needs of the enrolled children in attendance including:
   a. Art supplies,
   b. Books,
   c. Rubber or soft plastic balls,
   d. Puzzles and toys to enhance manipulative skills,
   e. Blocks,
   f. Washable soft toys and dolls,
   g. Musical instruments, and
   h. Indoor and outdoor equipment to enhance large muscle development;
4. Prohibit screen time in an activity area where child care services are provided to a 1-year-old child; ~~and~~
5. Not permit a 1-year-old or 2-year-old enrolled child to sleep with other children;
6. Not permit a 1-year-old or 2-year-old enrolled child to sleep in a playpen, pack and play, car seat, stroller, swing, bouncer, high chair, or other equipment not intended for sleep purposes;
7. Not shake a child or cause pediatric abusive head trauma;
8. Use routine activities such as nap time, feeding, diapering, and toileting as opportunities for language development and other learning; and

~~5.~~9. Ensure that:
   a. If finger food is served, the food is of a size and texture that does not present a choking hazard;
   b. A staff member serves food to an enrolled child in a feeding chair or at a table with a chair that allows the enrolled child to reach the food while sitting;
   c. If a child is fed with a bottle, a staff member complies with the requirements in R9-5-502(C)(3); and
   d. If a parent brings a sippy cup for the parent's enrolled child, the sippy cup, as in a lidded drinking container that is designed to be leak proof or leak-resistant and from which a child drinks through a spout or straw, is labeled with the enrolled child's name.

R9-5-505. Supplemental Standards for 3-year-old, 4-year-old, and 5-year-old Children

A. A licensee providing child care services for 3-year-old, 4-year-old, and 5-year-old children shall provide a supply of age-appropriate toys, materials, and equipment accessible to enrolled children in each activity area in a quantity sufficient to meet the needs of the enrolled children in attendance including:
1. Art supplies,
2. Blocks,
3. Books and posters,
4. Toys and dress-up clothes,
5. Indoor and outdoor equipment to enhance large muscle development,
6. Puzzles and toys to enhance manipulative and categorization skills,
7. Science materials, and
8. Musical instruments.

B. If applicable, a licensee providing child care services for 3-year-old, 4-year-old, and 5-year-old children shall consult with each enrolled child's parent to develop an individual plan for individual toilet training of the enrolled child and ensure that a staff member does not force toilet training on any enrolled child.

R9-5-506. Supplemental Standards for School-age ~~Children~~ Out-of-School Time Programs

A. A licensee providing child care services for school-age children shall:

1. Ensure that a staff member supervises an enrolled school-age child to and from a bathroom and allows the enrolled child privacy while in the bathroom;
2. Ensure that if an enrolled child remains in the bathroom for more than three minutes, the supervising staff member checks on the enrolled child to ensure the child's safety;
3. Provide age-appropriate toys, materials, and equipment accessible to enrolled children ~~in each activity area~~ in a quantity sufficient to meet the needs of the enrolled children in attendance including:
   a. Arts and crafts,
   b. Games,
   c. Puzzles and toys to enhance manipulative skills,
   d. Books,
   e. Science materials,
   f. Sports equipment, and
   g. Outdoor play equipment; ~~and~~
4. Provide enrolled school-age children with a quiet study area~~.~~;
5. Ensure that if drinking water is not accessible in an indoor or outdoor activity area, drinking water is available to meet the individual needs of each enrolled school-aged child; and
6. Ensure that, when a parent permits, a staff member allows an enrolled school-age child to possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.

B. A school-age out-of-school time program provider shall:

1. Operate after school, before school, or during a time when school is not in session;
2. Serve school-age children; and
3. Promote expanded childhood learning, enrichment, child and youth development, or educational, recreational, or character-building activities.

R9-5-507. Supplemental Standards for Children with a Special ~~Needs~~ Health Care Need or a Disability

A. A licensee providing child care services for a child with a special ~~needs~~ health care need or a disability shall:

1. Except as provided in subsection (A)(2), before a child with a special ~~needs~~ health care need or a disability receives child care services, obtain from the enrolled child's parent a copy of an existing individualized plan for the enrolled child that can be reviewed, adopted, and implemented by the licensee when providing child care services to the enrolled child that includes the following as needed for the enrolled child:
   a. Medication schedule;
   b. Nutrition and feeding instructions;
   c. Qualifications required of a staff member who feeds the enrolled child;
   d. Medical equipment or adaptive devices;
   e. Medical emergency instructions;
   f. Toileting and personal hygiene instructions;
   g. Specific child care services to be provided to the enrolled child at the facility;
   h. Information from health care providers, including the frequency and length of any prescribed medical treatment or therapy;
   i. Training required of a staff member to care for the enrolled child's a special ~~needs~~ health care need or a disability; and
   j. Participation in ~~fire and emergency evacuation~~ practice drills;
2. If an enrolled child with a special ~~needs~~ health care need or a disability does not have an existing individualized plan, obtain from the enrolled child's parent written instructions for providing services to the enrolled child until a written

individualized plan required in subsection (A)(1) is developed by a team consisting of staff members, the enrolled child's parent, and health care providers, if applicable, that is completed within 30 calendar days after the enrolled child's initial date of receiving child care services;

3. Maintain an enrolled child's current individualized plan on facility premises and if the current individualized plan was developed according to subsection (A)(2), provide a copy to the enrolled child's parent; and

4. Ensure the individualized plan is updated at least every 12 months after the date of the initial plan or as changes occur.

B. If an enrolled child with a special ~~needs~~ health care need or a disability who is 18 months of age or older and does not walk is placed in an infant group, a licensee may move the enrolled child after the enrolled child's parent and licensee determine that the proposed move is developmentally-appropriate.

C. A licensee shall ensure that:

1. When tube feeding an enrolled child, a staff member only uses:
   a. Commercially prepackaged formula in a ready-to-use state,
   b. Formula prepared by the enrolled child's parent and brought to the facility in an unbreakable container, or
   c. Breast milk brought to the facility in an unbreakable container; and
2. Only a staff member instructed by an enrolled child's parent or individual designated by the enrolled child's parent:
   a. Feeds the enrolled child using the enrolled child's tube-feeding apparatus, and
   b. Cleans the enrolled child's tube-feeding apparatus.

D. A licensee shall provide an enrolled child with a special ~~needs~~ health care need or a disability with:

1. Developmentally-appropriate toys, materials, and equipment; and
2. Assistance from staff members to enable the enrolled child to participate in the activities of the facility.

E. In addition to complying with the transportation requirements in R9-5-517, a licensee transporting an enrolled child with a special ~~needs~~ health care need or a disability in a wheelchair in a facility's motor vehicle shall ensure that the enrolled:

1. ~~The enrolled child's~~ Child's wheelchair is manufactured to be secured in a motor vehicle;
2. ~~The enrolled child's~~ Child's wheelchair is secured in the motor vehicle using a minimum of four anchorages attached to the motor vehicle floor, and four securement devices, such as straps or webbing that have buckles and fasteners, that attach the wheelchair to the anchorages;
3. ~~The enrolled child~~ Child is secured in the wheelchair by means of a wheelchair restraint that is a combination of pelvic and upper body belts intended to secure a passenger in a wheelchair; and
4. ~~The enrolled child's~~ Child's wheelchair is placed in a position in the motor vehicle that does not prevent access to the enrolled child in the wheelchair or passage to the front and rear ~~in~~ of the motor vehicle.

F. A licensee providing child care services for an enrolled child who uses a wheelchair or is not able to walk shall locate the enrolled child on the ground floor of the facility.

G. If a child care facility requires a separate diaper changing area to allow privacy while providing diapering to an enrolled child with a special ~~needs~~ health care need or a disability, the licensee shall submit a written request for approval of the intended change to the Department according to R9-5-208 prior to adding a diaper changing area.

R9-5-508. General Nutrition Standards

A. A licensee shall:

1. Make breakfast available to an enrolled child who is present at a facility before 8:00 a.m.,
2. Serve lunch to an enrolled child who is present at a facility between 11:00 a.m. through 1:00 p.m., and
3. Serve dinner to an enrolled child who is present from 5:00 p.m. through 7:00 p.m. and who will remain at the facility after 7:00 p.m.

B. A licensee shall serve the following meals or snacks to an enrolled child present at a facility ~~for the following periods of time~~ if an enrolled child is present:

1. ~~If an enrolled child is present~~ For two to four hours, one or more snacks;
2. ~~If an enrolled child is present during~~ During any of the meal times stated in subsection (A), a meal that meets the meal pattern requirements in subsection (C);
3. ~~If an enrolled child is present~~ For four to eight hours, one or more snacks and a meal;
4. ~~If an enrolled child is present~~ For nine or more hours, two snacks and one or more meals; and
5. Before bedtime, one snack.

C. If a licensee provides food, a licensee shall prepare and serve food according to the meal pattern requirements found in Table 5.1, "Meal Pattern Requirements for Children."

D. If an enrolled child's parent provides food for the parent's enrolled child, the licensee shall provide milk or juice to the enrolled child if not provided by the parent.

E. If a licensee plans and serves meals, the licensee shall ensure that the meals:

1. Meet the age-appropriate nutritional requirements of an enrolled child; and
2. For each calendar week, provide a variety of foods within each food group from the meal pattern requirements.

F. If a licensee provides food, the licensee shall maintain on the facility premises at least a one day supply of food needed to provide the meals and snacks required by subsections (B) and (C) to each enrolled child attending the facility.

G. In addition to the required daily servings of food stated in subsection (C), a licensee:

1. Shall make second servings of food available to each enrolled child at meals and at snack time,
2. May substitute a food that is equivalent to a specific food component if second servings of the specific food component are not available, and
3. Shall ensure that a food substitution in subsection (G)(2) is written on the posted weekly menu by the end of the meal or snack service.

Table 5.1 Meal Pattern Requirements for Children

TABLE OF MEAL PATTERN REQUIREMENTS FOR CHILDREN			
Food Components	Ages 1 through 2 years	Ages 3 through 5 years	Ages 6 and Older
Breakfast:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable, fruit, or both	1/4 cup	1/2 cup	1/2 cup
3. Grains	1/2 oz. eq[1]	1/2 oz. eq[1]	1 oz. eq[1]
Lunch or ~~Supper~~ Dinner:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetables Fruits	1/8 cup 1/8 cup	1/4 cup 1/4 cup	1/2 cup 1/4 cup
3. Grains	1/2 oz. eq[1]	1/2 oz. eq[1]	1 oz. eq[1]
4. Meat or meat alternates	1 oz.	1 1/2 oz.	2 oz.
Snack: (select 2 of these 4 components)***			
1. Milk, fluid	1/2 cup	1/2 cup	1 cup
2. Vegetables Fruits	1/2 cup 1/2 cup	1/2 cup 1/2 cup	3/4 cup 3/4 cup
3. Grains	1/2 oz.	1/2 oz.	1 oz.
4. Meat or meat alternates	1/2 oz.	1/2 oz.	1 oz.

[1] Meat and meat alternates may be used to substitute the entire grains component a maximum of three times per week. Oz eq = ounce equivalents

* In the same meal service, dried beans or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components.

** At lunch and ~~supper~~ dinner, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat or meat alternative to fulfill the requirement. Two tablespoons of nut butter or one ounce of nuts or seeds equals one ounce of meat.

*** Juice may not be served when milk is served as the only other component.

R9-5-509. General Food Service and Food Handling Standards

A. A licensee that prepares food for enrolled children on facility premises shall, if required by 9 A.A.C. 8, Article 1, and the local ordinances of the local health department where the facility is located, obtain a food establishment permit issued under 9 A.A.C. 8, Article 1, and:

1. ~~Provide~~ Submit to the Department ~~with a copy~~ a written notice of the facility's food establishment permit before the Department issues a license to the facility,
2. Maintain the facility's current food establishment permit on the facility's premises, and
3. Provide a ~~copy~~ written notice of the facility's current food establishment permit to the Department upon request.

B. If a licensee contracts with a food establishment to prepare and deliver food to the facility, the licensee shall obtain and provide the Department with a copy of the food establishment's permit, issued under 9 A.A.C. 8, Article 1, at the following times:

1. Before the Department issues a license to the facility,
2. Upon contracting with the food establishment, and
3. Every 12 months after the date the contract is entered into while the contract is in effect.

C. A licensee shall ensure that:

1. Enrolled children, except infants and children with a special ~~needs~~ health care need or a disability who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
2. A staff member:
   a. Washes the hands of an infant or a child with a special ~~needs~~ health care need or a disability who cannot wash the child's own hands before and after the infant or child with a special ~~needs~~ health care need or a disability handles or eats food using:
      i. A washcloth,
      ii. A single-use paper towel, or
      iii. Soap and running water; and
   b. If using a washcloth, uses each washcloth on only one child and only one time before it is laundered or discarded;
3. An enrolled child is not permitted to eat food directly off the floor, carpet, or ground or with utensils placed directly on the floor, carpet, or ground;
4. A staff member encourages, but never forces, enrolled children to eat food;
5. A staff member assists each enrolled child who needs assistance with eating;
6. A staff member teaches self-feeding skills and habits of good nutrition to each enrolled child as necessary;
7. Lunch and dinner are family-style meals as demonstrated by at least one of the following:
   a. Food is served from a serving container on the table where enrolled children are seated;
   b. Enrolled children serve themselves, independently or with the help of a staff member, from a serving container on the table where enrolled children are seated;
   c. Enrolled children pass a serving container from individual to individual;
   d. In a facility where lunch or dinner is provided by the facility, a staff member sits at the table and eats the lunch or dinner with enrolled children; or
   e. In a facility where each enrolled child brings the enrolled child's own lunch or dinner, a staff member sits at the table with the enrolled children and eats the staff member's own lunch or dinner;
8. Fresh milk is served from the original, commercially filled container, to a container used for meal service or a cup, and unused portions are not returned to the original container;
9. Milk served to an enrolled child older than two years of age is fat-free or 1% lowfat milk unless the enrolled child's parent requests otherwise;
10. Reconstituted dry milk is not served to meet the fluid milk requirement;
11. Juice served to children for a meal or snack is full-strength 100% vegetable or 100% fruit juice from an original, commercially filled container or reconstituted from a concentrate according to manufacturer instructions;
12. Fruit juice served to an enrolled child is limited to the following amounts for an enrolled child:

a. ~~For an enrolled child younger~~ Younger than six years of age, four ounces per day; or

b. ~~For an enrolled child six~~ Six years of age or older, six ounces per day;

~~13.~~ ~~A beverage sweetened with any kind of sugar product is not provided by the facility;~~

~~14.~~13. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent or health care provider, and the modified diet is posted in the kitchen and in the child's activity area;

~~15.~~14. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent or health care provider;

~~16.~~15. An enrolled child is not permitted in the kitchen during food preparation or food service except as part of an activity;

~~17.~~16. An enrolled child does not use the kitchen or a food storage area as a passageway;

~~18.~~17. A staff member:

a. Prepares a weekly menu at least one week in advance,

b. Includes on the menu the specific foods to be served on each day,

c. Dates each menu,

d. Posts each menu at least one day before the first meal on the menu will be served, and

e. Writes food substitutions on a posted menu no later than the morning of the day of meal service;

~~19.~~18. Non-single-use utensils and equipment used in preparing, eating, or drinking food are:

a. After each use washed in:

i. ~~Washed in an~~ An automatic dishwasher and air dried or heat dried; or

ii. ~~Washed in hot~~ Hot soapy water, rinsed in clean water, sanitized, and air dried or heat dried; and

b. Stored in a clean area protected from contamination;

~~20.~~19. Single-use utensils and equipment are disposed of after being used;

~~21.~~20. Perishable foods, which are foods that become unfit for human consumption if not stored to prevent spoilage, are covered and stored in a refrigerator at a temperature of 41° F or below;

~~22.~~21. A refrigerator at the child care facility maintains a temperature of 41° F or below and a freezer maintains a temperature of 0° F or below, as shown by a thermometer kept in the refrigerator and in the freezer at all times;

~~23.~~ ~~A freezer at the child care facility maintains a temperature of 0° F or below, as shown by a thermometer kept in the freezer at all times; and~~

~~24.~~22. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:

a. Cold held at a temperature of 45° F or below or hot held at a temperature of 130° F or above until served, or

b. Cold held at a temperature of 45° F or below and then reheated to a temperature of at least 165° F before being served.

R9-5-510. Positive Discipline and Guidance

~~A.~~ ~~A licensee shall ensure that a staff member:~~

~~1.~~ ~~Defines and maintains consistent and reasonable guidelines and limitations for an enrolled child's behavior;~~

~~2.~~ ~~Teaches, models, and encourages orderly conduct, personal control, and age-appropriate behavior;~~

~~3.~~ ~~Explains to an enrolled child why a particular behavior is not allowed, suggests an alternative, and assists the enrolled child to become engaged in an alternative activity; and~~

~~4.~~ ~~After determining that an enrolled child's behavior may result in harm to self or others, holds the enrolled child until the enrolled child regains control or composure.~~

A. A staff member shall provide guidance to help children respond to difficult situations. To develop self-regulation, children should receive adult support that is individual to the child and adapts as the child develops internal controls. This process should include:

1. Forming a positive relationship with the child, which occurs when the adult spends time talking to the child, listening to the child, following the child's lead, playing with the child, and responding to the child's needs;

2. Base expectations on the child's developmental level;

3. Establishing and being proactive in teaching and supporting children in learning simple rules;

4. Modifying the learning/play environment to support the child's appropriate behavior;

5. Creating a predictable daily routine and schedule;

6. Modeling desired behavior;

7. Showing children positive alternatives;

8. Using deliberate redirection, the staff member should encourage the child to use appropriate behavior, and provide positive feedback when the child exhibits the behavior;

9. Individualized positive discipline strategies based on the individual needs of children, such as using a buddy system, individualized schedule, special break, or another applicable positive discipline strategy; and

10. If applicable, a licensee shall develop a written plan with the enrolled child's parent to provide individualized social and emotional intervention supports for the enrolled child that includes methods for understanding the enrolled child's behavior, and developing, adopting, and implementing a team-based positive behavior support plan.

B. A licensee shall ensure that a staff member does not use or permit:

~~1. A method of discipline that could cause harm to the health, safety, or welfare of an enrolled child;~~

~~2. Corporal punishment;~~

~~3. Abusive language;~~

~~4. Discipline associated with:~~

~~a. Eating, napping, sleeping, or toileting;~~

~~b. Medication; or~~

~~c. Mechanical restraint; or~~

~~5. Discipline administered to any enrolled child by another enrolled child.~~

1. The use of physical punishment including:

a. Hitting, spanking, shaking, slapping, twisting, pulling, squeezing, or biting;

b. Demanding excessive physical exercise or excessive rest; and

c. Forcing a child to eat or consume soap, food, or foreign substances;

2. Any form of emotional abuse, including rejecting, extended ignoring, public or private humiliation;

3. Abusive, profane, sarcastic language, verbal abuse, threats, or derogatory remarks about the child or child's family;

4. Punishment associated with eating, resting, sleeping, toileting, and withholding outdoor play;

5. Using medication to control behavior or restrict freedom of movement unless it is prescribed by a health care provider;

6. Mechanical restraint to restrict a child's freedom of movement;

7. Placing a child in a crib, high chair, car seat, or other restrictive device for a time-out or to restrict a child's freedom of movement; and

8. Directing an enrolled child to punish another enrolled child.

C. A licensee may allow a staff member to separate an enrolled child from other enrolled children with continuous supervision ~~for unacceptable age-appropriate behavior~~.

1. ~~The separation period shall be for no longer than three minutes after the enrolled child has regained control or composure~~ Separation should only be used in combination with instructional approaches that teach children what to do in place of the behavior problem;

2. Separation may not be used for children ages infant to two-years-old;

3. A staff member may allow an enrolled child to be separated for no longer than three minutes. If the enrolled child has not regained control or composure after three minutes, a staff member may extend the separation for up to 10 minutes with staff member interaction.

~~2. A staff member shall not allow an enrolled child to be separated for longer than 10 minutes without the staff member interacting with the enrolled child.~~

D. A licensee shall not physically restrain an enrolled child, except when necessary to protect an enrolled child from physical injury, to protect persons on the premises from physical injury, or to protect property from damage.

1. When a child has an out-of-control behavior, the enrolled child may be removed from the company of other enrolled children until the enrolled child's behavior has stabilized. Removal of a child is only to be used when there is a safety concern that cannot be reduced or eliminated with reasonable accommodations;
2. After determining that an enrolled child's behavior may result in harm, a staff member may safely hold the child until the enrolled child regains control or composure; and
4. A licensee shall develop and implement written policies and procedures on physical restraint to protect children's safety and development.

R9-5-511. Sleeping and Napping

A. A licensee shall provide each enrolled child who naps or sleeps at the facility with a separate cot or mat or a crib that meets the requirements of R9-5-502(A)(8) and ensure that:

1. A cot, mat, or crib used by the enrolled child accommodates the enrolled child's height and weight;
2. A staff member covers each cot~~, crib mattress,~~ or mat with a clean sheet that is laundered when soiled, or at least once every seven days and before use by a different enrolled child;
3. A clean blanket or sheet is available for each enrolled child;
4. A rug, carpet, blanket, or towel is not used as a mat; ~~and~~
5. Each cot, mat, or crib is maintained in a clean and repaired condition~~.~~;
6. An infant is placed to sleep on the infant's back, unless the infant's parent submits written instructions from the infant's health care provider that states otherwise; and
7. An enrolled child sleeps alone with no other children.

B. A licensee shall not use bunk beds or waterbed mattresses.

C. A licensee shall provide an unobstructed passageway at least 18 inches wide between each row of cots or mats to allow a staff member access to each enrolled child.

D. A licensee shall ensure that if an enrolled child is present at the facility during evening and nighttime hours, the licensee:

1. Permits the enrolled child to use a mat only when used on top of a cot;
2. Before bathing the enrolled child at the facility, obtains written consent and bathing instructions from the enrolled child's parent and follows the instructions when bathing the enrolled child;
3. Requires that a staff member cleans and sanitizes a bathtub or shower stall after bathing each enrolled child;
4. Requires that a staff member remains awake while supervising the sleeping enrolled child; and
5. Prohibits the operation of a television set in a room where the enrolled child is sleeping.

E. A licensee shall ensure that if an enrolled child is present at the facility during naptime, the licensee:

1. Does not permit the enrolled child to lie in direct contact with the floor while napping,
2. Prohibits the operation of a television set in a room where the enrolled child is napping,
3. ~~Ensures naptime accommodations are available for the enrolled school-age child if requested by the enrolled child or the enrolled child's parent,~~
4.~~3.~~ Requires that a staff member remain awake while supervising the enrolled sleeping child, and
5.~~4.~~ Prohibits the enrolled child from napping in an attic or a loft during naptime.

F. A licensee shall ensure that storage space is provided in the facility for cots, mats, sheets, and blankets, that is:

1. Accessible to an area used for naptime or sleeping; and
2. Separate from food service and preparation areas, toilet rooms, and laundry rooms.

R9-5-514. Accident and Emergency Procedures

A. A licensee shall ensure that there is a first aid kit on facility premises that contains first aid supplies in a quantity sufficient to meet the needs of the enrolled children including the following:

1. Sterile bandages including:
   a. Adhesive bandages of assorted sizes,
   b. Sterile gauze pads, and
   c. Sterile gauze rolls;
2. Antiseptic solution or sealed antiseptic wipes;
3. A pair of scissors;
4. Adhesive or self-adhering tape;
5. Single-use, non-porous gloves; and
6. Reclosable plastic bags of at least one-gallon size.

B. A licensee shall ensure that the first aid kit required in subsection (A) is accessible to staff members but inaccessible to enrolled children.

C. A licensee shall:

1. Prepare and date a written fire and emergency plan that contains:
   a. The location of the first aid kit;
   b. The names of staff members who have ~~the~~ adult and pediatric first aid ~~training~~ and CPR certification, as required by R9-5-403(E);
   ~~c. The names of staff members who have the CPR training required by R9-5-403(E);~~
   ~~d.~~c. The directions for:
      i. Initiating verbal notification of an enrolled child's parent by telephone or other equally expeditious means within 30 minutes of a fire or emergency, and
      ii. Providing written notification to the enrolled child's parent within 24 hours, and
   ~~e.~~d. The facility's street address and the emergency telephone numbers for the local fire department, police department, ambulance service, and poison control center;
   e. The procedures for evacuation, relocation, shelter-in-place and lockdown, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants, children with disabilities, and children with chronic medical conditions, as specified in R9-5-301;
2. Maintain the plan required in subsection (C)(1) in a location on facility premises that has an operable telephone service or two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out operable telephone service;
3. Post the plan required in subsection (C)(1) in any indoor activity area that does not have an operable telephone service or two-way voice communication system that connects the indoor activity area with an individual who has direct access to an in-and-out operable telephone services; and
4. Update the plan in subsection (C)(1) every 12 months after the date of initial preparation of the plan or when any information changes.

D. The licensee shall consult with appropriate state and local authorities and shall establish and follow a written multi-hazard emergency and evacuation plan to protect children in the event of emergencies.

~~D.~~E. A licensee shall post, near an activity area or a room's designated exit, a building evacuation plan that details the designated exits from the activity area or room and the facility.

~~E.~~F. A licensee shall maintain and use a communication system that contains:

1. A direct-access, in-and-out, operating telephone service at the facility; or
2. A two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out, operating telephone service.

~~F.~~**G.** If while attending a facility an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, requires medical treatment by a health care provider, a licensee shall ensure that a staff member:

1. Notifies the enrolled child's parent and the Department immediately after the accident, serious physical injury, as defined in A.R.S. § 8-201, or emergency;
2. Documents:
   a. A description of the accident, serious physical injury, or emergency, including the date, time, and location of the accident, serious physical injury, or emergency;
   b. The method used to notify the enrolled child's parent; and
   c. The time the enrolled child's parent was notified; and
3. Maintains documentation required in subsection (F)(2) on facility premises for 12 months after the date of the child's disenrollment.

~~G.~~**H.** If an enrolled child's parent informs a staff member at the facility that the enrolled child's parent obtained medical treatment from a health care provider for an accident, serious physical injury, or emergency the enrolled child had while attending the facility, a licensee shall ensure that a staff member:

1. Documents any information about the enrolled child's accident, serious physical injury, or emergency received from the enrolled child's parent; and
2. Maintains documentation required in subsection (G)(1) on facility premises for 12 months after the date of the child's disenrollment.

R9-5-515. Illness and Infestation

A. A licensee shall not permit an enrolled child to remain at the facility if a staff member determines that the enrolled child shows signs of illness or infestation.

B. If an enrolled child exhibits signs of illness or infestation at a facility, a licensee shall ensure that a staff member:

1. Immediately separates the enrolled child from other enrolled children,
2. Immediately notifies the enrolled child's parent by telephone or other expeditious means to arrange for the enrolled child's removal from the facility, and
3. Maintains documentation of the notification on facility premises for 12 months after the date of the notification.

C. A licensee shall ensure that a staff member who has signs of illness or infestation is excluded from a facility.

D. A facility director shall not permit a staff member to return to a facility until free from signs of illness or infestation or until the staff member provides documentation by a health care provider that the individual may return to the facility.

E. If a staff member or enrolled child contracts a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, ~~Table 2~~ Table 2.2, a licensee shall ensure that, within 24 hours of notice of the communicable disease or infestation, written notice is provided to each staff member, parent, and the local health department.

F. A licensee shall ensure that:

1. A dated, written notice of the communicable disease or infestation is prepared and posted in the facility's entrance as required by R9-5-303;
2. Documentation of the notification is maintained on facility premises for 12 months from the date of the notification; and
3. Documentation of the absences of staff members and enrolled children due to a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, ~~Table 2~~ Table 2.2, is prepared and maintained on facility premises for 12 months from the first date of absence.

R9-5-517. Transportation

A. A licensee who transports an enrolled child in a motor vehicle that the licensee owns, or acquires for use by contract, shall:

1. Obtain dated, written permission from the enrolled child's parent before the licensee transports the enrolled child;
2. Maintain written permission required in subsection (A)(1) on facility premises for 12 months after the date on the written permission;
3. Ensure that the motor vehicle is registered by the Arizona Department of Transportation as required by A.R.S. Title 28, Chapter 7;
4. Maintain documentation of current motor vehicle insurance coverage inside the motor vehicle;
5. Contact the Department no later than 24 hours after a motor vehicle accident that occurs while transporting an enrolled child;
6. Submit a written report to the Department within seven calendar days after a motor vehicle accident that occurs while transporting an enrolled child;
7. Not permit an enrolled child to be transported in a truck bed, camper, or trailer attached to a motor vehicle;
8. Use a child passenger restraint system, as required by A.R.S. § 28-907, for each enrolled child who is:
    a. Under eight years of age, and
    b. Not more than four feet nine inches tall.
9. Ensure that the motor vehicle has:
    a. A working mechanical heating system capable of maintaining a temperature throughout the motor vehicle of at least 60° F when outside air temperatures are below 60° F;
    b. Except as provided in subsection (E), a working air-conditioning system capable of maintaining a temperature throughout the motor vehicle at or below 86° F when outside air temperatures are above 86° F;
    c. Except as provided in subsection (F), a first aid kit that meets the requirements of R9-5-514(A);
    d. Two large, clean towels or blankets; and
    e. Sufficient drinking water available to meet the needs of each enrolled child in the motor vehicle and sufficient cups or other drinking receptacles so that each enrolled child can drink from a different cup or receptacle;
10. Ensure that the motor vehicle is:
    a. Maintained in a clean condition,
    b. In a mechanically safe condition, and
    c. Free from hazards; and
11. Maintain the service and repair records of the motor vehicle as follows:
    a. A person operating a single child care facility shall maintain the service and repair records for at least 12 months after the date of an inspection or repair in a single location on facility premises;
    b. A public or private school that uses a school bus, as defined in A.R.S. § 28-101, shall maintain the service and repair records for the school bus as provided in ~~A.A.C. R17-9-108(F)~~ A.A.C. R13-13-108; and
    c. A school governing board, charter school, or person operating multiple child care facilities shall maintain the service and repair records for any motor vehicle other than a school bus for at least 12 months after the date of an inspection or repair in a single administrative office located in the same city, town, or school attendance area as the facility.

B. A licensee shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:

1. Is 18 years of age or older;
2. Holds a valid driver's license issued by the Arizona Department of Motor Vehicles as prescribed by A.R.S. Title 28, Chapter 8;

3. Carries a list stating the name of each enrolled child being transported and a copy of each enrolled child's Emergency, Information, and Immunization Record ~~card~~ including the attached immunization record or exemption affidavit, in the motor vehicle;
4. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
5. Does not permit an enrolled child to be seated in front of a motor vehicle's air bag;
6. Requires that each enrolled child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
7. Except as provided in subsection (E), requires that each enrolled child be secured in a seat belt before the motor vehicle is set in motion and while the motor vehicle is in motion;
8. Does not permit an enrolled child to open or close a door or window in the motor vehicle;
9. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
10. Ensures that each enrolled child is loaded into or unloaded from the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose; and
11. Does not use audio headphones or a telephone while the motor vehicle is in motion.

C. When transporting an enrolled school-age child in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled school-age child in a motor vehicle, if the motor vehicle driver meets the qualifications of a ~~teacher-caregiver~~ child educator.

D. When transporting an enrolled child who is not school-age in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled child who is not school-age in a motor vehicle, only if four or fewer enrolled children are being transported and the motor vehicle driver meets the qualifications of a ~~teacher-caregiver~~ child educator.

E. A licensee who is transporting an enrolled child in a commercial motor vehicle, as defined in A.R.S. § 28-1301, is exempt from the provisions in subsections (A)(9), (A)(10)(b), and (B)(7).

F. A licensee who is transporting an enrolled child in a school bus, as defined in A.R.S. § 28-101, is exempt from the provision in subsection (A)(10)(c) and shall comply with ~~A.A.C. R17-9-110~~ A.A.C. R13-13-107.

R9-5-518. Field Trips

A. A licensee providing a field trip for an enrolled child shall:

1. Obtain written permission from a parent before the enrolled child participates in a field trip including the:
   a. ~~The date~~ Date and description of the field trip;
   b. ~~The times~~ Times of departure from and return to the facility; and
   c. ~~The name~~ Name, street address, and telephone number, if any, of the field trip destination;
2. Prepare a written field trip plan including:
   a. The name of each participating enrolled child, staff member, and other individuals on the field trip;
   b. The times of departure from and return to the facility;
   c. If applicable, the license plate number of any motor vehicle used on the field trip; and
   d. The name, street address, and telephone number, if any, of the field trip destination; and
3. Maintain the written permission in subsection (A)(1) and written field trip plan in subsection (A)(2) on facility premises for 12 months after the date of the field trip.

B. A licensee shall ensure that a staff member taking enrolled children on a field trip carries the following on the field trip:

1. ~~A copy~~ Documentation of the Emergency, Information, and Immunization Record ~~card~~ including the attached immunization record or exemption affidavit, of each enrolled child participating in the field trip;

2. A copy of the written field trip plan required in subsection (A)(2);

3. A list stating the name of each participating enrolled child; and

4. Sufficient water to meet the needs of each enrolled child participating in the field trip.

C. A staff member shall verify the presence of each enrolled child and place a checkmark next to the enrolled child's name on the list required in subsection (B)(3) for each enrolled child who is present at the following times:

1. At the beginning of the field trip or when boarding the motor vehicle,

2. Upon arrival and each hour while at the field trip destination,

3. When preparing to leave the field trip destination or when boarding the motor vehicle to return to the facility, and

4. When reentering the facility at the conclusion of the field trip.

D. A licensee shall ensure that each enrolled child participating in a field trip is wearing in plain view a written identification stating the facility's name, address, and telephone number.

E. A licensee shall also ensure that each enrolled child is wearing out of view a written identification stating the enrolled child's name.

F. If a licensee uses a motor vehicle volunteered by a parent or other individual for a field trip, a licensee shall determine before the field trip begins that the motor vehicle is in compliance with R9-5-517(A)(3) and (4) and that the motor vehicle driver is in compliance with R9-5-517(B)(1) and (2).

G. When six or more enrolled children are participating in a field trip, a licensee shall ensure that a ~~teacher caregiver~~ child educator and at least one additional staff member are present on the field trip, including in each motor vehicle unless vehicles travel and remain together to and from the destination.

H. A licensee may use the written permission required in subsection (A) annually for multiple field trips to the same destination.

ARTICLE 6. PHYSICAL PLANT OF A FACILITY

R9-5-601. General Physical Plant Standards

A licensee shall comply with the following physical plant requirements, as applicable:

1. When a facility is licensed to care for more than five infants in an infant room as described in R9-5-502(A)(1), each infant room has two or more designated exits from the room;
2. Not including infants and children who use diapers, toilets and hand-washing sinks are available to enrolled children in a facility as follows:
   a. At least one flush toilet and one hand-washing sink for 10 or fewer children,
   b. At least two flush toilets and two hand-washing sinks for 11 to 25 children, and
   c. At least one flush toilet and one hand-washing sink for each additional 20 children;
3. A hand-washing sink required in R9-5-503(A)(2) or subsection (2) provides running water with a drain connected to a sanitary sewer as defined in A.R.S. § 45-101;
4. Except as provided in subsection (5), when providing child care services for infants or children who require diapering, a diaper changing area that meets the requirements in R9-5-503 is available in each infant room or indoor activity area used by an enrolled infant or child who wears diapers or disposable training pants;
5. A diaper changing area is not required in an activity area that is:
   a. Only used by enrolled children for snacks or meals,
   b. Used for a specific activity by enrolled children who are two years of age or older, or
   c. An indoor activity area that is being substituted for an outdoor activity area under R9-5-602(D); and
6. A glass mirror, window, or other glass surface that is located within 36 inches of the floor is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken, or is shielded by a barrier to prevent impact by or physical injury to an enrolled child.

R9-5-602. Facility Square Footage Requirements

A. A licensee shall ensure that the facility meets the following square footage requirements for indoor activity areas based on the child care services classifications:
   1. At least 35 square feet of indoor activity space for each infant and 1-year-old child;
   2. At least 25 square feet of indoor activity space for each child who is not an infant or a 1-year-old child; and
   3. When 1-year-old children are grouped together with children older than 1-year-old children in the same activity area, at least 35 square feet of indoor activity space for each child.

B. When computing indoor activity space for subsections (A)(1) through (3) to determine licensed capacity, the floor space occupied by the following shall be excluded:
   1. The interior walls;
   2. A kitchen, bathroom, closet, hallway, stair, entryway, office, a room designated for isolating an enrolled child from other children, storage rooms, and a room designated for the sole use of child care staff; and
   3. Room space occupied by ~~teacher-caregiver~~ desks, file cabinets, storage cabinets, and hand washing sinks ~~for staff use~~.

C. To provide activities that develop large muscles and an opportunity to participate in structured large muscle physical activities, a licensee shall:
   1. Provide at least 75 square feet of outdoor or indoor activity area per child for at least 50% of the facility's licensed capacity, or
   2. ~~Comply with one of the following:~~ If children are in care for less than four consecutive hours, the licensee is not required to have an outdoor activity space.
      ~~a. If no enrolled child attends the facility for more than four hours per day, provide at least 50 square feet of indoor activity area for each child, based on the facility's licensed capacity;~~

~~b. If no enrolled child attends the facility for more than six hours per day, provide at least 75 square feet of indoor activity area per child for at least 50% of the facility's licensed capacity in addition to the indoor activity area required in subsection (A); or~~

~~c. Provide at least 37.5 square feet of outdoor activity area and 37.5 square feet of indoor activity area per child for at least 50% of the facility's licensed capacity in addition to the indoor activity area required in subsection (A).~~

D. A licensee substituting indoor activity area for outdoor activity area shall~~:~~

~~1. Designate, on the site plan and the floor plan submitted with the license application or request for approval of an intended change, the indoor activity area that is being substituted for an outdoor activity area; and~~

~~2. In the indoor activity area substituted for outdoor activity area,~~ install and maintain a mat or pad designed to provide impact protection in the fall zone of indoor swings, slides, and climbing equipment.

~~**E.** An indoor activity area that is substituted for an outdoor activity area is not assigned a licensed capacity.~~

~~**F.** The Department shall review and approve or deny the request for exemption or substitution.~~

~~1. For a request that is part of a license application, the Department shall review the proposed exemption or substitution and provide written notice according to the procedures in R9-5-202.~~

~~2. For a licensed facility, within 30 calendar days after the date of the receipt of the request, the Department shall review the proposed exemption or substitution and provide written notice of the review to the licensee. If the proposed exemption or substitution:~~

~~a. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, the Department shall approve the proposed exemption or substitution; or~~

~~b. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter, the Department shall provide the licensee with the requirements necessary to approve the requested exemption or substitution.~~

~~3. A licensee shall provide at least 75 square feet of outdoor activity area per child for 50% of the facility's licensed capacity, until the Department approves the exemption or substitution.~~

R9-5-603. Outdoor Activity Areas

A. Except as provided in subsection (B), a licensee shall not permit an enrolled child to cross a driveway or parking lot to access an outdoor activity area on the facility premises or a school campus unless the licensee obtains written approval from the Department.

~~**B.** If a licensee requests approval from the Department for enrolled children to cross a driveway or parking lot to access an outdoor activity area, the Department shall inspect the facility premises or school campus to determine whether the health, safety, or welfare of enrolled children would be endangered. The Department shall notify the licensee of approval or disapproval within 30 calendar days of receipt of the request. If disapproved, the Department shall provide the licensee with the requirements necessary to approve the proposed crossing.~~

~~**C.**~~**B.** Except as provided in subsection (D), a licensee shall ensure that an outdoor activity area:

1. Is enclosed by a fence:
   a. A minimum of 4 feet high,
   b. Secured to the ground, and
   c. With either vertical or horizontal open spaces on the fence or gate that do not exceed 4.0 inches;
2. Is maintained free from hazards, such as exposed concrete footings and broken toys; and
3. Has gates that are kept closed while an enrolled child is in the outdoor activity area.

~~**D.**~~**C.** A licensee shall ensure that a playground used only for enrolled ~~school age~~ school-age children at a facility operating at a public school meets the fencing requirements of the public school. If the Department determines by inspection that a facility fence at a

public school does not ensure the health, safety, or welfare of enrolled children, the licensee shall meet the fencing requirements of subsection (C).

~~E.~~**D.** A licensee shall ensure that the following is provided and maintained within the fall zones of swings and climbing equipment in an outdoor activity area:

1. A shock-absorbing unitary surfacing material manufactured for such use in outdoor activity areas; or
2. A minimum depth of 6 inches of a nonhazardous, resilient material such as fine loose sand or wood chips.

~~F.~~**E.** A licensee shall ensure that hard surfacing material such as asphalt or concrete is not installed or used under swings or climbing equipment unless used as a base for a rubber surfacing.

~~G.~~**F.** A licensee shall ensure that a swing or climbing equipment is not located in the fall zone of another swing or climbing equipment.

~~H.~~**G.** A licensee shall provide a shaded area for each enrolled child occupying an outdoor activity area at any time of day.

R9-5-604. Swimming Pools

A. If a licensee uses a public or semi-public swimming pool for an enrolled child, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by the local government. If no ordinance has been adopted, the swimming pool shall meet the requirements in A.A.C. R9-8-801 through R9-8-813.

B. A licensee that uses a private pool for an enrolled child shall ensure that the swimming pool and its equipment meet the following requirements:

1. If a licensee uses a private pool that is a minimum of 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by the local government and, at a minimum, be equipped with the following:
   a. A recirculation system consisting of piping, pumps, filters, and water conditioning and disinfecting equipment that conforms to the swimming pool manufacturer's specifications for installation and operation, and is adequate to clarify and disinfect the pool water continuously;
   b. Two swimming pool inlets located on opposite sides of the swimming pool to produce uniform circulation of water and maintain uniform chlorine residual throughout the entire swimming pool without the existence of dead spots;
   c. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed by bathers;
   d. A swimming pool water vacuum system in operating condition;
   e. A removable strainer to prevent hair, lint, or other objects from reaching the pump and filter;
   f. An automatic mechanical water disinfectant system in use and in operating condition. The disinfecting agents shall maintain the swimming pool water as follows:
      i. A free chlorine level between 1.0 and 3.0 parts per million as tested by the diethyl-p-phenylene diamine method or 0.4 to 1.0 parts per million when tested by the orthotolidine method;
      ii. A pH level between 7.0 and 8.0 as tested by the diethyl-p-phenylene diamine method or the orthotolidine method; or
      iii. A bromine level between 2.0 and 4.0 parts per million as tested by the diethyl-p-phenylene diamine method;
   g. A shepherd's crook; and
   h. A ring buoy attached to a 1/2 inch diameter rope at least 25 feet in length;
2. If a licensee uses a private pool that is less than 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of subsection (B)(1) except that:
   a. The swimming pool shall have a minimum of one swimming pool inlet;
   b. The swimming pool is not required to have a bottom drain;

c. A pool water vacuum cleaning system is not required, and

d. A ring buoy with an attached rope is not required;

3. A portable pool that does not meet the requirements of subsection (B)(1) or (2) is prohibited;

4. On each day an enrolled child uses the swimming pool, a licensee shall test the water in the swimming pool at least once every day to verify that the swimming pool water meets the swimming pool water chemical ranges in subsection (B)(1)(f);

5. A licensee shall create a written swimming pool log ~~and~~ at the swimming pool site while enrolled children are using the swimming pool that includes results of tests required in subsection (B)(4) and maintain the written swimming pool log on facility premises for three months after the last date the swimming pool water was tested and documented.~~:~~

~~a. Document the results of tests required in subsection (B)(4) in the written swimming pool log;~~

~~b. Have the written swimming pool log at the swimming pool site while enrolled children are using the swimming pool; and~~

~~c. Maintain the written swimming pool log on facility premises for three months after the last date the swimming pool water was tested and documented; and~~

6. If the swimming pool water does not meet the swimming pool water chemical ranges in subsection (B)(1)(f), the licensee shall:

a. Add liquid or dissolved dry chemicals to the swimming pool water,

b. Document any actions taken by the licensee to restore the swimming pool water chemical ranges in the written swimming pool log required in subsection (B)(5)(a), and

c. Not allow enrolled children to use the swimming pool until tests of the swimming pool water verify that the swimming pool water meets the swimming pool water chemical ranges in subsection (B)(1)(f).

C. A licensee shall ensure that a public, semi-public, or private pool used by an enrolled child is enclosed by a wall, fence, or barrier that complies with:

1. The requirements of a swimming pool barrier ordinance adopted by the local government where the swimming pool is located; or

2. If the local government where the swimming pool is located has not adopted a swimming pool barrier ordinance, the requirements in A.R.S. § 36-1681.

D. A licensee that uses any semi-public or private swimming pool for enrolled children shall ensure that the swimming pool has been inspected by the Department or a city or county health department before it is used by enrolled children.

1. If a licensee operates or uses a swimming pool that is inspected by a city or county health department, the licensee shall provide the Department with a current written report of the swimming pool inspection.

2. A licensee shall maintain the current swimming pool inspection reports of a swimming pool used by enrolled children on the facility premises.

E. A licensee shall ensure that written permission is:

1. Obtained from an enrolled child's parent before allowing the enrolled child to participate in a swimming activity, and

2. Maintained on facility premises for 12 months after the date the enrolled child participated in the swimming activity.

R9-5-605. Fire and Safety

A. A licensee shall install and maintain a portable, pressurized fire extinguisher that meets, at a minimum, a 2A-10-BC rating of the Underwriters Laboratories in a facility's kitchen and any other location required by Standard 10-1 of the International Fire Code, incorporated by reference in ~~A.A.C. R9-1-412~~ A.A.C. R9-10-104.01.

B. A licensee shall ensure that:

1. All designated exits, corridors, and passageways that provide an escape from the building are unobstructed and unlocked during hours of operation;

2. Combustible material, such as paper, boxes, or rags, is not permitted to accumulate inside or outside the facility premises;
3. An unvented or open-flame space heater or portable heater is not used on the facility premises;
4. A gas valve on an unused gas outlet is removed and capped where it emerges from the wall or floor;
5. Electrical extension cords are not used;
6. Except for a room used only for an enrolled school-age child, each unused electrical outlet is covered with a safety plug cover or insert;
7. Slow cookers and hot plates are used only in a kitchen and are inaccessible to an enrolled child;
8. Heating and cooling equipment is inaccessible to an enrolled child;
9. Fans are mounted and inaccessible to an enrolled child;
10. Toilet rooms are ventilated to the outside of the building, either by a screened window open to the outside air or by an exhaust fan and duct system that is operated when the toilet room is in use;
11. A toilet room with a door that opens to the exterior of a building is equipped with a self-closing device that keeps the door closed except when an individual is entering or exiting;
12. A toilet room door does not open into a kitchen;
13. A smoke detector is installed in each indoor activity area and kitchen;
14. Each smoke detector required in subsection (B)(13) is:
    a. Maintained in an operable condition;
    b. Either battery operated or, if hard wired into the electrical system of the child care facility, has a back-up battery; and
    c. Tested monthly;
15. If the local fire jurisdiction requires a sprinkler system, the sprinkler system is:
    a. Installed,
    b. Operable,
    c. Tested quarterly, and
    d. Serviced at least once every 12 months;
16. The fire extinguisher required in subsection (A):
    a. Is serviced at least once every 12 months~~.~~; and
    b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing ~~and the identification of the person who serviced the fire extinguisher;~~ and
17. The testing required in subsections (B)(14) and (15) and servicing required in subsection (B)(16) is documented and the documentation is:
    a. Maintained by the licensee, and
    b. Available for at least 12 months after the date of the testing or servicing.

Article 7. School-age Out-of-School Time Programs

R9-5-701. Definitions

In addition to the definitions in A.R.S. § 36-881, the following definitions apply in this Article unless otherwise specified:

1. "Abuse" has the same meaning as in A.R.S. § 8-201.
2. "Accident" means an unexpected occurrence that:
    a. Causes injury to an enrolled child,
    b. Requires attention from a staff member, and
    c. May or may not be an emergency.
3. "Accommodation school" has the same meaning as in A.R.S. § 15-101.

4. "Accredited" means approved by the US Department of Education and recognized by the Council for Higher Education Accreditation.
5. "Activity" means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. "Activity area" means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. "Adaptive device" means equipment used to augment an individual's use of the individual's arms, legs, sight, hearing, or other physical part or function.
8. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
9. "Adult" means an individual who is at least 18 years of age.
10. "Age-appropriate" means suitable with the developmental and social maturity of the child's age based on physical growth, language, emotional, social, behavioral and cognitive development.
11. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. "Applicant" means a person or governmental agency requesting one of the following:
    a. A license, or
    b. Approval of a change affecting a license under R9-5-208.
13. "Application" means the documents that an applicant is required to electronically submit to the Department for licensure or approval of a request for a change affecting a license.
14. "Assistant child educator" means a staff member who aids a child educator in planning, developing, or conducting child care activities.
15. "Association" means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.
16. "Background check" means results identified in searches according to A.R.S.§ 46-811(A) and consistent with the Child Care and Development Block Grant Act of 2014 (Public Law 113-186):
    a. The state sex offender registry within this state and each state where a staff member resided during the preceding five years;
    b. The state-based child abuse and neglect registries and databases within this state and each state where a staff member resided during the preceding five years;
    c. The state criminal history checks within this state and each state where a staff member resided during the preceding five years;
    d. The National FBI criminal history check, with FBI fingerprint check; and
    e. The National Crime Information Center including the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 A.S.C. 16901 et seq).
17. "Beverage" means a liquid for drinking, including water.
18. "Business organization" has the same meaning as "entity" in A.R.S. § 10-140.
19. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
20. "Calendar week" means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
21. "C.C.P." means Certified Childcare Professional, a credential awarded by the National Early Childhood Program Accreditation.
22. "C.D.A." means Child Development Associate, a credential awarded by the Council for Professional Recognition.

23. "Charter school" has the same meaning as in A.R.S. § 15-101.
24. "Child care experience" means an individual's documented work with children in:
    a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
    b. A public school, a charter school, a private school, or an accommodation school;
    c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or
    d. One of the following professional fields:
        i. Nursing,
        ii. Social work,
        iii. Psychology,
        iv. Child development, or
        v. A closely-related field.
25. "Child care services" means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.
26. "Child educator" means a staff member responsible for developing, planning, and conducting child care activities.
27. "Child educator aide" means a staff member who provides child care services under the supervision of a child educator.
28. "Child with a disability" means the same as
    a. A child with a "developmental disability" as defined in A.R.S. § 36-551; or
    b. A "child with a disability" as defined in A.R.S. § 15-761.
29. "Child with a special health care need" means a child with a health care provider's diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning.
30. "Clean" means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.
31. "Closely-related field" means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.
32. "Communicable disease" has the same meaning as in A.A.C. R9-6-101.
33. "Compensation" means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
34. "CPR" means cardiopulmonary resuscitation.
35. "Credit hour" means an academic unit earned at an accredited college or university:
    a. By attending a class session, which is equivalent to 15 clock hours, each calendar week during a semester or equivalent shorter course term, or
    b. Completing practical work for a course as determined by the accredited college or university.
36. "Designated agent" means an individual who meets the requirements in A.R.S. § 36-889(D).
37. "Developmentally-appropriate" means consistent with a child's physical, emotional, social, cultural, linguistic, and cognitive development, based on the child's age and family background and the child's personality, learning style, and pattern and timing of growth.
38. "Documentation" means information in written, photographic, electronic, or other permanent form.
39. "Electronic signature" has the same meaning as in A.R.S. § 41-251.
40. "Emergency" means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.

41. "Endanger" means to expose an individual to a situation where physical injury or mental injury to the individual may occur.
42. "Enrolled" means placed by a parent and accepted by a licensee for child care services.
43. "Evening and nighttime care" means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.
44. "Facility" has the same meaning as "child care facility" in A.R.S. § 36-881.
45. "Facility director" means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.
46. "Facility premises" means property that is:
    a. Designated on an application for a license by the applicant; and
    b. Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.
47. "Fall zone" means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
48. "Field trip" means an activity planned by a staff member for an enrolled child at a:
    a. Location or area that is not licensed for child care services by the Department, or
    b. Child care facility in which the child is not enrolled.
49. "Final construction drawings" means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by the local government for the construction, alteration, or addition of a facility.
50. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
51. "Food preparation" means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
52. "Full-day care" means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.
53. "Governmental agency" has the same meaning as in A.R.S. § 44-7002.
54. "Guidance" means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-regulation, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
55. "Hazard" means a source of endangerment.
56. "Health care provider" means a physician, physician assistant, or registered nurse practitioner.
57. "High school equivalency diploma" means a document issued by:
    a. The State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
    b. Another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
    c. Another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental agencies.
58. "Hours of operation" means the specific time during a day for which a licensee is licensed to provide child care services.
59. "Illness" means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.
60. "Immediate" or "immediately" means without restriction, delay, or hesitation.

61. "Inaccessible" means:
    a. Out of an enrolled child's reach, or
    b. Locked.
62. "Individual plan" means a written description of the daily activities required for an enrolled child with a special health care need or disability.
63. "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
64. "Inspection" means:
    a. Examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
    b. Review of facility documents, records, or reports by the Department; or
    c. Examination of a facility by a local governmental agency.
65. "License" means the written authorization issued by the Department to operate a facility in Arizona.
66. "Licensed capacity" means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.
67. "Licensee" means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.
68. "Local" means under the jurisdiction of a city or county in Arizona.
69. "Mat" means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child's body.
70. "Medication" means a substance prescribed by a health care provider or available without a prescription for the treatment or prevention of illness or infestation.
71. "Menu" means:
    a. A written description of the food that a facility provides and serves as a meal or snack, or
    b. The combination of food that a facility provides and serves as a meal or snack.
72. "Modification" means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a child care facility.
73. "Motor vehicle" has the same meaning as in A.R.S. § 28-101.
74. "N.A.C." means the National Administrator Credential, a credential issued by the National Institute of Child Care Management.
75. "Name" means, for an individual, the individual's first name and the individual's last name.
76. "Neglect" has the same meaning as in A.R.S. § 8-201.
77. "Outbreak" has the same meaning as in A.A.C. R9-6-101.
78. "Out-of-school time" means a program, as described in Article 7 of this Chapter, that is licensed with the Department and operates when school is not in session, such as before school, after school, or during school breaks, and serves school-aged children enrolled in school.
79. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
80. "Parent" means:
    a. A natural or adoptive mother or father,
    b. A legal guardian appointed by a court of competent jurisdiction, or
    c. A "custodian" as defined in A.R.S. § 8-201.
81. "Part-day care" means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.

82. "Pediatric abusive head trauma" means an injury to the skull or intracranial contents of an infant or a child due to inflicted blunt impact and/or violent shaking.
83. "Pesticide" has the same meaning as in A.R.S. § 3-3601.
84. "Physical injury" means temporary or permanent damage or impairment to a child's body.
85. "Physical plant" means a building that houses a facility, or the licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
86. "Physical restraint" means a restriction that immobilizes or prevents freedom of movement of all or part of a person's body, or restricting normal access to the person's body.
87. "Physician" means an individual licensed as a doctor of:
    a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
    b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
    c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
    d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
    e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.
88. "Physician assistant" means an individual who is licensed:
    a. Under A.R.S. Title 32, Chapter 25; or
    b. As a physician assistant under the law of another state.
89. "Positive Discipline" means the on-going process of teaching a child self-regulation and assuming responsibility for the child's own actions, as well as providing guidance that focuses on preventing behavior problems by supporting children in learning appropriate social skills and emotional responses.
90. "Private pool" has the same meaning as "private residential swimming pool" in A.A.C. R18-5-201.
91. "Private school" has the same meaning as in A.R.S. § 15-101.
92. "Program" means a variety of activities organized and conducted by a staff member.
93. "Public pool" has the same meaning as "public swimming pool" in A.A.C. R18-5-201.
94. "Public school" has the same meaning in A.R.S. § 15-101.
95. "Punishment" means a negative physical or emotional action taken by adults in the classroom for a child's behavior that is not deemed acceptable.
96. "Regular basis" means at recurring, fixed, or uniform intervals.
97. "Responsible party" means an individual or a group of individuals who:
    a. Is assigned by a public school, charter school, or governmental agency; and
    b. Has general oversight of the child care facility.
98. "Sanitize" means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
99. "School-age child" means a child who:
    a. Meets one of the following:
        i. Is five years old on or before January 1 of the current school year, or
        ii. Is five years old on or before January 1 of the most recent school year; and
    b. Meets one of the following:
        i. Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
        ii. Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
        iii. Is home-schooled at a kindergarten or higher level during the current school year; or

iv. Was home-schooled at a kindergarten or higher level during the most recent school year.

100. "School-age child care" means child care services provided to a school-age child.

101. "School campus" means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.

102. "School governing board" has the same meaning as "governing board" in A.R.S. § 15-101.

103. "Screen time" means the use of electronic media to watch television or to watch a video at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.

104. "Semi-public pool" has the same meaning as "semipublic swimming pool" in A.A.C. R18-5-201.

105. "Separation" means removing an enrolled child from a group setting when the enrolled child needs support to gain control of them self under the supervision of a familiar and supportive adult until the enrolled child has regained regulation.

106. "Serious physical injury" has the same meaning as in A.R.S. § 8-201.

107. "Service classification" means one of the following:

a. Full-day care;

b. Part-day care;

c. Evening and nighttime care;

d. School-age child care; or

e. Weekend care.

108. "Signatory" means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.

109. "Signed" means affixed with an individual's signature or with a symbol representing an individual's signature if the individual is unable to write the individual's name.

110. "Space utilization" means the designated use of an area within a facility for specific child care services or activities.

111. "Staff" or "staff member" means the same as "child care personnel" as defined in A.R.S. § 36-883.02.

112. "Student-aide" means an individual between 15 and 18 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.

113. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.

114. "Supervision" means:

a. For an enrolled school-age child, as defined in R9-5-101(98), knowledge of and accountability for the actions and whereabouts of the enrolled child, including the ability to see or hear the enrolled child at all times, to interact with the enrolled child, and to provide guidance to the enrolled child; or

b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual's actions to prevent harm to enrolled children.

115. "Swimming pool" has the same meaning as in A.A.C. R18-5-201.

116. "Training" means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.

117. "Volunteer" means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.

118. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday, federal holiday, or a statewide furlough day.

119. "Written notice" means a message in written, typed, or printed characters sent or otherwise proved to have been received.

R9-5-702. Designated Person for Applicant or Licensee Requirements

When an applicant or licensee is required by this Chapter to provide information on or sign documents, and possess a fingerprint clearance card, the following shall satisfy the requirement on behalf of the applicant or licensee, if the applicant or licensee is:

1. An individual, the individual;
2. A business organization, a designated agent who meets the requirements in A.R.S. § 36-889(D);
3. A public school, an individual designated in writing as a signatory for the public school by the school district governing board or school district superintendent;
4. A charter school, the person approved to operate the charter school by the school district governing board, the Arizona State Board of Education, or the Arizona State Board for Charter Schools; and
5. A governmental agency, the individual in the senior leadership position with the agency, or an individual designated in writing as a signatory by that individual.

R9-5-703. Application for a License

A. An applicant for a license shall:

1. Be at least 21 years of age;
2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
5. Submit to the Department an application containing:
    a. The following information in a Department-provided format:
        i. The applicant's name;
        ii. The applicant's date of birth;
        iii. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
        iv. The requested service classifications;
        v. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
        vi. An attestation that the:
            (1) Applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter; and
            (2) Information provided on the application is accurate and complete; and
        vii. The applicant's signature and date of signature;
    b. Documentation for the applicant that complies with A.R.S. § 41-1080; and
    c. A copy of the applicant's valid fingerprint clearance card, both front and back, issued according to A.R.S. Title 41, Chapter 12, Article 3.1;
    d. A copy of the applicant's valid background check document according to A.R.S. § 46-811(A);
    e. A copy of the form required in A.R.S. § 36-883.02(C);
    f. Except as provided in subsection (A)(5)(j), a site plan of the facility drawn to scale by an architect, draftsman, or contractor showing:
        i. The boundary square footage of the property upon which the facility's physical plant is located;

ii. If more than one building is used for the facility, the location and perimeter square footage of each building;

iii. The location of each driveway on the property;

iv. The location and boundary square footage of each parking lot on the property;

v. The location and perimeter square footage of each outdoor activity area;

vi. The location, type, and height of each fence and gate; and

vii. If applicable, the location of any swimming pool on the property;

g. Except as provided in subsection (A)(5)(j), a floor plan of each building to be used for child care services drawn to scale by an architect, draftsman, or contractor showing:

i. The length and width square footage for each indoor activity area;

ii. The requested licensed capacity and applicable service classification for each indoor activity area;

iii. The location of each diaper changing area;

iv. The location of each hand washing, utility, and three-compartment sink, toilet, urinal, and drinking fountain; and

v. The location and type of fire alarm system;

h. Except as provided in subsection (A)(5)(j):

i. A copy of a certificate of occupancy issued for the facility by the local jurisdiction;

ii. Documentation from the local jurisdiction that the facility was approved for occupancy; or

iii. If the documents in subsections (A)(5)(i)(i) and (ii) are not available, a statement from the local jurisdiction stating that the certificate of occupancy is not available;

i. For an applicant providing child care services in a facility located in a public school, a set of final construction drawings or a school map showing the:

i. Location of each school building;

ii. Location and square footage of each outdoor activity area to be used by enrolled children;

iii. Length and width square footage for each indoor activity area;

iv. Requested licensed capacity and applicable service classification for each indoor activity area; and

v. Location of each hand-washing sink, toilet, urinal, drinking fountain, and, if applicable, diaper changing area to be used by enrolled children;

j. If the facility is located within one-fourth of a mile of agricultural land:

i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the facility, and

ii. An attestation signed and dated by the applicant agreeing with compliance of A.R.S. § 36-882 for each parcel of agricultural land;

k. The applicable fee in R9-5-206;

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

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

ii. The type of business organization;

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

iv. Documentation of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable;

v. Documentation of good standing issued by the Arizona Corporation Commission; and

vi. A statement signed by the applicant stating that each controlling person has not:

(1) Been denied a certificate or license to operate a child care group home or child care

facility in this state or another state, and

(2) Had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children;

m. If the applicant is a public school, a form provided by the Department that contains:

i. The name of the school district;

ii. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

iii. A statement signed by the applicant stating that each individual in subsection (A)(5)(n)(ii) has not:

(1) Been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) Had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iv. A letter from the school district governing board or school district superintendent designating a signatory, if applicable;

n. If the applicant is a charter school, a form provided by the Department that contains:

i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

ii. A statement signed by the applicant stating that each individual in subsection (A)(5)(o)(i) has not:

(1) Been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) Had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iii. A letter from the school district governing board in which the charter school is located, the Arizona State Board of Education, or the Arizona State Board for Charter Schools, approving the applicant to operate the charter school; and

o. If the applicant is a governmental agency, a form provided by the Department that contains:

i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

ii. A statement signed by the applicant stating that each individual in subsection (A)(5)(p)(i) has not:

(1) Been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) Had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iii. A letter from the individual in the senior leadership position with the agency designating a signatory.

B. The Department requires a separate license and a separate application for each facility owned by:

1. The same person at a different location, and

2. A different person at the same location.

C. The Department does not require a separate application and license for a structure that is:

1. Located so that the structure and the facility:
   a. Share the same street address, or
   b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another,
2. Under the same ownership as the facility, or
3. Intended to be used as a part of the facility.

D. A licensee shall provide written notice to the Department that the licensed facility is no longer operating and requests to void the license.

R9-5-704. Time-frames

A. The administrative completeness review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date that the Department receives an application.

1. An application for a license is not complete until the date, provided to the Department with the application or by written notice, that the child care facility is ready for an onsite licensing inspection.
2. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
   a. A notice of deficiencies shall list each deficiency and the items needed to complete the application.
   b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is issued until the date that the Department receives all of the missing items from the applicant.
   c. If an applicant for a license or an approval of a change affecting a license fails to submit to the Department all of the items listed in the notice of deficiencies within 180 calendar days after the date that the Department sent the notice of deficiencies, the Department shall consider the application or request for approval withdrawn.
3. If the Department issues a license or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

B. The substantive review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date of the notice of administrative completeness.

1. As part of the substantive review for a license application, the Department shall conduct an inspection that may require more than one visit to the facility.
2. As part of the substantive review for a request for approval of a change affecting a license that requires a change in the use of physical space at the facility, the Department shall conduct an evaluation of the request to determine compliance with applicable rules and statutes that may include an onsite inspection.
3. The Department shall send a license, a written notice of approval, or denial of a license or other request for approval to an applicant within the substantive review time-frame.
4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
   a. If the Department determines that an applicant or a facility is not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.

b. An applicant shall submit to the Department all of the information requested in the comprehensive written request for additional information and documentation of the corrections required in the statement of deficiencies, if applicable within 120 calendar days after the date of the comprehensive written request for additional information.

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

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

5. The Department shall issue a license or other approval if the Department determines that the applicant and facility are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, and the applicant submits documentation of corrections that is acceptable to the Department for any deficiencies.

6. If the Department determines that a license or other approval is to be denied, the Department shall send to the applicant a written notice of denial complying with A.R.S. § 36-888 and stating the reasons for denial and all other information required by A.R.S. §§ 36-888 and 41-1076.

Table 7.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Substantive Review Time-Frame
License under R9-5-703	A.R.S. § 36-882	120	30	90
Approval of Change Affecting License under R9-5-710	A.R.S. §§ 36-882 and 36-883	75	30	45

R9-5-705. Fingerprinting and Background Check

A. A licensee shall ensure that a staff member completes, signs, dates, and submits to the licensee, before the staff member's starting date of employment or volunteer service:

1. The form required in A.R.S. § 36-883.02(C); and
2. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I).

B. A licensee shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03 and a valid background check document issued under A.R.S. § 46-811.

C. Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member, before starting date of employment or volunteer service, submits to the licensee a copy of the staff member's valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1.

D. A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed every five years.

E. If a staff member possesses a fingerprint clearance card that was issued before the staff member became a staff member at the facility, a licensee shall:

1. Contact the Department of Public Safety before the individual becomes a staff member to determine whether the fingerprint clearance card is valid; and
2. Document this determination, including the name of the staff member, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.

F. A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid background check document:

1. Issued under A.R.S. § 46-811(A) before the starting date of employment or volunteer service; and
2. Each time a background check is issued or renewed every five years.

G. As required by A.R.S. § 8-804, before an individual's starting date of employment or volunteer service, a licensee shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.

H. A licensee shall not allow an individual to be a staff member if the individual:

1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1 and has not received an interim approval under A.R.S. § 41-619.55;
2. Has been denied a background check document that indicates the individual is not eligible for employment due to violations identified pursuant to A.R.S. § 46-811;
3. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
4. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
5. Has been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;

6. Has been denied or had revoked a certification to work in a child care facility or a child care group home in this state or another state;

7. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or

8. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

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

R9-5-706. Child Care Service Classifications

A. The Department licenses child care facilities using the following service classifications:

1. Full-day care;

2. Part-day care;

3. Evening and nighttime care;

4. School age out-of-school time programs; and

5. Weekend care.

B. The Department shall designate on a facility's license each service classification that the facility is licensed to provide.

C. A licensee shall submit an application to the Department to add or change a service classification. A licensee shall not provide child care services in a service classification for which the licensee is not licensed.

R9-5-707. Submission of Licensure Fees

A licensee shall submit the following to the Department, on an annual basis, no more than 60 calendar days before the anniversary date of the facility's license:

1. An application, in a Department-provided format that contains:

   a. The licensee's name,

   b. The facility's name and license number, and

   c. Whether the licensee intends to submit the applicable fee:

      i. With the form, or

      ii. According to the payment plan in subsection (2)(b), and

2. Either:

   a. The applicable fee, as specified in R9-5-206, or

   b. One-half of the applicable fee in R9-5-206 with the form and the remainder of the applicable fee due no later than 120 calendar days after the anniversary date of the facility's license.

R9-5-708. Licensure Fees

A. Except as provided in subsection (B), the annual fees, as specified in A.R.S § 36-882, for an applicant submitting an application or a licensee submitting licensure fees are for a child care facility with a licensed capacity of:

1. Five to 10 children, $330;

2. 11 to 59 children, $1330; and

3. 60 or more children, $2575.

B. The Department may discount the fee in subsection (A), based on available funding or if the applicant or licensee participates in a Department-approved program.

C. The fee for a licensee requesting an increase in a facility's licensed capacity is the difference between the applicable fee in this Section for the new licensed capacity and the applicable fee in this Section for the current licensed capacity, prorated from the

date the licensee submitted the request for the increase for the number of months remaining before the facility's license anniversary date specified in R9-5-205.

R9-5-709. Invalid License

If a licensee does not submit the licensure fee as required in R9-5-707(2), the facility license is no longer valid and the facility is operating without a license.

R9-5-710. Changes Affecting a License

A. At least 30 calendar days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change.

B. At least 30 calendar days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the intended change to the Department that includes:

1. The licensee's name;
2. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
3. The name, telephone number, and fax number of a point of contact for the request;
4. The facility's license number;
5. The type of change intended:
    a. Service classification,
    b. Space utilization, or
    c. Licensed capacity;
6. A narrative description of the intended change; and
7. The following additional information, as applicable, if the intended change:
    a. Affects an activity area, the following information about each affected activity area, as applicable:
        i. Identification of the activity area,
        ii. Current and intended square footage,
        iii. Current and intended operating hours,
        iv. Current and intended service classification,
        v. Current and intended licensed capacity, and
        vi. Whether the activity area has or will have a diaper changing area;
    b. Is to increase licensed capacity, the square footage of the outdoor activity area; and
    c. Includes an alteration or addition to the physical plant of a licensed facility, the following, as applicable, if the facility is located in a public school and provides child care only for school-age children, a set of final construction drawings or a school map, including the information required in R9-5-703(5)(j) showing the intended change.

C. If the intended change in subsection (B) includes an increase in the licensed capacity, a licensee shall submit the fee for an increase in licensed capacity in R9-5-708(C) with the written request for approval.

D. The Department will review a request submitted under subsection (B) according to R9-5-202. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and any applicable fee is submitted, the Department will send the licensee written approval of the requested change or an amended license that incorporates the change but retains the anniversary date of the current license.

E. A licensee shall not implement any change described under subsection (B) until the Department issues an approval or amended license.

F. At least 30 days before the date of a change in ownership of a facility, a licensee shall send the Department written notice of the change. For the purpose of this section, "change in ownership" means a transfer of controlling legal or controlling equitable

interest and authority in a facility resulting from a sale or merger of a facility. A new owner shall obtain a new license as prescribed in R9-5-703 before the new owner begins operating the facility.

G. A licensee changing a facility's location shall apply for a new license as prescribed in R9-5-703.

H. Within 30 calendar days after a change in a controlling person, a licensee shall send the Department written notice of the change that includes:

1. The name of the licensee;
2. A description of the change made;
3. The name, title, street address, city, state, and zip code of each controlling person;
4. A statement that each controlling person has not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
5. A statement that each controlling person has not had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to the endangerment of the health and safety of children;
6. A statement that the information provided in the written notice is accurate and complete; and
7. The signature of the licensee.

I. If the change in subsection (I) is a change in a controlling person who is a designated agent, a licensee shall include a copy of documentation for the designated agent~~.~~ that complies with A.R.S. § 41-1080.

J. Within 30 calendar days after changing a responsible party, a licensee shall send the Department written notice of the change that includes:

1. The name of the licensee;
2. A description of the change made;
3. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals; and
4. A statement signed by the licensee stating that each individual in subsection (K)(3) has not:
   a. Been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
   b. Had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children.

R9-5-711. Inspections; Investigations

A licensee shall:

1. Allow the Department immediate access to all areas of the facility affecting the health, safety, or welfare of an enrolled child or to which an enrolled child has access during hours of operation, according to A.R.S. § 36-885;
2. Notify the Department within 24 hours, prior to the next business day, of business closure; and
3. Permit the Department to interview each staff member or enrolled child as part of an investigation.

R9-5-712. Denial, Revocation, or Suspension of License

A. The Department may deny, revoke, or suspend a license to operate a facility if an applicant or licensee:

1. Provides false or misleading information to the Department;
2. Has been denied a certificate or license to operate a child care group home or child care facility in any state, unless the denial was based on the applicant's failure to complete the certification or licensing process according to a required time-frame;
3. Has had a certificate or license to operate a child care group home or child care facility revoked or suspended in any state;

4. Has been denied a fingerprint clearance card or has had a fingerprint clearance card revoked under A.R.S. Title 41, Chapter 12, Article 3.1;

5. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter; or

6. Substantially complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, but refuses to carry out a plan acceptable to the Department to eliminate any deficiencies.

B. In determining whether to deny, suspend, or revoke a license, the Department shall consider the threat to the health and safety of children in a facility based on such factors as:

1. Repeated violations of statutes or rules,

2. A pattern of non-compliance,

3. The type of violation,

4. The severity of each violation, and

5. The number of violations.

R9-5-713. General Licensee Responsibilities

A. A licensee shall:

1. Designate a facility director who acts on behalf of the licensee and is responsible for the daily onsite operation of a facility;

2. Submit the name of the designated facility director in a written notice to the Department before a license is issued;

3. Except as provided in subsection (A)(4), within 10 calendar days before changing a facility director, submit written notice of the change including the new designated facility director's name and starting date;

4. If the licensee is not aware of a change in the facility director 10 calendar days before the effective date of the change, submit written notice of the change to the Department including the new designated facility director's name and starting date within 72 hours after becoming aware of the change.

B. A licensee shall ensure that a facility director:

1. Designates, in writing, an individual who meets the requirements of R9-5-401(2) to act on behalf of the facility director when the facility director is not present in the facility;

2. Supervises or assigns a child educator to supervise each staff member who does not meet the qualifications of R9-5-401(3);

3. Prepares a dated attendance record for each day and ensures that each staff member documents on the attendance record the time of each arrival and departure of the staff member; and

4. Maintains on the facility premises, the dated attendance record required in subsection (B)(3) for 12 months after the date on the attendance record.

C. A licensee shall develop and implement written facility policies and procedures required for the daily onsite operation of the facility as prescribed in A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter.

D. A licensee shall ensure that the following individuals are allowed immediate access to facility premises during hours of operation:

1. A parent of an enrolled child or an individual designated in writing by the parent of an enrolled child; or

2. A representative of:

   a. The Department,

   b. The local health department,

   c. Arizona Department of Child Safety, or

   d. The local fire department or State Fire Marshal.

E. A licensee shall ensure that a staff member supervises any individual who is not a staff member who is on facility premises where enrolled children are present.

F. A licensee shall ensure that a staff member submits, on or before the starting date of employment or volunteer services, a completed self-screening form in a Department-provided format for tuberculosis screening purposes and follow recommendations for further tuberculosis testing, as applicable.

G. A licensee shall ensure that a staff member who has current certification in adult and pediatric first aid and CPR, as required by R9-5-403(E), is present:

1. At all times during hours of operation on facility premises,
2. On field trips, and
3. While transporting enrolled children in the facility's motor vehicle or a vehicle designated by the licensee to transport enrolled children.

H. A licensee shall prohibit the use or possession of the following items when an enrolled child is on facility premises, during hours of operation, or in any motor vehicle used for transporting an enrolled child:

1. Any beverage containing alcohol;
2. A controlled substance as listed in A.R.S. Title 36, Chapter 27, Article 2, except where used as a prescription medication in the manner prescribed;
3. A dangerous drug as defined in A.R.S. § 13-3401, except where used as a prescription medication in the manner prescribed;
4. A prescription medication as defined in A.R.S. § 32-1901, except where used in the manner prescribed; or
5. A firearm as defined in A.R.S. § 13-105.

I. At least once a month, and at different times of the day, a licensee shall ensure that:

1. An unannounced practice drill that includes evacuation, relocation, shelter-in place, and lock downs are conducted;
2. Each staff member, volunteer, and enrolled child at the facility participates in practice drills;
3. If applicable, accommodations are made for an enrolled child with a special need or disability; according to the enrolled child's individualized plan as specified in R9-5-507(A)(1); and
4. Document each practice drill and maintain the documentation on facility premises for 12 months after the date of the practice drill.

J. A licensee shall not allow a staff member who lacks proof of immunity against a disease listed in A.A.C. R9-6-702 to be present in the facility between the start and end of an outbreak of the disease at the facility.

K. A licensee shall ensure that the Department is notified orally or in writing within 24 hours after an enrolled child's death at the child care facility during hours of operation.

R9-5-714. Statement of School-Age Child Care Services

A licensee shall prepare a written statement of child care services provided by the licensee that includes the following:

1. A description of the facility's child care services classifications in R9-5-204;
2. Hours of operation;
3. The facility's street address, city, state, zip code, mailing address, and telephone number;
4. Child enrollment and disenrollment procedures;
5. Charges, fees, and payment requirements for child care services;
6. Child admission and release requirements;
7. Guidelines for positive discipline reflective of age-appropriate methods for children that include clear, appropriate, consistent expectations;
8. Transportation procedures;
9. Field trip requirements and procedures;
10. Responsibilities and participation of parents in facility activities;
11. A general description of activities and programs;

12. A description of the liability insurance required by R9-5-308 that is carried by the licensee and a statement that documentation of the liability insurance coverage is available for review on the facility premises;
13. Medication administration procedures;
14. Accident and emergency procedures;
15. A notice stating inspection reports are available onsite;
16. A provision stating that the facility is regulated by the Arizona Department of Health Services including the Department's local street address, city, state, zip code, and local telephone number;
17. The procedures for notifying a parent at least 48 hours before a pesticide is applied on a facility's premises;
18. A statement that a parent has access to the areas on facility premises where the parent's enrolled child is receiving child care services; and
19. Policies and procedures for suspension and expulsion of enrolled children to include clear, appropriate, consistent expectations, including suspension and expulsion prevention strategies.

R9-5-715. Posting of Notices

A. A licensee shall post in a place that can be conspicuously viewed by individuals entering or leaving the facility or activity area the:
1. Facility's license;
2. Name of the facility director;
3. Name of the individual designated to act on behalf of the facility director when the facility director is not present in the facility, as prescribed by R9-5-301(B)(1);
4. Schedule of child care services fees and policy for refunding fees as prescribed by A.R.S. § 36-882(P);
5. Breakfast, lunch, dinner, and snack menus for each calendar week at the beginning of the calendar week;
6. Notice of the presence of any communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2.2, from the date of discovery through the incubation period of the communicable disease or infestation;
7. Notice of the Department's intent to deny, revoke, or suspend as prescribed by A.R.S. § 36-888 at the expiration of time in the notice for the licensee to respond;
8. Notice of an intermediate sanction imposed as prescribed by A.R.S. § 36-891.01 within 10 calendar days after the licensee received notice of the intermediate sanction;
9. Notice of a legal injunction imposed as prescribed by A.R.S. § 36-886.01 when the licensee receives the legal injunction; and
10. Notice of the availability of facility inspection reports for public viewing at the facility premises.

B. A licensee shall ensure that the licensed capacity of each indoor activity area is posted in that activity area.

C. Except as prescribed in A.R.S. § 36-898(C), a licensee shall post a notification of pesticide application in each activity area and in each entrance of a facility, at least 48 hours before a pesticide is applied on the facility's premises, containing:
1. The date and time of the pesticide application, and
2. A statement that written pesticide information is available from the licensee upon request.

R9-5-716. Enrollment of Children

A. A licensee shall require that a child be enrolled by the child's parent or an individual authorized in writing by the parent.

B. Except as required in A.R.S. § 36-3009, before an enrolled child receives child care services, a licensee shall require the enrolled child's parent to complete an Emergency, Information, and Immunization Record, no more than a two-page written notice, that is signed by the enrolled child's parent containing:
1. The child's name, home address, sex, and date of birth;
2. The date of the child's enrollment;
3. The name, home address, email address, and telephone number of each parent of the child;

4. The name and telephone number of at least two individuals authorized by the child's parent to collect the child from the facility in case of emergency, or if the child's parent cannot be contacted;

5. The name and ~~contact~~ telephone number of the child's health care provider;

6. The written authorization for emergency medical care of the enrolled child;

7. The name of the individual to be contacted in case of injury or sudden illness of the child;

8. The written instructions of a child's parent or health care provider for the nutritional and dietary needs of the child including, if applicable, the request in R9-5-731(C)(13); and

9. A written record completed by the child's parent or health care provider noting the child's susceptibility to illness, physical conditions of which a staff member should be aware, and any individual requirements for health maintenance.

C. A licensee shall maintain a current Emergency, Information, and Immunization Record for each enrolled child on facility premises in a place that provides a staff member ready access to the record in the event of an emergency at, or evacuation of, the facility.

D. When an enrolled child is disenrolled from a facility, the licensee shall:

1. Enter the date of disenrollment on the child's Emergency, Information, and Immunization Record; and

2. Maintain the records in subsection (D)(1) for 12 months after the date of disenrollment on facility premises in a place separate from the current Emergency, Information, and Immunization Record. If a licensee is a school governing board, a charter school, or a person operating multiple child care facilities, the licensee may maintain disenrollment records in a single central administrative office located in the same city, town, or school attendance area as the facility.

R9-5-717. Child Immunization Requirements

A. A licensee shall not permit an enrolled child to attend a facility until the facility receives:

1. An immunization record for the enrolled child with the information required in 9 A.A.C. 6, Article 7, documenting that the enrolled child has received all current, age-appropriate immunizations required under 9 A.A.C. 6, Article 7:

   a. Provided by a health care provider, or

   b. Generated from the Arizona State Immunization Information System, which is the Department's child immunization reporting system established in A.R.S. § 36-135; or

2. An exemption affidavit for the enrolled child provided by the enrolled child's parent that contains a statement, signed by the enrolled child's:

   a. Health care provider, that the immunizations required by 9 A.A.C. 6, Article 7 would endanger the enrolled child's health or medical condition; or

   b. Parent, that the enrolled child is being raised in a religion whose teachings are in opposition to immunization; or

B. If an enrolled child has not had immunizations and is either homeless, as in "homeless children and youths" according to 42 USC 11434a, who is referred by DCS or Tribal Child Protective Services, initial doses should be administered within 30-calendar days, unless the enrolled child has a religious or medical exemption, as specified in subsections (A)(1) and (2). A child who is experiencing homelessness or who is referred by DCS or Tribal Child Protective Services is permitted to enroll in the program while required documentation is obtained

C. A licensee shall attach an enrolled child's written immunization record or exemption affidavit, required in subsection (A), to the enrolled child's Emergency, Information, and Immunization Record, required in R9-5-304(B).

D. A licensee shall ensure that a staff member updates an enrolled child's written immunization record required in subsection (A)(1)(a) each time the enrolled child's parent provides the licensee with a written statement from the enrolled child's health care provider that the enrolled child has received an age-appropriate immunization required by 9 A.A.C. 6, Article 7.

E. If an enrolled child's immunization record indicates that the enrolled child has not received an age-appropriate immunization required by 9 A.A.C. 6, Article 7, a licensee shall ensure that a staff member:

1. Notifies the enrolled child's parent in writing that the enrolled child may attend the facility for not more than 15 calendar days after the date of the notification unless the enrolled child's parent complies with the immunization requirements in 9 A.A.C. 6, Article 7; and

2. Documents on the enrolled child's Emergency, Information, and Immunization Record the date on which the enrolled child's parent is notified of an immunization required by the Department.

F. A licensee shall not allow an enrolled child who lacks proof of immunity against a disease listed in A.A.C. R9-6-702 to attend the child care facility between the start and end of an outbreak of the disease at the facility.

G. If a parent of an enrolled child, excluded from a child care facility because of the lack of documented immunity to a disease during an outbreak of the disease at the child care facility, submits any of the documents in A.A.C. R9-6-704 as proof of the enrolled child's immunity to the disease, a licensee shall allow the enrolled child to attend the child care facility during the outbreak of the disease.

R9-5-718. Admission and Release of Children; Attendance Records

A. A licensee shall:

1. Maintain a dated attendance form containing an enrolled child's name with the time of each admission and release, and the parent or staff member's signature or other unique identifier.

2. If an electronic signature is used to admit or release the enrolled child, adopt policies and procedures to ensure that the individual whose signature the electronic or digital method of identification represents is accountable for the use of the electronic or digital method;

3. Develop, document, and implement policies and procedures to ensure that the identity of an individual is known to the staff member or is verified with picture identification before releasing an enrolled child to the individual.

4. Not release the enrolled child to an individual other than the enrolled child's parent or other individual designated in writing by the enrolled child's parent except when the enrolled child's parent is unable to collect the enrolled child and authorizes the licensee by telephone to release the enrolled child to an individual not so designated.

5. Not permit the self-admission or self-release of an enrolled child unless the enrolled child is of school-age and the licensee has obtained and verified written permission from the enrolled child's parent.

6. Maintain the attendance form on facility premises for 12 months after the date of attendance.

B. A licensee shall:

1. Develop, document, and implement policies and procedures to ensure that a staff member maintains daily documentation of the presence of an enrolled child in an activity area that includes a method to account for any temporary absences of the enrolled child from the activity area; and

2. Maintain the documentation of the presence of enrolled children in an activity area required in subsection (B)(1) on facility premises for 12 months after the date of the documentation.

R9-5-719. Suspected or Alleged Child Abuse or Neglect

A licensee shall ensure that the licensee or a staff member documents and reports all suspected or alleged cases of child abuse or neglect.

1. The licensee or staff member shall report the suspected or alleged child abuse or neglect to the Arizona Department of Child Safety or to a local law enforcement agency as prescribed in A.R.S. § 13-3620. The licensee or staff member shall also send documentation to the Arizona Department of Child Safety and any local law enforcement agency previously notified within three calendar days of the initial report, and maintain documentation of a child abuse or neglect report on facility premises for 12 months after the date of a report.

2. The licensee or staff member shall report the suspected or alleged child abuse by a staff member to the Department and to a local law enforcement agency as prescribed in A.R.S. § 13-3620. A licensee or staff member shall also send documentation to the Department and to any law enforcement agency previously notified within three calendar days of

the initial report, and maintain documentation of a child abuse report on facility premises for 12 months after the date of a report.

R9-5-720. Insurance Requirements

A. A licensee shall secure and maintain the following minimum insurance coverage:

1. General facility liability insurance of at least $300,000; and
2. Motor vehicle insurance coverage, required by A.R.S. Title 28, Chapter 9, Article 4, for each motor vehicle provided by a licensee to transport enrolled children.

B. A licensee shall maintain documentation of the insurance coverage required in subsection (A) on facility premises.

C. A licensee shall provide a copy of documentation of insurance to the Department before issuance of a license and at any time that the licensee's insurance coverage expires, is canceled, or changes.

R9-5-721. Gas and Fire Inspections

A. An applicant shall obtain the following inspections of a facility and make any repairs or corrections stated on an inspection report before a license is issued by the Department:

1. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a gas inspection by a licensed plumber or individual authorized by the local jurisdiction that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on facility premises; and
2. A fire inspection by a local fire department.

B. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a licensee shall ensure that a licensed plumber or individual authorized by the local jurisdiction conducts a gas inspection that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on facility premises at least once every 12 months after the issue date of the license.

C. A licensee shall maintain on facility premises:

1. A current fire inspection report including documentation of any repairs or corrections required by the fire inspection report; and
2. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a current gas inspection report including documentation of any repairs or corrections required by the gas inspection report.

R9-5-722. Pesticides

A. A licensee shall make written pesticide information available to a parent, upon a parent's request, at least 48 hours before a pesticide application occurs on facility premises, containing the:

1. Brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide;
2. Date and time of the pesticide application;
3. Pesticide label, which includes the written, printed, or graphic matter approved by the United States Environmental Protection Agency on or attached to, a pesticide container; and
4. Name and telephone number of the pesticide business licensee and the name of the licensed applicator, who complies with A.A.C. R3-8-201(C), providing pesticide services.

B. A licensee is exempt from the provisions in subsection (A), as prescribed by A.R.S. § 36-898(C).

R9-5-723. Staff Qualifications

A licensee shall ensure that staff members meet the following qualifications for employment or volunteer service at a facility:

1. A facility director is 21 years of age or older and provides the licensee with documentation of one of the following:
   a. At least 24 months of child care experience, a high school or high school equivalency diploma, and
      i. Six credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or

ii. At least 60 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field, and an additional 12 hours of instruction, provided in conferences, seminars, lectures, or workshops in the area of program administration, planning, development, or management;

b. At least 18 months of child care experience; and

i. An N.A.C., C.D.A., or C.C.P. credential; or

ii. At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;

c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or

d. At least three months of child care experience and a bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field;

2. A facility director's designee is 21 years of age or older and provides the licensee with documentation of one of the following:

a. At least 12 months of child care experience, a high school or high school equivalency diploma; and

i. Three credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or

ii. At least 30 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field;

b. At least 12 months of child care experience; and

i. An N.A.C., C.D.A., or C.C.P. credential; or

ii At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;

c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or

d. At least three months of child care experience and a bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field;

3. A child educator is 18 years of age or older and provides the licensee with documentation of one of the following:

a. Three months of child care experience if working with school-aged children; and

i. A high school diploma or high school equivalency diploma; or

ii. At least 12 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;

b. Associate or bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field; or

c. N.A.C., C.D.A., or C.C.P. credential;

4. An assistant child educator is 16 years of age or older and provides the licensee with documentation of one of the following:

a. Current and continuous enrollment in high school or a high school equivalency class;

b. High school or high school equivalency diploma;

c. Enrollment in vocational rehabilitation, as defined in A.R.S. § 23-501; or

d. Employment or service as a volunteer in a licensed child care facility for 12 months;

5. A child educator aide is 16 years of age or older;

6. A student-aide provides the licensee with documentation of participation in:

a. An educational, curriculum-based course in child development, parenting, or guidance counseling; or

b. A vocational education or occupational development program; and

7. A volunteer is 15 years of age or older.

R9-5-724. Staff Records and Reports

A. A licensee shall maintain a file for each staff member containing:

1. The staff member's name, date of birth, home address, and telephone number;
2. The staff member's starting date of employment or volunteer service;
3. The staff member's ending date of employment or volunteer service, if applicable;
4. The name and telephone number of an individual to be notified in case of an emergency;
5. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
6. The form required in A.R.S. § 36-883.02(C);
7. Documents required by R9-5-203;
8. Documents required by R9-5-301;
9. Documents required by R9-5-401, if applicable;
10. If applicable:
    a. The form required in A.R.S. § 8-804(I),
    b. Documentation of the submission required in A.R.S. § 8-804 and the information received as a result of the submission, and
    c. Documentation of training provided by a licensee as required by R9-5-403;
11. A copy of any current license or certification required by A.R.S. Title 36, Chapter 7.1, Article 1, or this Chapter; and
12. Documentation of the requirements in A.R.S. § 36-883.02(D).

B. A licensee shall ensure that, for a staff member who is currently working at the facility, the staff member's information required by:

1. Subsections (A)(1) through (11) is maintained in a single location on facility premises, and
2. Subsection (A)(12) is maintained and provided to the Department within two hours of the Department's request.

C. A licensee shall ensure that, for an individual who is not currently working at the facility, the information required in subsections (A)(1) through (12) is:

1. Maintained for 12 months after the date the individual last worked at the facility, and
2. Provided to the Department within two hours of the Department's request.

R9-5-725. Training Requirements

A. Within 10 calendar days of the starting date of employment or volunteer service, a licensee shall provide, and each staff member who provides child care services shall complete, training for new staff members that includes all of the following:

1. Facility philosophy and goals;
2. Names and ages of and developmental expectations for enrolled children for whom the staff member will provide child care services;
3. Health needs, nutritional requirements, any known allergies, and information about adaptive devices of enrolled children for whom the staff member will provide child care services;
4. Lesson plans;
5. Child guidance and methods of positive discipline, including separation;
6. Hand washing techniques;
7. Food preparation, service, sanitation, and storage, if assigned to food preparation;
8. Recognition of signs of illness and infestation;

9. Child abuse or neglect detection, prevention, and reporting;

10. Accident and emergency procedures;

11. Staff responsibilities as required by A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;

12. Sun safety policies and procedures;

13. Safety in outdoor activity areas;

14. Transportation procedures, if applicable;

15. Field trip procedures, if applicable; and

16. Prevention of pediatric abusive head trauma and child maltreatment.

B. A licensee shall ensure that:

1. Each staff member who provides child care services completes 24 or more clock hours of training every 12 months after the effective date of this Chapter or the staff member's starting date of employment or volunteer service in at least two topics listed below:

a. Child growth and development, including:

i. Brain development;

ii. Basic child development, including cognitive, social, emotional, and physical, as well as approaches to learning;

iii. Language development;

iv. Observation and child assessment;

v. Developmentally-appropriate activities;

vi. Child guidance and methods of positive discipline which may include techniques to promote healthy social-emotional development and reduce challenging behaviors; or

vii. Developmentally-appropriate activity areas.

b. Health and safety issues, including:

i. Accident and emergency procedures, including CPR and first aid for children;

ii. Recognition of signs of illness and infestation;

iii. Nutrition and developmentally-appropriate eating habits;

iv. Child abuse detection, reporting, and prevention;

v. Safety of indoor and outdoor activity areas;

vi. Sun safety policies and procedures;

vii. Water safety;

viii. Prevention and control of infectious diseases, including immunization:

ix. Prevention and response to emergencies due to food and allergic reactions, including anaphylactic shock;

x. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

xi. Emergency preparedness, response, and recovery planning for emergencies resulting from a natural disaster or a human-caused event;

xii. Administration of medication, consistent with standards for parental or guardian consent;

xiii. Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

xiiii. Prevention of pediatric abusive head trauma and child maltreatment; or

xv. Physical restraint techniques.

c. Program administration, planning, development, or management; and

d. Availability of community services and resources, including those available to children with a special health care need or a disability; and

2. As part of the required 24 hours of training in subsection (B)(1):

a. A staff member who has less than 12 months of child care experience before the staff member's starting date, completes at least 12 hours in one or more of the topics in subsection (B)(1)(a) in the staff member's first 12 months at the facility;

b. A staff member who has 12 months or more of child care experience, completes at least six hours in one or more of the topics in subsection (B)(1)(a) every 12 months after the staff member's starting date;

c. A facility director completes at least six hours in subsection (B)(1)(c) every 12 months after the facility director's starting date.

d. A child educator for school-aged children shall complete six of the 24 hours of training within the first three months of hire.

C. A licensee shall ensure that documentation of a staff member's completion of training required by subsection (A) is signed by the facility director and dated.

D. A licensee shall ensure that a staff member submits to the licensee documentation of training received as required by subsection (B) to the licensee as the training is completed.

E. A licensee shall ensure that a staff member, as required by R9-5-301(G):

1. Obtains adult and pediatric first aid certification;

2. Obtains adult and pediatric CPR certification, which includes a demonstration of the staff member's ability to perform CPR;

3. Maintains current certification in adult and pediatric first aid and CPR; and

4. Provides the licensee with a copy of the front and back of the current card issued to the staff member upon completing adult and pediatric first aid and CPR training as proof of completion of the requirements of this subsection.

R9-5-726. Staff-to-Children Ratios

A. A licensee shall ensure that at least the following staff-to-children ratios are maintained at all times when providing child care services to enrolled children:

Age Group	*Staff: Children*	
School-age children	1:20	

B. A licensee shall:

1. Determine and maintain the required staff-to-children ratio for each group of enrolled children based on the age of the youngest child in the group; and

2. Only allow an individual qualified as a director, child educator, or an assistant child educator to be counted as staff in staff-to-children ratios.

C. A licensee shall ensure that when there are:

1. Six or more enrolled children present in a facility, the following individuals are present in the facility:

a. A facility director or a director's designee who meets the requirements in R9-5-723 for a director's designee, and

b. One additional staff member; and

2. Five or fewer enrolled children are present in a facility, the facility director or director's designee who meets the requirements in R9-5-401 is present in the facility, and an additional staff member is available by telephone or other equally expeditious means and able to reach the facility within 15 minutes after notification; and

D. A licensee shall ensure that a staff member assigned to provide child care services to enrolled children does not perform duties that may affect the staff member's ability to provide child care services to the enrolled children.

E. In addition to maintaining the required staff-to-children ratios, a licensee shall ensure that:

1. Staff members are present on facility premises to perform facility administration, food preparation, food service, and maintenance responsibilities; and
2. Facility maintenance does not depend on the work of enrolled children.

F. If a licensee conducts swimming activities at a swimming pool, the licensee shall ensure that there is a lifeguard on the premises who has current lifeguard certification that includes a demonstration of the lifeguard's ability to perform CPR. If the lifeguard is a staff member, the staff member cannot be counted in the staff-to-children ratios required by subsection (A).

R9-5-727. General Equipment Health, and Safety Standards

A. A licensee shall ensure that:

1. In addition to complying with the requirements in this Chapter, the health, safety, or welfare of an enrolled child is not placed at risk of harm;
2. The facility does not allow enrolled children to mix with non-enrolled children on licensed facility premises;
3. An enrolled child is placed in an age-appropriate or developmentally-appropriate group;
4. Indoor activity areas used by enrolled children are decorated with age-appropriate articles such as mirrors, bulletin boards, pictures, and posters;
5. Age-appropriate toys, materials, and equipment are provided to enable each enrolled child to participate in an activity;
6. Storage space is provided in the facility for indoor and outdoor toys, materials, and equipment in areas accessible to enrolled children;
7. Clean clothing is available to an enrolled child when the enrolled child needs a change of clothing;
8. The facility premises, including the buildings, are maintained free from hazards;
9. Toys and play equipment, required in this Article, are maintained:
    a. Free from hazards, and
    b. In a condition that allows the toy or play equipment to be used for the original purpose of the toy or play equipment;
10. Temperatures are maintained between 68° F and 82° F in each room used by enrolled children;
11. Each enrolled child's toothbrush, comb, washcloth, cloth towel, and clothing are maintained in a clean condition and stored in an identified space separate from those of other enrolled children;
12. Except as provided in subsection (A)(14), the following are stored separate from food storage areas and are inaccessible to an enrolled child:
    a. All materials and chemicals labeled as a toxic or flammable substance;
    b. All substances that have a child warning label and may be a hazard to a child; and
    c. Lawn mowers, ladders, toilet brushes, plungers, and other facility equipment that may be a hazard to a child;
13. Hand sanitizers when being:
    a. Stored, are stored separate from food storage areas and are inaccessible to enrolled children; and
    b. Provided for use, are accessible to enrolled children; and
14. Except when used as part of an activity, the following are stored in an area inaccessible to an enrolled child:
    a. Garden tools, such as a rake, trowel, and shovel; and
    b. Cleaning equipment and supplies, such as a mop and mop bucket.

B. A licensee shall ensure that a staff member:

1. Supervises each enrolled child at all times;
2. Does not smoke, vape, or use tobacco:

a. On facility premises, except in designated areas separated from the children; or

b. On a field trip or when transporting an enrolled child;

3. Does not smoke or use marijuana, as specified in A.R.S. § 36-894;

4. Except for an enrolled child who can change the enrolled child's own clothing, changes an enrolled child's clothing when wet or soiled;

5. Except as provided in subsection (C), prepares, posts, and implements in each indoor activity area, a current schedule of children's age-appropriate activities, including the times the following are provided:

a. Meals and snacks;

b. Naps;

c. Indoor activities;

d. If weather and air quality permit, outdoor or large muscle development activities;

e. Quiet and active activities;

f. Teacher-directed activities;

g. Self-directed activities;

h. Activities for individuals, groups of five or fewer children, and groups of six or more children; and

i. Activities that develop small muscles;

6. If an activity in the lesson plan required in subsection (C)(5) includes screen time, include in the lesson plan the duration of the screen time in minutes;

7. If the schedule in subsection (C)(4) or lesson plan in subsection (C)(5) is not implemented, writes on the schedule or the lesson plan the activity that is implemented;

8. Does the following when a parent permits or asks a staff member to apply personal products on an enrolled child, such as sun screen or sun block preparations, and toothpaste:

a. Obtains the enrolled child's personal products from the enrolled child's parent or, if the licensee provides the personal products for use by the enrolled child, obtains written approval for use of the products from the enrolled child's parent;

b. Labels the personal products with the enrolled child's name; and

c. Keeps the personal products inaccessible to enrolled children;

9. In an indoor activity area that:

a. Stores an enrolled child's wet or soiled clothing in a sealed plastic bag labeled with the enrolled child's name; and

b. Sends an enrolled child's wet or soiled clothing home with the enrolled child when the facility releases the enrolled child to the enrolled child's parent; and

10. Monitors an enrolled child for overheating or overexposure to the sun. If the enrolled child exhibits signs of overheating or overexposure to the sun, a staff member who has the first aid training required by R9-5-403(E) shall evaluate and treat the enrolled child.

C. A licensee is not required to have a schedule required in subsection (C)(4) or a lesson plan required in subsection (C)(5) for an indoor activity area that is approved and used:

1. By enrolled children only for:

a. Snacks or meals, or

b. A specific activity,

2. As a substitute for an outdoor activity area.

R9-5-728. Supplemental Standards

A. A licensee providing child care services for school-age children shall:

1. Ensure that a staff member supervises an enrolled school-age child to and from a bathroom and allows the enrolled child privacy while in the bathroom;
2. Ensure that if an enrolled child remains in the bathroom for more than three minutes, the supervising staff member checks on the enrolled child to ensure the child's safety;
3. Provide age-appropriate toys, materials, and equipment accessible to enrolled children in a quantity sufficient to meet the needs of the enrolled children in attendance including:
   a. Arts and crafts,
   b. Games,
   c. Puzzles and toys to enhance manipulative skills,
   d. Books,
   e. Science materials,
   f. Sports equipment, and
   g. Outdoor play equipment;
4. Provide enrolled school-age children with a quiet study area;
5. Ensure that if drinking water is not accessible in an indoor or outdoor activity area, drinking water is available to meet the individual needs of each enrolled school-aged child; and
6. Ensure that, when a parent permits, a staff member allows an enrolled school-age child to possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.

B. A school age out-of-school time program provider shall:

1. Operate after school, before school, or during a time when school is not in session;
2. Serve school-age children; and
3. Promote expanded childhood learning, enrichment, child and youth development, or educational, recreational, or character-building activities.

R9-5-729. Supplemental Standards for Children with a Special Health Care Need or a Disability

A. A licensee providing child care services for a child with a special health care need or a disability shall:

1. Except as provided in subsection (A)(2), before a child with a special health care need or a disability receives child care services, obtain from the enrolled child's parent a copy of an existing individualized plan for the enrolled child that can be reviewed, adopted, and implemented by the licensee when providing child care services to the enrolled child that includes the following as needed for the enrolled child:
   a. Medication schedule;
   b. Nutrition and feeding instructions;
   c. Qualifications required of a staff member who feeds the enrolled child;
   d. Medical equipment or adaptive devices;
   e. Medical emergency instructions;
   f. Toileting and personal hygiene instructions;
   g. Specific child care services to be provided to the enrolled child at the facility;
   h. Information from health care providers, including the frequency and length of any prescribed medical treatment or therapy;
   i. Training required of a staff member to care for the enrolled child's a special health care need or a disability; and
   j. Participation in practice drills;
2. If an enrolled child with a special health care need or a disability does not have an existing individualized plan, obtain from the enrolled child's parent written instructions for providing services to the enrolled child until a written

individualized plan required in subsection (A)(1) is developed by a team consisting of staff members, the enrolled child's parent, and health care providers, if applicable, that is completed within 30 calendar days after the enrolled child's initial date of receiving child care services;

3. Maintain an enrolled child's current individualized plan on facility premises and if the current individualized plan was developed according to subsection (A)(2), provide a copy to the enrolled child's parent; and

4. Ensure the individualized plan is updated at least every 12 months after the date of the initial plan or as changes occur.

B. A licensee shall ensure that:

1. When tube feeding an enrolled child, a staff member only uses:

a. Commercially prepackaged formula in a ready-to-use state,

b. Formula prepared by the enrolled child's parent and brought to the facility in an unbreakable container, or

c. Breast milk brought to the facility in an unbreakable container; and

2. Only a staff member instructed by an enrolled child's parent or individual designated by the enrolled child's parent:

a. Feeds the enrolled child using the enrolled child's tube-feeding apparatus, and

b. Cleans the enrolled child's tube-feeding apparatus.

C. A licensee shall provide an enrolled child with a special health care need or a disability with:

1. Developmentally-appropriate toys, materials, and equipment; and

2. Assistance from staff members to enable the enrolled child to participate in the activities of the facility.

D. In addition to complying with the transportation requirements in R9-5-517, a licensee transporting an enrolled child with a special health care need or a disability in a wheelchair in a facility's motor vehicle shall ensure that the enrolled:

1. Child's wheelchair is manufactured to be secured in a motor vehicle;

2. Child's wheelchair is secured in the motor vehicle using a minimum of four anchorages attached to the motor vehicle floor, and four securement devices, such as straps or webbing that have buckles and fasteners, that attach the wheelchair to the anchorages;

3. Child is secured in the wheelchair by means of a wheelchair restraint that is a combination of pelvic and upper body belts intended to secure a passenger in a wheelchair; and

4. Child's wheelchair is placed in a position in the motor vehicle that does not prevent access to the enrolled child in the wheelchair or passage to the front and rear ~~in~~ of the motor vehicle.

E. A licensee providing child care services for an enrolled child who uses a wheelchair or is not able to walk shall locate the enrolled child on the ground floor of the facility.

F. If a child care facility requires a separate diaper changing area to allow privacy while providing diapering to an enrolled child with a special health care need or a disability, the licensee shall submit a written request for approval of the intended change to the Department according to R9-5-710 prior to adding a diaper changing area.

R9-5-730. General Nutrition Standards

A. A licensee shall:

1. Make breakfast available to an enrolled child who is present at a facility before 8:00 a.m.,

2. Serve lunch to an enrolled child who is present at a facility between 11:00 a.m. through 1:00 p.m., and

3. Serve dinner to an enrolled child who is present from 5:00 p.m. through 7:00 p.m. and who will remain at the facility after 7:00 p.m.

B. A licensee shall serve the following meals or snacks to an enrolled child present at a facility if an enrolled child is present:

1. For two to four hours, one or more snacks;

2. During any of the meal times stated in subsection (A), a meal that meets the meal pattern requirements in subsection (C);

3. For four to eight hours, one or more snacks and a meal;

4. For nine or more hours, two snacks and one or more meals; and

5. Before bedtime, one snack.

C. If a licensee provides food, a licensee shall prepare and serve food according to the meal pattern requirements found in Table 7.2, "Meal Pattern Requirements for Children."

D. If an enrolled child's parent provides food for the parent's enrolled child, the licensee shall provide milk or juice to the enrolled child if not provided by the parent.

E. If a licensee plans and serves meals, the licensee shall ensure that the meals:

1. Meet the age-appropriate nutritional requirements of an enrolled child; and

2. For each calendar week, provide a variety of foods within each food group from the meal pattern requirements.

F. If a licensee provides food, the licensee shall maintain on the facility premises at least a one day supply of food needed to provide the meals and snacks required by subsections (B) and (C) to each enrolled child attending the facility.

G. In addition to the required daily servings of food stated in subsection (C), a licensee:

1. Shall make second servings of food available to each enrolled child at meals and at snack time,

2. May substitute a food that is equivalent to a specific food component if second servings of the specific food component are not available, and

3. Shall ensure that a food substitution in subsection (G)(2) is written on the posted weekly menu by the end of the meal or snack service.

Table 7.2 Meal Pattern Requirements

TABLE OF MEAL PATTERN REQUIREMENTS		
Food Components	Ages 3 through 5 years	Ages 6 and Older
Breakfast:		
1. Milk, fluid	3/4 cup	1 cup
2. Vegetable, fruit, or both	1/2 cup	1/2 cup
3. Grains	1/2 oz. eq[1]	1 oz. eq[1]
Lunch or Dinner:		
1. Milk, fluid	3/4 cup	1 cup
2. Vegetables Fruits	1/4 cup 1/4 cup	1/2 cup 1/4 cup
3. Grains	1/2 oz. eq[1]	1 oz. eq[1]
4. Meat or meat alternates	1 1/2 oz.	2 oz.
Snack: (select 2 of these 4 components)***		
1. Milk, fluid	1/2 cup	1 cup
2. Vegetables Fruits	1/2 cup 1/2 cup	3/4 cup 3/4 cup
3. Grains	1/2 oz.	1 oz.

4. Meat or meat alternates	1/2 oz.	1 oz.

[1] Meat and meat alternates may be used to substitute the entire grains component a maximum of three times per week. Oz eq = ounce equivalents

* In the same meal service, dried beans or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components.

** At lunch and dinner, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat or meat alternative to fulfill the requirement. Two tablespoons of nut butter or one ounce of nuts or seeds equals one ounce of meat.

*** Juice may not be served when milk is served as the only other component.

R9-5-731. General Food Service and Food Handling Standards

A. A licensee that prepares food for enrolled children on facility premises shall, if required by 9 A.A.C. 8, Article 1, and the local ordinances of the local health department where the facility is located, obtain a food establishment permit issued under 9 A.A.C. 8, Article 1, and:

1. Submit to the Department a written notice of the facility's food establishment permit before the Department issues a license to the facility,
2. Maintain the facility's current food establishment permit on the facility's premises, and
3. Provide a written notice of the facility's current food establishment permit to the Department upon request.

B. If a licensee contracts with a food establishment to prepare and deliver food to the facility, the licensee shall obtain and provide the Department with a copy of the food establishment's permit, issued under 9 A.A.C. 8, Article 1, at the following times:

1. Before the Department issues a license to the facility,
2. Upon contracting with the food establishment, and
3. Every 12 months after the date the contract is entered into while the contract is in effect.

C. A licensee shall ensure that:

1. Enrolled children, except children with a special health care need or a disability who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
2. A staff member:
   a. Washes the hands of a child with a special health care need or a disability who cannot wash the child's own hands before and after the child with a special health care need or a disability handles or eats food using:
      i. A washcloth,
      ii. A single-use paper towel, or
      iii. Soap and running water; and
   b. If using a washcloth, uses each washcloth on only one child and only one time before it is laundered or discarded;
3. An enrolled child is not permitted to eat food directly off the floor, carpet, or ground or with utensils placed directly on the floor, carpet, or ground;
4. A staff member encourages, but never forces, enrolled children to eat food;
5. A staff member assists each enrolled child who needs assistance with eating;
6. A staff member teaches self-feeding skills and habits of good nutrition to each enrolled child as necessary;
7. Fresh milk is served from the original, commercially filled container, to a container used for meal service or a cup, and unused portions are not returned to the original container;

8. Milk served to an enrolled school-aged child is fat-free or 1% lowfat milk unless the enrolled child's parent requests otherwise;
9. Reconstituted dry milk is not served to meet the fluid milk requirement;
10. Juice served to children for a meal or snack is full-strength 100% vegetable or 100% fruit juice from an original, commercially filled container or reconstituted from a concentrate according to manufacturer instructions;
11. Fruit juice served to an enrolled child is limited to six ounces per day;
12. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent or health care provider, and the modified diet is posted in the kitchen and in the child's activity area;
13. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent or health care provider;
14. An enrolled child is not permitted in the kitchen during food preparation or food service except as part of an activity;
15. An enrolled child does not use the kitchen or a food storage area as a passageway;
16. A staff member:
    a. Prepares a weekly menu at least one week in advance,
    b. Includes on the menu the specific foods to be served on each day,
    c. Dates each menu,
    d. Posts each menu at least one day before the first meal on the menu will be served, and
    e. Writes food substitutions on a posted menu no later than the morning of the day of meal service;
17. Non-single-use utensils and equipment used in preparing, eating, or drinking food are:
    a. After each use washed in:
        i. An automatic dishwasher and air dried or heat dried; or
        ii. Hot soapy water, rinsed in clean water, sanitized, and air dried or heat dried; and
    b. Stored in a clean area protected from contamination;
18. Single-use utensils and equipment are disposed of after being used;
19. Perishable foods, which are foods that become unfit for human consumption if not stored to prevent spoilage, are covered and stored in a refrigerator at a temperature of 41° F or below;
20. A refrigerator at the child care facility maintains a temperature of 41° F or below and a freezer maintains a temperature of 0° F or below, as shown by a thermometer kept in the refrigerator and in the freezer at all times;
21. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:
    a. Cold held at a temperature of 45° F or below or hot held at a temperature of 130° F or above until served, or
    b. Cold held at a temperature of 45° F or below and then reheated to a temperature of at least 165° F before being served.

R9-5-732. Positive Discipline and Guidance

A. A staff member shall provide guidance to help children respond to difficult situations. To develop self-regulation, children should receive adult support that is individual to the child and adapts as the child develops internal controls. This process should include:
1. Forming a positive relationship with the child, which occurs when the adult spends time talking to the child, listening to the child, following the child's lead, playing with the child, and responding to the child's needs;
2. Base expectations on children's developmental level;
3. Establishing and being proactive in teaching and supporting children in learning simple rules;
4. Modifying the learning/play environment to support the child's appropriate behavior;
5. Creating a predictable daily routine and schedule;
6. Modeling desired behavior;
7. Showing children positive alternatives;

8. Using deliberate redirection, the staff member should encourage the child to use appropriate behavior, and provide positive feedback when the child exhibits the behavior;

9. Individualized positive discipline strategies based on the individual needs of children, such as using a buddy system, individualized schedule, special break, or another applicable positive discipline strategy.

B. A licensee shall ensure that a staff member does not use or permit:

1. The use of physical punishment including:

a. Hitting, spanking, shaking, slapping, twisting, pulling, squeezing, or biting;

b. Demanding excessive physical exercise or excessive rest; and

c. Forcing a child to eat or consume mouth soap, food, or foreign substances.

2. Any form of emotional abuse, including rejecting, extended ignoring, public or private humiliation;

3. Abusive, profane, sarcastic language, verbal abuse, threats, or derogatory remarks about the child or child's family;

4. Punishment associated with eating, resting, sleeping, toileting, and withholding outdoor play;

5. Using medication to control behavior or restrict freedom of movement unless it is prescribed by a health care provider;

6. Mechanical restraint to restrict a child's freedom of movement;

7. Placing a child in a crib, high chair, car seat, or other restrictive device for a time-out or to restrict a child's freedom of movement; and

8. Directing an enrolled child to discipline or punish another enrolled child.

C. A licensee may allow a staff member to separate an enrolled child from other enrolled children for behaviors that are persistent and unacceptable. Separation should only be used in combination with instructional approaches that teach children what to do in place of the behavior problem.

1. A staff member may allow an enrolled child to be separated for no longer than three minutes. If the enrolled child has not regained control or composure after three minutes, a staff member may extend the separation for up to 10 minutes with staff member interaction with the enrolled child, except as provided in (C)(4);

2. An enrolled child may not be physically restrained, except when necessary to protect an enrolled child from injury, to protect persons on the premises from physical injury, or to protect property from damage, only physical restraint may be used;

3. When a child has an out-of-control behavior, the enrolled child may be removed from the company of other enrolled children until the enrolled child's behavior has stabilized. Removal of a child is only to be used when there is a safety concern that cannot be reduced or eliminated with reasonable accommodations; and

4. A licensee shall develop a written plan with the enrolled child's parent to provide individualized social and emotional intervention supports for the enrolled child that includes methods for understanding the enrolled child's behavior, and developing, adopting, and implementing a team-based positive behavior support plan.

R9-5-733. Cleaning and Sanitation

A. A licensee shall maintain facility premises free of insects and vermin.

B. A licensee shall maintain facility premises and furnishings:

1. In a clean condition, and

2. Free from odor.

C. A licensee shall ensure that floor coverings are:

1. Clean, and

2. Free from:

a. Dampness,

b. Odors, and

c. Hazards.

D. A licensee shall ensure that toilet bowls, lavatory fixtures, and floors in toilet rooms and kitchens are cleaned and sanitized as often as necessary to maintain them in a clean and sanitized condition or at least once every 24 hours.

E. If laundry belonging to a facility is done on facility premises, a licensee shall:

1. Not use a kitchen or food storage area for sorting, handling, washing, or drying laundry;
2. Locate the laundry equipment in an area that is separate from licensed activity areas and inaccessible to enrolled children;
3. Not permit an enrolled child to be in a laundry room or use a laundry area as a passageway for enrolled children; and
4. Ensure that laundry soiled by vomitus, urine, feces, blood, or other body fluid is stored, cleaned, and sanitized separately from other laundry.

F. A licensee shall ensure that:

1. Each toilet room in a facility contains, within easy reach of enrolled children:
   a. Mounted toilet tissue; and
   b. Except as provided in subsection (G):
      i. A sink with running water;
      ii. Soap contained in a dispenser; and
      iii. Disposable, single-use paper towels in a mounted dispenser, or a mechanical air hand dryer;
2. Staff members wash their hands with soap and running water after toileting;
3. An enrolled child's hands are washed with soap and running water after toileting;
4. Except for a cup or receptacle used only for water, food waste is stored in a covered container and the container is clean and lined with a plastic bag;
5. Food waste and other refuse is removed from the facility building at least once every 24 hours or more often as necessary to maintain a clean condition and avoid odors;
6. A staff member or an enrolled child does not draw water for human consumption from a toilet room hand-washing sink;
7. Toys, materials, and equipment are maintained in a clean condition;
8. Plumbing fixtures are maintained in a clean and working condition; and
9. Chipped or cracked sinks and toilets are replaced or repaired.

G. A licensee may have a sink with running water, soap contained in a dispenser, and single-use paper towels in a mounted dispenser or a mechanical air hand dryer located directly outside a toilet room if an enrolled child exiting the toilet room can access the sink, soap, and paper towels or air hand dryer without having to cross space that is used for any activity.

R9-5-734. Pets and Animals

A. A licensee shall maintain written documentation of current immunization against rabies for each ferret, dog, or cat owned by a licensee or staff member that is present on facility premises.

B. A licensee shall ensure that a staff member:

1. Keeps all pet and animal habitats clean;
2. Prohibits reptiles, such as turtles, iguanas, snakes, and lizards, in the facility;
3. Prohibits birds in food preparation and eating areas;
4. Keeps pets and animals clean;
5. Prohibits pets and animals from endangering an enrolled child, staff member, or other individual on facility premises; and
6. Keeps birds and animals such as horses, sheep, cattle, and poultry in an enclosure that is not accessible to an enrolled child except as part of an activity.

R9-5-735. Accident and Emergency Procedures

A. A licensee shall ensure that there is a first aid kit on facility premises that contains first aid supplies in a quantity sufficient to meet the needs of the enrolled children including the following:

1. Sterile bandages including:
   a. Adhesive bandages of assorted sizes,
   b. Sterile gauze pads, and
   c. Sterile gauze rolls;
2. Antiseptic solution or sealed antiseptic wipes;
3. A pair of scissors;
4. Adhesive or self-adhering tape;
5. Single-use, non-porous gloves; and
6. Reclosable plastic bags of at least one-gallon size.

B. A licensee shall ensure that the first aid kit required in subsection (A) is accessible to staff members but inaccessible to enrolled children.

C. A licensee shall:

1. Prepare and date a written fire and emergency plan that contains:
   a. The location of the first aid kit;
   b. The names of staff members who have adult and pediatric first aid and CPR certification, as required by R9-5-725(E);
   c. The directions for:
      i. Initiating verbal notification of an enrolled child's parent by telephone or other equally expeditious means within 30 minutes of a fire or emergency, and
      ii. Providing written notification to the enrolled child's parent within 24 hours, and
   d. The facility's street address and the emergency telephone numbers for the local fire department, police department, ambulance service, and poison control center;
   e. The procedures for evacuation, relocation, shelter-in-place and lockdown, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of children with disabilities and children with chronic medical conditions, as specified in R9-5-713;
2. Maintain the plan required in subsection (C)(1) in a location on facility premises that has an operable telephone service or two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out operable telephone service;
3. Post the plan required in subsection (C)(1) in any indoor activity area that does not have an operable telephone service or two-way voice communication system that connects the indoor activity area with an individual who has direct access to an in-and-out operable telephone services; and
4. Update the plan in subsection (C)(1) every 12 months after the date of initial preparation of the plan or when any information changes.

D. The licensee shall consult with appropriate state and local authorities and shall establish and follow a written multi-hazard emergency and evacuation plan to protect children in the event of emergencies.

E. A licensee shall post, near an activity area or a room's designated exit, a building evacuation plan that details the designated exits from the activity area or room and the facility.

F. A licensee shall maintain and use a communication system that contains:

1. A direct-access, in-and-out, operating telephone service at the facility; or

2. A two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out, operating telephone service.

G. If while attending a facility an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, requires medical treatment by a health care provider, a licensee shall ensure that a staff member:

1. Notifies the enrolled child's parent and the Department immediately after the accident, serious physical injury, as defined in A.R.S. § 8-201, or emergency;
2. Documents:
   a. A description of the accident, serious physical injury, or emergency, including the date, time, and location of the accident, serious physical injury, or emergency;
   b. The method used to notify the enrolled child's parent; and
   c. The time the enrolled child's parent was notified; and
3. Maintains documentation required in subsection (F)(2) on facility premises for 12 months after the date of the child's disenrollment.

H. If an enrolled child's parent informs a staff member at the facility that the enrolled child's parent obtained medical treatment from a health care provider for an accident, serious physical injury, or emergency the enrolled child had while attending the facility, a licensee shall ensure that a staff member:

1. Documents any information about the enrolled child's accident, serious physical injury, or emergency received from the enrolled child's parent; and
2. Maintains documentation required in subsection (G)(1) on facility premises for 12 months after the date of the child's disenrollment.

R9-5-736. Illness and Infestation

A. A licensee shall not permit an enrolled child to remain at the facility if a staff member determines that the enrolled child shows signs of illness or infestation.

B. If an enrolled child exhibits signs of illness or infestation at a facility, a licensee shall ensure that a staff member:

1. Immediately separates the enrolled child from other enrolled children,
2. Immediately notifies the enrolled child's parent by telephone or other expeditious means to arrange for the enrolled child's removal from the facility, and
3. Maintains documentation of the notification on facility premises for 12 months after the date of the notification.

C. A licensee shall ensure that a staff member who has signs of illness or infestation is excluded from a facility.

D. A facility director shall not permit a staff member to return to a facility until free from signs of illness or infestation or until the staff member provides documentation by a health care provider that the individual may return to the facility.

E. If a staff member or enrolled child contracts a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2.2, a licensee shall ensure that, within 24 hours of notice of the communicable disease or infestation, written notice is provided to each staff member, parent, and the local health department.

F. A licensee shall ensure that:

1. A dated, written notice of the communicable disease or infestation is prepared and posted in the facility's entrance as required by R9-5-303;
2. Documentation of the notification is maintained on facility premises for 12 months from the date of the notification; and
3. Documentation of the absences of staff members and enrolled children due to a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2.2, is prepared and maintained on facility premises for 12 months from the first date of absence.

R9-5-737. Medications

A. A licensee shall ensure that a written statement is prepared and maintained on facility premises that specifies:

1. Whether prescription or nonprescription medications are administered to enrolled children; and
2. If prescription or nonprescription medications are administered, the requirements in subsection (B) for administering the prescription or nonprescription medications.

B. If prescription or nonprescription medications are administered, a licensee shall ensure that:

1. A facility director, or a staff member designated in writing by the facility director, is responsible for the administration of all medications in the facility, including storing, supervising an enrolled child's ingestion of a medication, and documenting all medications administered to an enrolled child;
2. A facility director ensures that only one staff member in the facility at any given time is responsible for the administration of medications;
3. A facility director, or a staff member designated in writing by the facility director, does not administer a medication to an enrolled child unless the facility receives written authorization signed by the enrolled child's parent or health care provider that includes the:
    a. Name of the enrolled child;
    b. Type of the medication;
    c. Prescription number, if any;
    d. Instructions for administration specifying the:
        i. Dosage and route of administration;
        ii. If indicated, starting and ending dates of the dosage period; and
        iii. Times and frequency of administration;
    e. Reason for the medication; and
    f. Date of authorization; and
4. A staff member:
    a. Administers a prescription medication provided by a parent only from a container dispensed by a pharmacy;
    b. Administers a nonprescription medication provided by a parent for an enrolled child only from a container prepackaged and labeled for use by the manufacturer and labeled with the enrolled child's name;
    c. Does not administer any medication that has been transferred from one container to another; and
    d. Does not administer a nonprescription medication to an enrolled child inconsistent with the instructions on the nonprescription medication's label, unless the facility receives written authorization from the enrolled child's health care provider.

C. A licensee shall allow an enrolled child to receive an injection only after obtaining a written authorization from a health care provider.

D. A licensee shall maintain the health care provider's written authorization required in subsection (C) on facility premises for 12 months after the date of the written authorization.

E. An individual authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).

F. A licensee shall maintain documentation of all medications administered to an enrolled child.

1. Documentation shall contain:
    a. The name of the enrolled child;
    b. The name and amount of medication administered and the prescription number, if any;
    c. The date and time the medication was administered; and
    d. The signature of the staff member who administered the medication to the enrolled child; and

2. A licensee shall maintain the documentation on facility premises for 12 months after the date the medication is administered.

G. A licensee shall return all unused prescription and nonprescription medications to a parent when the medication prescription date has expired or the medication is no longer being administered to the enrolled child or dispose of the medication if unable to locate the enrolled child's parent after the child's disenrollment.

H. Except as provided in subsection (J), a licensee shall ensure that prescription and nonprescription medications are stored as follows:

1. An enrolled child's medication is kept in a locked, leak-proof storage cabinet or container that is used only for storing enrolled children's medications and is located out of reach of children;
2. Medication for a staff member is kept in a locked, leak-proof storage cabinet or container that is separate from the storage container for enrolled children's medications and is located out of reach of children; and
3. Medications requiring refrigeration are kept in a locked, leak-proof container in a refrigerator.

I. Except as specified in A.R.S. § 36-2229(B) through (D), a licensee shall ensure that a facility does not stock a supply of medications for administration to enrolled children, including:

1. Any prescription medication; or
2. A nonprescription medication such as aspirin, acetaminophen, ibuprofen, or cough syrup.

J. A staff member's or enrolled child's prescription medication necessary to treat life-threatening symptoms:

1. May be kept in the activity area where the staff member or enrolled child is present; and
2. Except when the prescription medication is administered to treat life-threatening symptoms, is inaccessible to an enrolled child.

K. A licensee of a licensed child care facility owned and located on a public school premises shall ensure that enrolled school-aged children are allowed to possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices according to A.R.S. § 15-341, if an enrolled school-aged child:

1. Has a written prescription from a physician,
2. Is named on the prescription label, and
3. Has written documentation from the enrolled school-aged child's parent approving the enrolled school-aged child to possess and self-administer emergency medication.

R9-5-738. Transportation

A. A licensee who transports an enrolled child in a motor vehicle that the licensee owns, or acquires for use by contract, shall:

1. Obtain dated, written permission from the enrolled child's parent before the licensee transports the enrolled child;
2. Maintain written permission required in subsection (A)(1) on facility premises for 12 months after the date on the written permission;
3. Ensure that the motor vehicle is registered by the Arizona Department of Transportation as required by A.R.S. Title 28, Chapter 7;
4. Maintain documentation of current motor vehicle insurance coverage inside the motor vehicle;
5. Contact the Department no later than 24 hours after a motor vehicle accident that occurs while transporting an enrolled child;
6. Submit a written report to the Department within seven calendar days after a motor vehicle accident that occurs while transporting an enrolled child;
7. Not permit an enrolled child to be transported in a truck bed, camper, or trailer attached to a motor vehicle;
8. Use a child passenger restraint system, as required by A.R.S. § 28-907, for each enrolled child who is:
   a. Under eight years of age, and
   b. Not more than four feet nine inches tall.

9. Ensure that the motor vehicle has:
   a. A working mechanical heating system capable of maintaining a temperature throughout the motor vehicle of at least 60° F when outside air temperatures are below 60° F;
   b. Except as provided in subsection (E), a working air-conditioning system capable of maintaining a temperature throughout the motor vehicle at or below 86° F when outside air temperatures are above 86° F;
   c. Except as provided in subsection (F), a first aid kit that meets the requirements of R9-5-735(A);
   d. Two large, clean towels or blankets; and
   e. Sufficient drinking water available to meet the needs of each enrolled child in the motor vehicle and sufficient cups or other drinking receptacles so that each enrolled child can drink from a different cup or receptacle;
10. Ensure that the motor vehicle is:
   a. Maintained in a clean condition,
   b. In a mechanically safe condition, and
   c. Free from hazards; and
11. Maintain the service and repair records of the motor vehicle as follows:
   a. A person operating a single child care facility shall maintain the service and repair records for at least 12 months after the date of an inspection or repair in a single location on facility premises;
   b. A public or private school that uses a school bus, as defined in A.R.S. § 28-101, shall maintain the service and repair records for the school bus as provided in A.A.C. R13-13-108; and
   c. A school governing board, charter school, or person operating multiple child care facilities shall maintain the service and repair records for any motor vehicle other than a school bus for at least 12 months after the date of an inspection or repair in a single administrative office located in the same city, town, or school attendance area as the facility.

B. A licensee shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:
1. Is 18 years of age or older;
2. Holds a valid driver's license issued by the Arizona Department of Motor Vehicles as prescribed by A.R.S. Title 28, Chapter 8;
3. Carries a list stating the name of each enrolled child being transported and a copy of each enrolled child's Emergency, Information, and Immunization Record including the attached immunization record or exemption affidavit, in the motor vehicle;
4. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
5. Does not permit an enrolled child to be seated in front of a motor vehicle's air bag;
6. Requires that each enrolled child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
7. Except as provided in subsection (E), requires that each enrolled child be secured in a seat belt before the motor vehicle is set in motion and while the motor vehicle is in motion;
8. Does not permit an enrolled child to open or close a door or window in the motor vehicle;
9. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
10. Ensures that each enrolled child is loaded into or unloaded from the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose; and
11. Does not use audio headphones or a telephone while the motor vehicle is in motion.

C. When transporting an enrolled school-age child in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-726(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled school-age child in a motor vehicle, if the motor vehicle driver meets the qualifications of a child educator.

D. A licensee who is transporting an enrolled child in a commercial motor vehicle, as defined in A.R.S. § 28-1301, is exempt from the provisions in subsections (A)(9), (A)(10)(b), and (B)(7).

E. A licensee who is transporting an enrolled child in a school bus, as defined in A.R.S. § 28-101, is exempt from the provision in subsection (A)(10)(c) and shall comply with A.A.C. R13-13-107.

R9-5-739. Field Trips

A. A licensee providing a field trip for an enrolled child shall:

1. Obtain written permission from a parent before the enrolled child participates in a field trip including the:
   a. Date and description of the field trip;
   b. Times of departure from and return to the facility; and
   c. Name, street address, and telephone number, if any, of the field trip destination;
2. Prepare a written field trip plan including:
   a. The name of each participating enrolled child, staff member, and other individuals on the field trip;
   b. The times of departure from and return to the facility;
   c. If applicable, the license plate number of any motor vehicle used on the field trip; and
   d. The name, street address, and telephone number, if any, of the field trip destination; and
3. Maintain the written permission in subsection (A)(1) and written field trip plan in subsection (A)(2) on facility premises for 12 months after the date of the field trip.

B. A licensee shall ensure that a staff member taking enrolled children on a field trip carries the following on the field trip:

1. Documentation of the Emergency, Information, and Immunization Record including the attached immunization record or exemption affidavit, of each enrolled child participating in the field trip;
2. A copy of the written field trip plan required in subsection (A)(2);
3. A list stating the name of each participating enrolled child; and
4. Sufficient water to meet the needs of each enrolled child participating in the field trip.

C. A staff member shall verify the presence of each enrolled child and place a checkmark next to the enrolled child's name on the list required in subsection (B)(3) for each enrolled child who is present at the following times:

1. At the beginning of the field trip or when boarding the motor vehicle,
2. Upon arrival and each hour while at the field trip destination,
3. When preparing to leave the field trip destination or when boarding the motor vehicle to return to the facility, and
4. When reentering the facility at the conclusion of the field trip.

D. A licensee shall ensure that each enrolled child participating in a field trip is wearing in plain view a written identification stating the facility's name, address, and telephone number.

E. A licensee shall also ensure that each enrolled child is wearing out of view a written identification stating the enrolled child's name.

F. If a licensee uses a motor vehicle volunteered by a parent or other individual for a field trip, a licensee shall determine before the field trip begins that the motor vehicle is in compliance with R9-5-517(A)(3) and (4) and that the motor vehicle driver is in compliance with R9-5-517(B)(1) and (2).

G. When six or more enrolled children are participating in a field trip, a licensee shall ensure that a child educator and at least one additional staff member are present on the field trip, including in each motor vehicle.

H. A licensee may use the written permission required in subsection (A) annually for multiple field trips to the same destination.

R9-5-740. General Physical Plant Standards

A licensee shall comply with the following physical plant requirements, as applicable:

1. Toilets and hand-washing sinks are available to enrolled children in a facility as follows:
   a. At least one flush toilet and one hand-washing sink for 10 or fewer children,
   b. At least two flush toilets and two hand-washing sinks for 11 to 25 children, and
   c. At least one flush toilet and one hand-washing sink for each additional 20 children;
2. A hand-washing sink required in R9-5-503(A)(2) or subsection (2) provides running water with a drain connected to a sanitary sewer as defined in A.R.S. § 45-101;
3. A glass mirror, window, or other glass surface that is located within 36 inches of the floor is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken, or is shielded by a barrier to prevent impact by or physical injury to an enrolled child.

R9-5-741. Facility Square Footage Requirements

A. A licensee shall ensure that the facility meets the following square footage requirements for indoor activity areas based on the child care services classifications at least 25 square feet of indoor activity space for each school-aged child.

B. When computing indoor activity space for subsections (A)(1) through (3) to determine licensed capacity, the floor space occupied by the following shall be excluded:
   1. The interior walls;
   2. A kitchen, bathroom, closet, hallway, stair, entryway, office, a room designated for isolating an enrolled child from other children, storage rooms, and a room designated for the sole use of child care staff; and
   3. Room space occupied by desks, file cabinets, storage cabinets, and hand washing sinks.

C. To provide activities that develop large muscles and an opportunity to participate in structured large muscle physical activities, a licensee shall:
   1. Provide at least 75 square feet of outdoor or indoor activity area per child for at least 50% of the facility's licensed capacity, or
   2. If children are in care for less than four consecutive hours, the licensee is not required to have an outdoor activity space.

D. A licensee substituting indoor activity area for outdoor activity area shall install and maintain a mat or pad designed to provide impact protection in the fall zone of indoor swings, slides, and climbing equipment.

R9-5-742. Outdoor Activity Areas

A. Except as provided in subsection (B), a licensee shall not permit an enrolled child to cross a driveway or parking lot to access an outdoor activity area on the facility premises or a school campus unless the licensee obtains written approval from the Department.

B. Except as provided in subsection (D), a licensee shall ensure that an outdoor activity area:
   1. Is enclosed by a fence:
      a. A minimum of 4 feet high,
      b. Secured to the ground, and
      c. With either vertical or horizontal open spaces on the fence or gate that do not exceed 4.0 inches;
   2. Is maintained free from hazards, such as exposed concrete footings and broken toys; and
   3. Has gates that are kept closed while an enrolled child is in the outdoor activity area.

C. A licensee shall ensure that a playground used only for enrolled school-age children at a facility operating at a public school meets the fencing requirements of the public school. If the Department determines by inspection that a facility fence at a public school does not ensure the health, safety, or welfare of enrolled children, the licensee shall meet the fencing requirements of subsection (C).

D. A licensee shall ensure that the following is provided and maintained within the fall zones of swings and climbing equipment in an outdoor activity area:

1. A shock-absorbing unitary surfacing material manufactured for such use in outdoor activity areas; or

2. A minimum depth of 6 inches of a nonhazardous, resilient material such as fine loose sand or wood chips.

E. A licensee shall ensure that hard surfacing material such as asphalt or concrete is not installed or used under swings or climbing equipment unless used as a base for a rubber surfacing.

F. A licensee shall ensure that a swing or climbing equipment is not located in the fall zone of another swing or climbing equipment.

G. A licensee shall provide a shaded area for each enrolled child occupying an outdoor activity area at any time of day.

R9-5-743. Swimming Pools

A. If a licensee uses a public or semi-public swimming pool for an enrolled child, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by the local government. If no ordinance has been adopted, the swimming pool shall meet the requirements in A.A.C. R9-8-801 through R9-8-813.

B. A licensee that uses a private pool for an enrolled child shall ensure that the swimming pool and its equipment meet the following requirements:

1. If a licensee uses a private pool that is a minimum of 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by the local government and, at a minimum, be equipped with the following:

   a. A recirculation system consisting of piping, pumps, filters, and water conditioning and disinfecting equipment that conforms to the swimming pool manufacturer's specifications for installation and operation, and is adequate to clarify and disinfect the pool water continuously;

   b. Two swimming pool inlets located on opposite sides of the swimming pool to produce uniform circulation of water and maintain uniform chlorine residual throughout the entire swimming pool without the existence of dead spots;

   c. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed by bathers;

   d. A swimming pool water vacuum system in operating condition;

   e. A removable strainer to prevent hair, lint, or other objects from reaching the pump and filter;

   f. An automatic mechanical water disinfectant system in use and in operating condition. The disinfecting agents shall maintain the swimming pool water as follows:

      i. A free chlorine level between 1.0 and 3.0 parts per million as tested by the diethyl-p-phenylene diamine method or 0.4 to 1.0 parts per million when tested by the orthotolidine method;

      ii. A pH level between 7.0 and 8.0 as tested by the diethyl-p-phenylene diamine method or the orthotolidine method; or

      iii. A bromine level between 2.0 and 4.0 parts per million as tested by the diethyl-p-phenylene diamine method;

   g. A shepherd's crook; and

   h. A ring buoy attached to a 1/2 inch diameter rope at least 25 feet in length;

2. If a licensee uses a private pool that is less than 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of subsection (B)(1) except that:

   a. The swimming pool shall have a minimum of one swimming pool inlet;

   b. The swimming pool is not required to have a bottom drain;

   c. A pool water vacuum cleaning system is not required, and

   d. A ring buoy with an attached rope is not required;

3. A portable pool that does not meet the requirements of subsection (B)(1) or (2) is prohibited;

4. On each day an enrolled child uses the swimming pool, a licensee shall test the water in the swimming pool at least once every day to verify that the swimming pool water meets the swimming pool water chemical ranges in subsection (B)(1)(f);

5. A licensee shall create a written swimming pool log at the swimming pool site while enrolled children are using the swimming pool that includes results of tests required in subsection (B)(4) and maintain the written swimming pool log on facility premises for three months after the last date the swimming pool water was tested and documented.

6. If the swimming pool water does not meet the swimming pool water chemical ranges in subsection (B)(1)(f), the licensee shall:

   a. Add liquid or dissolved dry chemicals to the swimming pool water,

   b. Document any actions taken by the licensee to restore the swimming pool water chemical ranges in the written swimming pool log required in subsection (B)(5)(a), and

   c. Not allow enrolled children to use the swimming pool until tests of the swimming pool water verify that the swimming pool water meets the swimming pool water chemical ranges in subsection (B)(1)(f).

C. A licensee shall ensure that a public, semi-public, or private pool used by an enrolled child is enclosed by a wall, fence, or barrier that complies with:

1. The requirements of a swimming pool barrier ordinance adopted by the local government where the swimming pool is located; or

2. If the local government where the swimming pool is located has not adopted a swimming pool barrier ordinance, the requirements in A.R.S. § 36-1681.

D. A licensee that uses any semi-public or private swimming pool for enrolled children shall ensure that the swimming pool has been inspected by the Department or a city or county health department before it is used by enrolled children.

1. If a licensee operates or uses a swimming pool that is inspected by a city or county health department, the licensee shall provide the Department with a current written report of the swimming pool inspection.

2. A licensee shall maintain the current swimming pool inspection reports of a swimming pool used by enrolled children on the facility premises.

E. A licensee shall ensure that written permission is:

1. Obtained from an enrolled child's parent before allowing the enrolled child to participate in a swimming activity, and

2. Maintained on facility premises for 12 months after the date the enrolled child participated in the swimming activity.

R9-5-744. Fire and Safety

A. A licensee shall install and maintain a portable, pressurized fire extinguisher that meets, at a minimum, a 2A-10-BC rating of the Underwriters Laboratories in a facility's kitchen and any other location required by Standard 10-1 of the International Fire Code, incorporated by reference in A.A.C. R9-10-104.01.

B. A licensee shall ensure that:

1. All designated exits, corridors, and passageways that provide an escape from the building are unobstructed and unlocked during hours of operation;

2. Combustible material, such as paper, boxes, or rags, is not permitted to accumulate inside or outside the facility premises;

3. An unvented or open-flame space heater or portable heater is not used on the facility premises;

4. A gas valve on an unused gas outlet is removed and capped where it emerges from the wall or floor;

5. Electrical extension cords are not used;

6. Slow cookers and hot plates are used only in a kitchen and are inaccessible to an enrolled child;

7. Heating and cooling equipment is inaccessible to an enrolled child;

8. Fans are mounted and inaccessible to an enrolled child;

9. Toilet rooms are ventilated to the outside of the building, either by a screened window open to the outside air or by an exhaust fan and duct system that is operated when the toilet room is in use;

10. A toilet room with a door that opens to the exterior of a building is equipped with a self-closing device that keeps the door closed except when an individual is entering or exiting;

11. A toilet room door does not open into a kitchen;

12. A smoke detector is installed in each indoor activity area and kitchen;

13. Each smoke detector required in subsection (B)(13) is:

    a. Maintained in an operable condition;

    b. Either battery operated or, if hard wired into the electrical system of the child care facility, has a back-up battery; and

    c. Tested monthly;

14. If the local fire jurisdiction requires a sprinkler system, the sprinkler system is:

    a. Installed,

    b. Operable,

    c. Tested quarterly, and

    d. Serviced at least once every 12 months;

15. The fire extinguisher required in subsection (A):

    a. Is serviced at least once every 12 months; and

    b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing, and

16. The testing required in subsections (B)(14) and (15) and servicing required in subsection (B)(16) is documented and the documentation is:

    a. Maintained by the licensee, and

    b. Available for at least 12 months after the date of the testing or servicing.

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES –

CHILD CARE FACILITIES

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

April 2025

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 5. DEPARTMENT OF HEALTH SERVICES –
CHILD CARE FACILITIES

1. An identification of the rulemaking:

The purpose of this rulemaking is to update and amend the licensing requirements for Child Care Facilities licensed under Arizona Revised Statutes (A.R.S.) Title 36, Chapter 7.1, Article 1. A.R.S. § 36-883 requires the Arizona Department of Health Services (Department) to adopt reasonable rules necessary to ensure the health, safety, and well-being of children being cared for in a child care facility. The Department adopted the Arizona Administrative Code (A.A.C.) Title 9, Chapter 5 rules to implement A.R.S. §§ 36-883 through 36-883.04. The rules provide definitions; application requirements for licensure, including fingerprinting; facility administration requirements; facility staff and training requirements; facility program and equipment requirements; and requirements for the physical plant of a facility. The Department, in its 2022 Child Care Facilities five-year-review report (Report), identified that the rules' effectiveness could be improved by making the rules more clear, concise, and understandable by updating cross-references, correcting grammatical errors, clarifying the language throughout the rules, and removing obsolete definitions and requirements. Additionally, in this rulemaking, the Department plans to amend and establish rules for school-age children being cared for in a child care facility that only cares for school-age children. The amended rules for school-aged children are expected to broaden the types of afterschool, summer, and enrichment programs eligible for licensure by creating a separate child care license for "out-of-school time" programs. This will streamline the process for these programs to accept child care assistance by meeting the high-quality standards in the federal Child Care and Development Block Grant (CCDBG). The Department plans to make other changes in this rulemaking to improve consistency with CCDBG. This rulemaking improves the health and safety of enrolled infants and children who attend licensed child care facilities. Changes conform to the rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

2. Identification of the persons who will be directly affected by, bears the costs of, or directly benefits from the rules:

a. The Department

b. Child Care Facilities and Staff

c. Infants and children enrolled in a Child Care Facility and parents

d. The General Public

3. Cost/benefit analysis:

The changes made through this rulemaking are expected to improve the effectiveness and efficiency of the rules. This analysis covers the cost and benefits associated with the rule changes related to implementing rules for out-of-school time programs and compliance with the Child Care & Development Block Grant (CCDBG) requirements. No new FTEs will be required due to this rulemaking. The annual cost and revenue changes are designated as none-to-minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or more in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

A. The Department and State, and Local Government Agencies

The Department

A.R.S. § 36-883 requires the Department to "define and prescribe reasonable rules regarding the health, safety, and well-being of the children to be cared for in a child care facility." A.R.S. § 36-883.04 requires the Department to "prescribe reasonable rules and standards regarding the health, safety, and well-being of children cared for in any public school child care program." Accordingly, the Department implemented A.R.S. §§ 36-883 and 36-883.04 and promulgated rules specifying licensure requirements for child care facilities at A.A.C. Title 9, Chapter 5, Articles 1 through 6. The rules provide definitions; application requirements for licensure, including fingerprinting; facility administration requirements; facility staff and training requirements; facility program and equipment requirements; and requirements for the physical plant of a facility. The purpose of the rules is to protect the health, safety, and well-being of the children to be cared for in an Arizona licensed child care facility, including public school child care programs, and to establish licensure requirements for a person or a governmental agency requesting a license to operate a child care facility.

Child care facilities play a crucial role in supporting families and the overall economy. These facilities not only provide a safe and nurturing environment for children but also have far-reaching economic implications. As of November 2024, the Department licenses 2,380 child care facilities in Arizona, which have a combined licensed capacity of over 280,291 children. Some of these facilities may have closed but were active during fiscal year 2024. In fiscal year 2024, the Department conducted 115 initial inspections and 2,055 compliance inspections. The Department also received 873 complaints,

issued 58 initial and 1299 renewal licenses, and processed 210 enforcement actions. The Department estimates the cost associated with the rulemaking to be moderate for a rules analyst and program staff to amend rules in 9 A.A.C. 5, as well as spending time to meet with stakeholders to ensure that the Department is aware of stakeholder concerns and, when appropriate, make changes to the draft rules.

Through this rulemaking, the Department is amending 40 Sections and 1 Table, throughout Chapter 5, Articles 1 through 6, to make the rules clearer, concise, and understandable by updating cross-references, correcting grammatical errors, clarifying the language throughout the rules, and removing obsolete definitions and requirements. Additional changes in the rules were made to be more consistent with statutory requirements and improve consistency with CCDBG. The Department expects to receive a significant benefit, greater than the cost incurred for drafting amended rules, for providing clearer, concise, and understandable rules for child care facilities that comply with the CCDBG requirements. In addition, the Department is creating a new Article 7 with 44 new Sections and two new Tables for school-aged children.

Amendments were made throughout Article 2, *Facility Licensure*, to update and simplify language for consistency and better clarity, including updating language to be more applicable to the online application process in a "Department-provided format" rather than "[An] application on a form provided by the Department." In addition, language was amended to reflect an attestation on the application, rather than requiring the applicant to write "a statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter." Changes as such, directly affect the Department in creating and maintaining an online system and database for application processing. The Department has implemented a new electronic system through Salesforce to utilize in the application process. Online systems can collect and analyze data more effectively. This allows Department staff to track metrics, identify trends, and make data-driven decisions to improve processes. Moving to an online application is expected to significantly benefit the Department and applicants (child care facilities). For example, online applications increase accessibility, making it easier for a wider range of candidates to apply, including those from different geographic locations. For Department staff who process the applications, electronic applications allow for a quicker standardization processing system. The Department anticipates incurring moderate costs to maintain and update the online application and database, but expects the benefit of having a simpler and more consistent processing system will provide a significant benefit to staff by utilizing a more streamlined process.

Other changes were made in Article 2 to simplify the language referring to the documents an applicant may submit as identification to reference A.R.S. § 41-1080 and expand the acceptable forms of documentation. Since adding the statutory cross-reference expands the type of acceptable documentation

of identification, staff members who process applications for child care facilities will need to be trained on how to properly identify a valid identification type. The cost to implement this change in the rule is expected to be none-to-minimal; the Department estimates that any incurred costs would far outweigh the benefit of the amended rule due to the new rule being more inclusive. Additionally, in this rulemaking, the Department is minimizing requirements by removing the required four hours of Department-provided training, but keeping that training available as an option. The Department expects that the new change to the rule will allow staff to spend less time processing applications by not having to check that staff members at a child care facility have completed the required Department-provided training. Also, in Article 2, R9-5-209, *Inspections; Investigations*, the Department is updating language to clarify that the child care facility is required to notify the Department within 24 hours of a business closure. Requiring a facility to notify the Department within 24 hours of a business closure is expected to save the Department money and time from planning a visit to a facility that is closed for the day; no costs are expected to be incurred by a child care facility due to this change.

By adding rules for school-age out-of-school time programs in R9-5-506, *Supplemental Standards for School-age Children,* and Article 7, the Department expects to incur moderate costs due to the additional applications that will need to be reviewed and additional facilities to inspect and regulate. The Department is projecting that the new rule will expand child care programs for school-aged children by 20-25 new facilities in Arizona. No new FTEs are expected. The Department anticipates that this change in the rules will provide a significant benefit in expanding the options for child care facilities.

B. Privately Owned Businesses

Child Care Facilities and Staff

Child care facilities are small businesses that contribute to the local economy and generate revenue through tuition fees, government subsidies, and private investments. This income supports the sustainability and growth of child care businesses, further enhancing their economic impact. Child care providers are required to meet specific qualifications, including background checks, fingerprinting, and training in child development, first aid, and CPR. Staff-to-child ratios are also regulated, ensuring there are enough qualified caregivers for the number of children in the facility. Child care facilities must maintain a safe and clean environment. This includes adherence to sanitation, fire safety, and building code regulations. Regular inspections are conducted to ensure compliance.

In R9-5-101, *Definitions*, the Department is amending the terms to use updated language that is more inclusive, removing antiquated terms, and adding definitions to provide clarity to the rules. For example, the

definition of an "application" was updated to include electronic submission, and the term "written notice" was defined to allow for submissions to be either physically on paper or in an electronic format. The Department has already transitioned to an online database, which allows applicants to submit their child care facility application quickly and minimizes processing time due to expedited online processes. The Department made other changes related to electronic submissions in R9-5-205, *Submission of Licensure Fees*, to reflect the online application process. By submitting applications online, the costs of paper, ink, and postage to mail in a physical paper application are eliminated. This change in the rules will allow those affected by the rules to have more clarification that the application is to be done online. In addition, the processing and turnaround time for applicants to know if their application has been approved or if more information is required is expedited due to having the online system, which eliminates communication through paper mail. Online applications will facilitate easier application submissions for a wider range of candidates, including those from remote geographic locations. Additionally, these amendments aim to create a simpler, more inclusive, and efficient regulatory framework for childcare facility licensing, ultimately enhancing access to childcare services in rural areas. The Department is also updating the term "teacher-caregiver" to "child educator" in the definitions, as well as throughout the entire Chapter. The title change is more applicable to the terms used in the field today and aligns with updates that other states are making in their child care facility rules. The change in title for a staff member at a child care facility is not associated with a promotion or a pay raise. In addition, no new staff are required to be hired due to this new change in the rules. In this rulemaking, the Department is also changing the definition of a "student-aide," which is currently defined as "less than 16 years of age," to "between 15 and 18 years of age." This change in the rule expands the student-aid option to 17 and 18 year olds. The Department estimates that facilities may incur up to moderate costs for the change in the new rule due to the increased liability of expanding the option of becoming a student-aid, however, facilities may receive a significant benefit for having an increased number of student-aid candidates and expanding the workforce. Other terms being amended to align better with national standards are "discipline" to "positive discipline," and "self-control" to "self-regulation." The Department anticipates that having up-to-date language in the rules will provide a significant benefit to those affected by the rules by having better understandability.

In compliance with the CCDBG requirements, the Department is adding a reference to the state criminal history checks within Arizona and each state where a staff member resided during the preceding five years, and the National FBI criminal history check, with FBI fingerprint check, under the definition of a "background check." Due to the new requirement, staff and volunteers working in a child care facility will need to renew their fingerprint clearance card every five years instead of six years. Additional corresponding changes related to this were made in R9-5-203, *Fingerprinting and Background Check*, to require a staff member to have a valid background check document under A.R.S. § 46-811(A) to be completed before employment or volunteer

service, in compliance with CCDBG requirements. The cost to renew a fingerprint clearance card and complete the required background checks is the same, and no additional costs are expected to be incurred, however, the individual who possesses a fingerprint clearance card will have to renew more often due to the CCDBG requirements. The Department anticipates that the benefit of the new rules will outweigh the associated costs for facilities to comply with the fingerprinting and background check requirements.

Throughout Article 2, the Department is updating and simplifying language for consistency and better clarity, specifically for the rules to apply to the online application process, which allows applicants to complete online applications at their convenience, 24/7, without the need to visit a physical location during specific hours. Online applications often reduce the costs associated with printing, postage, and physical storage of paper applications. They can also streamline administrative tasks, reducing labor costs. Online applications can provide a more user-friendly experience for applicants, including saving progress, uploading documents, and receiving immediate confirmation of application submissions. Online forms can include validation checks to ensure that applicants provide accurate and complete information, reducing errors and incomplete applications. In addition, the Department is removing the requirement for architectural plans in R9-5-201(A)(5)(f) to be reviewed and approved by the Department. The new change should ease the application process and reduce the burden on the applicant or licensee. Furthermore, language in R9-5-201(A)(5)(i)(iii) was also simplified to only require a statement from the local jurisdiction that the certificate of occupancy (COO) is not available. The new changes clarify the process if the COO is not available. If the applicant cannot get the COO, the application is held up, and it takes more time to process. The Department anticipates that those affected by the rules will receive a significant benefit from the new changes.

Furthermore, R9-5-201(A)(5)(j) was amended for the requirements to apply to all children, including infants through 2 years old. The new change allows for a child care facility to submit the school map if the facility is licensed at a school. The Department expects facilities not to incur any additional costs due to the new change in the rule; rather, facilities are expected to save on costs. In R9-5-201(A)(5)(j)(v), the Department amended the rule to include a diaper changing area, if applicable, on the school map, whereas before it was on the architecture map. In R9-5-202, *Time-frames*, the Department simplified the rules by removing the current subsection (A), which allows the applicant and the Department to agree in writing to extend the substantive review time-frame and the overall time-frame. The Department anticipates that child care facilities will significantly benefit from having rules that are less confusing and more clear, concise, and understandable. In R9-5-206, *Licensure Fees*, the Department updated language to clarify that fees are due annually, according to A.R.S. § 36-882. The Department does not expect child care facilities to incur additional costs due to this change in the rule, and the

Department anticipates that child care facilities will receive a significant benefit by having clearer rules that include the time-frame requirement of paying the annual fees.

Similar changes were made in Article 3 to correct grammatical errors and update language to be clearer and more consistent. In R9-5-301, *General Licensee Responsibilities*, the Department is removed subsection (D) to be more consistent with the statutory authority in A.R.S. § 36-885, which only allow a parent or a representative from the Department to have immediate access to a child care facility during hours of operation, which is also referenced in R9-5-209. Currently, R9-5-301 allows for someone from the Department, the local health department, the Arizona Department of Child Safety, or the local fire department or State Fire Marshal to have immediate access to the facility premises during hours of operation. The Department does not expect the change in the rule to add costs to a child care facility, however, the change in the rule is expected to potentially create a barrier to the local health department, the Arizona Department of Child Safety, the local fire department, or State Fire Marshal since they will no longer have immediate access to a child care facility according to the rules in Chapter 5. In the case of an emergency, fire departments will be allowed immediate access to a child care facility. The Department anticipates that this change in the rules will provide a significant benefit for more secure public health and safety at a child care facility.

In R9-5-301, the Department is amending subsection (F) to make the tuberculosis testing requirements less burdensome by allowing staff members to complete a self-screening form. Depending on the results of the self-screening, the staff member may be required to be tested for tuberculosis before beginning employment. The change in the rule is expected to significantly benefit staff members and child care facilities since the new changes do not require every staff member to be seen by a physician and complete tuberculosis testing before beginning employment. Therefore, costs incurred by staff and child care facilities that pay for doctor visits and tuberculosis testing are expected to be reduced significantly. Also, in R9-5-301, the Department is clarifying that first aid and CPR certification are required, not only the training. This change was updated throughout multiple Sections in the Chapter. The change in the rule is not expected to impose a cost on child care facilities, but rather a clearer understanding of the rules. Additionally, the language in R9-5-301(I) was restructured to be listed into subsections and include “if applicable.” The Department is removing subsection (J), which requires licensees to provide parents with annual information related to recommendations for influenza vaccinations. By omitting this rule, the Department expects that child care facilities will save time and resources by not having to provide recommendations for influenza vaccinations. This change is also more consistent with the Department’s statutory authority since this rule is not specifically outlined in the statute.

In R9-5-302, *Statement of Child Care Services*, the Department is updating and amending language and creating two new subsections for the statement of child care services to include guidelines for positive discipline reflective of age-appropriate methods for children and policies and procedures for expulsion of children. The Department expects that this new change in the rule may impose a minimal administrative burden on facilities, but will have a significant benefit for including this in the statement of services. In R9-5-304, *Enrollment of Children*, the Department is removing the Department-provided Emergency, Information, and Immunization Record card, otherwise known as the "blue card." While the "blue card" is being removed, the Department is still requiring the information contained on the "blue card" to be collected on no more than a two-page written notice, and to be readily on file at the child care facility. The rule is also being amended to simplify the contact information and remove unnecessary requirements, including the home telephone number, and to add the parent's email address to be listed as a form of contact. The change in the rule allows for more flexibility, simplifies and updates the information that is being collected, and allows for records to be kept electronically. The Department expects that this change in the rule will save facilities a minimal-to-moderate amount of costs by using their business model to collect the required information, rather than the Department-provided "blue card".

In R9-5-305, *Child Immunization Requirements*, the Department is adding a new subsection to allow for a 30-day grace period for enrolled homeless children and youth to receive their required immunizations. If an enrolled child has not had immunizations, initial doses should be administered as soon as possible, unless the enrolled child has a religious or medical exemption. In R9-5-306, *Admission and Release of Children; Attendance Records*, the Department is removing subsection (A)(1) and (2) to expand the options for sign-in/sign-out to be done electronically using a secure unique identifier. Other subsections in R9-5-306 are being restructured and simplified, including removing obsolete and duplicative requirements. The Department expects child care facilities will save a minimal-to-moderate amount by having rules that allow for a unique identifier when parents are signing their enrolled child in and out of the facility.

Throughout Article 4, *Facility Staff*, the Department is correcting grammatical errors and amending language for consistency. In R9-5-401, *Staff Qualifications*, the Department is amending the rules to minimize the requirements for individuals who plan to work with only school-aged children to have three months of experience at a licensed facility working with school-aged children rather than six months of experience. The Department expects that facilities will receive a significant benefit from having the flexibility to hire a staff member with less experience and potentially be able to hire qualified staff more quickly. The Department made several amendments throughout R9-5-403, *Training Requirements*, including updating language to be clearer and more consistent with the CCBDG

requirements. In subsection (A), the Department created two new subsections for the 10 calendar day training for new staff members to include infant tummy time and prevention of sudden infant death syndrome, and use of safe sleeping practices. To ensure staff are properly trained and to increase public health and safety, the Department increased the required hours of training every 12 months from 18 to 24 clock hours. The Department anticipates that the change in the rules will impose a minimal-to-moderate impact on staff members who provide child care services at a facility by having to spend more time to complete the required trainings. While there are many free trainings available, the Department expects child care facilities or staff members at the child care facility to incur up to minimal costs for having to potentially pay for the additional required hours of training. However, the Department expects that child care facilities will receive a significant benefit for having better-trained staff working at the facility. Additionally, in R9-5-403(B)(2)(e), the Department is adding a new subsection to require a child educator providing services to school-aged children shall complete six of the 24 hours of training within the first three months of hire, this allows for some flexibility for the staff members to not have to complete all the required trainings right away. The Department expects that staff members at a child care facility will receive a significant benefit from having more time to complete the required training.

Also, in R9-5-403, several amendments were made to add new training requirements in compliance with the CCDBG requirements. Prevention of sudden infant death syndrome and the use of safe sleeping practices was a topic added to the preservice training for new staff members. As part of the required 24 clock hours of training every 12 months after the staff member's starting date of employment or volunteer service, the staff member must choose at least two topics according to the list in R9-5-403(B). The following additional topics of choice were added; prevention of shaken baby syndrome, abusive head trauma, and child maltreatment; basic child development, including cognitive, social, emotional, and physical, as well as approaches to learning; water safety; prevention and control of infectious diseases, including immunization; prevention and response to emergencies due to food and allergic reactions, including anaphylactic shock; building and physical premises safety, including identification of and protection from hazards that can cause bodily injuries such as electrical hazards, bodies of water, and vehicular traffic; emergency preparation and response planning for emergencies resulting from a natural disaster or a human-caused event; administration of medication, consistent with standards for parental or guardian consent; and handling and storage of hazardous materials and the appropriate disposal of biocontaminants. The Department expects that staff members at a child care facility may incur up to minimal costs for the increased training requirements, but will receive a significant benefit for having an expanded list of topics to receive training on. Lastly, in R9-5-404, *Staff-to-Children Ratios*, the Department is removing R9-5-404(B)(3), which states that a licensee shall not

allow a student-aide or an individual qualified as a teacher-caregiver-aide to be counted as staff in staff-to-children ratios since this subsection is duplicative to what is covered in R9-5-404(B)(2). The Department estimates that facilities will receive a significant benefit from having clearer rules.

Throughout Article 5, the Department is simplifying the rules, removing obsolete requirements, and creating new subsections to provide clarity to the rule. For example, in R9-5-501, *General Child Care Program, Equipment, and Health and Safety Standards*, the Department is adding a new subsection to clarify that a facility does not allow enrolled children to mix with non-enrolled children. This is a current expectation in the guidelines for child care facilities, however, it is not currently enforced in the rules. As all child care facilities currently follow this practice, the Department doesn't expect any costs to be incurred. Instead, the rule is anticipated to provide significant benefits to child care facilities by setting clearer expectations. The Department is removing R9-5-501(A)(11), which requires outdoor activities to allow not less than 75 square feet for each enrolled child occupying the facility's outdoor activity area or indoor activity area substituted for outdoor activity area at any time. The Department is also simplifying and removing obsolete and outdated requirements in subsections (A)(15) and (A)(16) related to candles of illumination. New language is being added to subsection (A)(15) that is clearer, concise, and understandable by clarifying that in rooms used for napping, the lighting must be dim during nap time to promote an atmosphere conducive to sleep, but must be bright enough for supervision of children. The Department expects that the changes to the rule may reduce costs for child care facilities without candles of illumination, and child care facilities are expected to receive a significant benefit from having clearer rules. In addition, costs for the Department are expected to be reduced when inspecting a child care facility by not having to measure the amount of illumination but only inspecting that the lights are dimmed during nap time. The Department is also removing R9-5-501(B), which stipulates that a toy or piece of play equipment, that is free from hazards but in a condition that does not allow the toy or play equipment to be used for the toy or play equipment's original purpose, may be in an activity area but is not counted as one of the toys or play equipment required in this Article, since it is an outdated and obsolete requirement that is unnecessary. Lastly, in R9-5-501, the Department is adding that a staff member shall not smoke or vape on facility premises, except in designated areas separated from the children, and a staff member shall not smoke or use marijuana, as specified in A.R.S. § 36-894. The Department does not expect child care facilities to incur costs related to the changes in R9-5-501, but to receive a significant benefit for having updated rules, and rules that help protect the health and safety of enrolled children.

In alignment with national standards set by the American Academy of Pediatrics, the Department is removing the requirement in R9-5-502(A)(8)(c) for a "top sheet or a blanket" to be on the crib. Loose

blankets and other soft items in an infant's sleep space can contribute to an increased risk of sleep-related infant death. Other subsections were amended to clarify that each crib sheet should be cleaned and sanitized before use by another infant. In addition, the rule was amended to remove the requirement of changing a crib blanket before use by another infant since the Department is removing the requirement of a crib blanket. Corresponding changes were made in R9-5-511, *Sleeping and Napping*, to remove the requirement of a staff member covering a crib mattress. The Department anticipates that this change in the rule may save facilities money by not having to purchase top sheets or blankets for cribs and not having to sanitize them after each use. Also, in R9-5-502, the Department is adding a new subsection to (B)(5) to specify that the licensee providing child care services for infants shall not shake an infant or child, or cause pediatric abusive head trauma. While staff at a child care facility already should not shake an infant or child, adding this specific subsection to the rules may impose minimal costs on child care facilities for staff to receive training on the prevention of shaken baby syndrome. Other subsections in the rules were amended to clarify that the documentation of each infant's activities, food consumption, diaper changes, and tummy time should include the time, in addition to the date. While staff at a child care facility already keep daily documentation of the required activities, the change to the rule clarifies that time should be recorded for more accurate documentation. The Department made further changes to the rules to clarify that dietary instructions from a parent or health care provider regarding the method of feeding and types of foods to be prepared or fed to an infant at the facility must be signed. Child care facilities are expected to receive a significant benefit for having rules in alignment with national standards and rules that allow for an increase in health and safety.

In R9-5-506, *Supplemental Standards for School-age Children*, the Department is changing the title and amending the rules to include out-of-school time programs. The Department is adding a new subsection (B) to describe an out-of-school time program, for which may apply for a child care facility license; this new change would also be consistent with the new Article 7. The changes are expected to benefit out-of-school time programs providing services to school-aged children by being more inclusive and expanding the child care facility services offered in Arizona. The Department anticipates that adding out-of-school time programs may create jobs and new small businesses in Arizona, which will provide a significant benefit to the state.

In R9-5-507, *Supplemental Standards for Children with Special Needs*, the Department is amending the title to be more inclusive, "*Supplemental Standards for Children with a Special Health Care Need or a Disability*." The terms "child with special needs" and "child with a disability" are often used interchangeably, but they can have slightly different connotations and may be interpreted differently in various contexts. "Special needs" is a broader term that encompasses a wide range of challenges,

differences, or requirements that may affect a child's development, learning, or overall well-being. Special needs can refer to a variety of conditions, such as learning disabilities, speech and language disorders, sensory processing issues, ADHD (Attention Deficit Hyperactivity Disorder), behavioral challenges, and more. It can also refer to circumstances in a child's life that require additional support, like being a child in foster care or experiencing trauma. The term "special needs" is often used in educational and social service contexts to describe children who may require individualized assistance or accommodations to thrive in various settings. A child with a disability specifically refers to a child who has a physical, intellectual, sensory, or developmental condition that significantly impairs their ability to perform daily activities and participate fully in typical activities. Disabilities can include conditions like autism, cerebral palsy, Down syndrome, blindness, deafness, and mobility impairments, among others. The term "disability" is often used in legal and medical contexts to determine eligibility for services, accommodations, or benefits based on a recognized and documented impairment. In summary, while "special needs" is a more inclusive and general term that can encompass a wide range of challenges and requirements, "disability" is a more specific term used to describe children with documented impairments that significantly affect their daily lives and participation. The Department anticipates that those affected by the rules will receive a significant benefit from having rules with updated language.

In R9-5-510, *Positive Discipline and Guidance*, the Department is restructuring and rewording the majority of this Section to be updated and clear, concise, and understandable. As previously mentioned, the Department is changing the term “discipline” to “positive discipline” so that there is no negative connotation. In a setting where multiple children play and interact, maintaining order is vital. Proper discipline helps prevent accidents and ensures that children coexist in harmony. A structured environment fosters predictability, which in turn allows children to feel secure and understand expectations. Children are more receptive to learning when they understand boundaries and behavioral expectations. Discipline paves the way for effective learning experiences. By learning discipline early on, children learn to respect others, share, wait their turn, and effectively express their emotions. The habits and self-control developed in daycare can significantly influence a child's future in school and personal and professional relationships. Discipline in the daycare setting goes beyond just managing children's behavior. It's about nurturing an environment where children feel secure, understood, and empowered to make the right choices. It's a delicate balance between providing structure and granting freedom, between guiding and letting learn, between setting boundaries and allowing exploration. With the right strategies, patience, and understanding, discipline in daycare can lay the foundation for a child's successful future. The Department anticipates that the changes to the rules will not cause child care facilities to incur

additional costs; rather, the facilities will receive a significant benefit for having updated rules that are more positive and inclusive regarding discipline.

In R9-5-514, *Accident and Emergency Procedures*, the Department is adding a new subsection in (C)(1)(f) in compliance with CFR 98.41, State Plan 5.3, 5.4.5[1] for emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)[2]), that shall include procedures for evacuation, relocation, shelter-in-place and lockdown, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions. The Department is also adding a new subsection (D) in R9-5-514 in compliance with the CCDBG requirements, which requires the director to consult with appropriate state and local authorities and to establish a multi-hazard emergency and evacuation plan to protect children and staff in the event of emergencies. The Department expects that the changes to the rules may impose minimal costs on child care facilities, however, facilities are expected to receive a significant benefit from having updated rules that improve public health and safety at a child care facility.

In R9-5-518, *Field Trips*, the rules clarify that two staff members are required to be in a vehicle with six or more children when traveling on a field trip. The Department estimates that the changes to the rules will not cause child care facilities to incur additional costs; rather, child care facilities may receive a significant benefit for having clearer rules that are easier to understand. Furthermore, the Department is allowing for a licensee to use the written permission required in subsection (A) annually for multiple field trips to the same destination. The Department estimates that this new rule should minimize administrative burden on licensees and provide a significant benefit by having rules that are simpler and easier to follow.

Furthermore, throughout Article 6, the Department is updating the rules to correct grammatical errors, simplify language, and make the rules clearer. In R9-5-601, *General Physical Plant Standards*, the Department is adding "as applicable" for clarification on whom the rules apply to. For example, a child care facility only serving school-aged children does not need to implement rules related to a diaper changing area. In R9-5-602, *Facility Square Footage Requirements*, the Department is minimizing requirements by not requiring an outdoor activity space if children are in care for less than four consecutive hours. Also, the Department is removing subsections (E) and (F) regarding indoor and

[1] https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98/subpart-E/section-98.41#p-98.41(a)(1)(vii)
[2] https://www.govinfo.gov/content/pkg/USCODE-2022-title42/pdf/USCODE-2022-title42-chap68-subchapIV-B-sec5195a.pdf

outdoor substitution. This change in the rules allows for facilities to have more flexibility and may reduce costs related to facility square footage requirements, therefore, the Department anticipates that child care facilities will receive a significant benefit from the updated rules. In R9-5-603, *Outdoor Activity Areas*, the Department is simplifying language in subsection (B) by removing the requirement for the Department to provide the licensee with the requirements necessary to approve the proposed crossing if initially disapproved.

As mentioned earlier, the Department is creating a new Article 7, consisting of 44 new Sections and two Tables, specifically tailored for school-age out-of-school time programs. The requirements in Article 7 mirror the exact language applicable to school-age children in Articles 1 through 6. While these rules are duplicative, they were included in Chapter 5 based on stakeholder feedback to enhance clarity and effectiveness. Consequently, the Department anticipates no additional costs for facilities and believes that the new Article 7 will be highly beneficial for child care facilities.

Overall, the Department expects that some licensed child care facilities may incur a minimal one-time cost for having to revise administrative policies and procedures related to the new rules. In addition, the Department anticipates that the amended rules may have a significant benefit for child care facilities and staff for providing excellent care that increases the health and safety of child care facilities enrolled children.

C. Consumers

Infants and children enrolled in Child Care Facilities and their parents

Families rely on child care services to allow parents to work and contribute to the economy. Access to quality child care enables parents, particularly mothers, to maintain full-time employment or pursue educational opportunities. This, in turn, increases household income and spending power. Child care enables parents to focus on their careers, enhancing overall economic productivity. Early childhood education programs offered by child care facilities lay the foundation for future learning, improving educational outcomes, and workforce readiness. Child care facilities contribute to children's health by ensuring proper nutrition and access to medical services, and reducing health-related absenteeism among parents. The Department does not anticipate that enrolled children, parents of enrolled children, private persons, or consumers will incur any costs related to the changes in the rules.

The General Public

The Department expects that the public will receive a significant benefit from living in a state that protects children and parents by having licensed child care facilities comply with requirements that ensure and increase children’s health and safety. The Department does not expect the public to incur any

costs associated with the rulemaking.

4. A general description of the probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the rulemaking.

The Department does not expect the rules to have a negative impact on employment for private and public businesses, agencies, and political subdivisions. The rulemaking does not require child care facilities or the Department to hire or dismiss employees. Rather, the Department is optimistic that the changes to the rules will expand employment eligibility and improve employment at a child care facility.

5. A statement of the probable impact of the rules on small businesses:

a. An identification of the small business subject to the rulemaking:

Small businesses affected by the rulemaking include licensed child care facilities.

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

A summary of the administrative effects of the rulemaking is given in the cost and benefit analysis in Section 3.

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

The Department knows of no other methods to further reduce the impact on small businesses and believes that the rulemaking amends and adds requirements of general applicability consistent with A.R.S. § 41-1001(21).

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

A summary of the effects of the rulemaking on private persons and consumers is given in the cost and benefit analysis, Section 3.

6. A statement of the probable effect on state revenues:

The Department does not expect the rules to have an effect on state revenues.

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

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

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

Not applicable.

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

January 24, 2025

Sent Via Email: agairola@tlechildcare.com

Amita Gairola
Franchise Owner
The Learning Experience

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 5. Department of Health Services – Child Care Facilities; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Gairola:

Thank you for your feedback regarding the proposed changes to A.A.C. R9-5-404 and for sharing your perspective as an owner of two "The Learning Experience" centers. The Department appreciates your work in providing high-quality care and fostering a supportive environment for children and families in your community.

The Department recognizes the concerns regarding the removal of the "bonus baby" allowance, particularly its potential impact on classroom capacities, revenue, and the financial competitiveness of providers. For facilities like yours that utilize the "bonus baby" allowance, we understand the burden this change may place on operations and access to care. For this reason, the Department plans to reinstate the allowance of the "bonus baby," keeping the rules as they are currently codified. However, since many stakeholders, including DES, expressed support for removing the "bonus baby," the Department intends to discuss this, along with the other ratio and group size issues in the next rulemaking. We hope that having robust conversations about these focused topics and inviting input from all of our stakeholders will lead to a more comprehensive solution to address these related issues.

The Department appreciates your feedback and participation in this rulemaking process. If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

Gmail

Lucinda Sallaway <lucinda.sallaway@azdhs.gov>

Fwd: Removal of "Bonus Baby" allowance

Stacie Gravito <stacie.gravito@azdhs.gov> Tue, Jan 7, 2025 at 3:28 PM
To: Lucinda Feeley <lucinda.feeley@azdhs.gov>

---------- Forwarded message ---------
From: **Amita Gairola** <agairola@tlechildcare.com>
Date: Tue, Jan 7, 2025 at 3:21 PM
Subject: RE: Removal of "Bonus Baby" allowance
To: margaret.bernal@azdhs.gov <margaret.bernal@azdhs.gov>, Stacie.Gravito@azdhs.gov <Stacie.Gravito@azdhs.gov>

Greetings,

My name is Amita Gairola and I am the owner of two locations of “The Learning Experience” in the valley.

Our centers utilize the "bonus baby" allowance. The removal of this allowance would reduce the number of infants that we can provide care for, leading to disenrollment of current families, and reduced access and availability for families seeking quality child care.

Under the current staff-to-child ratios, The Learning Experience ensures that each child receives the individual attention they need for optimal development and learning. Our safety practices allow teachers to effectively monitor and engage with each child, fostering a supportive and nurturing environment. For child care providers ensuring high level supervision under the “bonus baby” allowance, the removal of the allowance could result in increased operational costs, higher tuition fees, and make it difficult for providers to remain financially competitive. We urge the Department to consider the unintended consequences of the proposed rule change and to not amend this section of the rule.

We appreciate the Arizona Department of Health Services commitment to collaborating with stakeholders to find the best solutions for child care. We ask you to consider our feedback when finalizing the rule so that we can continue to provide high-quality care for as many children as possible.

Thank You!

Amita Gairola

Franchise Owner

THE LEARNING EXPERIENCE Academy of Early Education | happy happens here.

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Stacie Gravito (she/they)
Chief Administrative Counsel,
Office of Administrative Counsel & Rules
Director's Office
ARIZONA DEPARTMENT OF HEALTH SERVICES
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ARIZONA
DEPARTMENT OF
HEALTH SERVICES

January 24, 2025

Sent Via Email: bianca.lopez@bgcaz.org and josh.stine@bgcaz.org

Josh Stine
State Director
Arizona Alliance of Boys and Girls Clubs
602-954-8182

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 5. Department of Health Services – Child Care Facilities; Response to Stakeholder Comment on Proposed Rules

Dear Mr. Stine:

Thank you for submitting your comments regarding the proposed rules under A.A.C. Title 9, Chapter 5, Child Care Facilities. The Department appreciates your thoughtful feedback and dedication to providing safe, supportive, and enriching environments for children and youth through the Arizona Alliance of Boys & Girls Clubs.

Regarding your comment on **A.A.C. R9-5-506(A)(1)(2)** and the challenges associated with bathroom supervision for school-age children, this rule aims to ensure the safety of enrolled children while considering operational feasibility. Specifically, the requirement for staff to supervise children is aligned with the definition of "supervision" provided in A.A.C. R9-5-101(119), which states:

> "Supervision" means:
>
> a. For an enrolled child, knowledge of and accountability for the actions and whereabouts of the enrolled child, including the ability to see or hear the enrolled child at all times, to interact with the enrolled child, and to provide guidance to the enrolled child; or
>
> b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual's actions to prevent harm to enrolled children.

This definition provides flexibility in how supervision is maintained, while ensuring the safety and accountability for children's actions and whereabouts. It does not necessarily require a staff member to

escort each child to and from the bathroom, but ensures staff remain aware of the child's location and actions, as well as available to intervene if needed. The Department encourages providers to adopt supervision practices that align with this definition, while accommodating the unique needs of their programs.

In regards to **A.A.C. R9-5-703(A)(5)(f)** concerning the Department's approval of architectural plans, the Department plans to remove this subject as well as in R9-5-201(A)(5)(f) before submitting the Notice of Final Rulemaking.

As for **A.A.C. R9-5-718(B)(1)**, and the requirement to maintain daily documentation of a child's presence in each activity area, this requirement is consistent with the current standards outlined in A.A.C. R9-5-306(B) for all licensed child care facilities. It is a minimum standard for health and safety, ensuring that children's whereabouts are always accounted for. Real-time tracking is important for maintaining a safe environment, as it allows staff to respond quickly in case of an emergency or other safety concerns. While the Department recognizes that meeting this requirement may involve some operational adjustments, it is essential for ensuring the safety and well-being of children in the care of Boys & Girls Club facilities.

The supplemental standards in **A.A.C. R9-5-728** are consistent with **A.A.C. R9-5-506**, as are all the rules in Article 7. The purpose of these standards is to provide additional clarity and detail, specifically for school-age programs, while maintaining alignment with the rules in this chapter. This consistency ensures that all child care facilities, including those serving school-aged children, meet the necessary health and safety requirements.

Lastly, the Department plans to amend **A.A.C. R9-5-739(H)** to simplify the requirements for field trip permission to allow a licensee to use the written permission required in subsection (A) annually for multiple field trips to the same destination.

Thank you again for your valuable feedback. The Department appreciates your time and input throughout this rulemaking.

If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

Gmail Lucinda Sallaway <lucinda.sallaway@azdhs.gov>

Re: ADHS Proposed Child Care Rules- Arizona Alliance of Boys & Girls Clubs Comments

Bianca Lopez <bianca.lopez@bgcaz.org> Tue, Jan 7, 2025 at 3:33 PM
To: Margaret Bernal <margaret.bernal@azdhs.gov>, "stacie.gravito@azdhs.gov" <stacie.gravito@azdhs.gov>
Cc: Josh Stine <josh.stine@bgcaz.org>, Lucinda Sallaway <lucinda.feeley@azdhs.gov>, "SRieve@veridus.com" <SRieve@veridus.com>, "jharris@veridus.com" <jharris@veridus.com>

Good afternoon Ms. Bernal and Ms. Gravito,

On behalf of the Arizona Alliance for Boys & Girls Clubs, thank you for the opportunity to submit our formal comments in writing and in person earlier today.

I am following up to reiterate our concerns with the current language in **R9-5-718 (B)(1) - Documentation of Presence in Activity Areas** and provide further clarity regarding our existing roster system that is in place to ensure staff know at all times which activity area a child is in based on their age group. We believe our current roster system meets the intent of the language under R9-5-718(B)(1) but the language does not allow the flexibility that is needed for our daily operations.

To clarify, each child that enters our facilities, must be scanned in, then they are directed by staff to go to the activity area that corresponds to their age group. That child may move to multiple areas throughout the day, but they will always move with their age group. The front desk keeps track of all children that scan in and they are able to track where they are located in the facility based on their age group and the programming they are engaged in. Front desk staff keeps record of all children entering and leaving the building and they keep schedules of all programming happening in the facility.

Our roster system ensures accurate documentation while supporting the dynamic nature of our programming. We respectfully request that the final language of R9-5-718(B)(1) provide the necessary flexibility to accommodate such systems.

We are happy to share additional information, examples and any documentation that would help create a clear picture of our roster system.

Thank you again for your time and attention to this matter.

Sincerely,

Bianca Lopez, MSW | Director of External Affairs

[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]

Margaret Bernal

Bureau Chief

Bureau of Child Care Licensing

Arizona Department of Health Services

150 North 18th Avenue, Suite #400

Phoenix, Arizona 85007

602-364-2539

Website: azdhs.gov / BCCL

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BOYS & GIRLS CLUBS
ARIZONA ALLIANCE

January 6, 2025

Margaret Bernal, Bureau Chief
Division of Public Health Licensing Services
Arizona Department of Health Services
Bureau of Child Care Licensing
150 N. 18th Avenue, Suite 400
Phoenix, AZ 85007

Stacie Gravito, Office Chief
Arizona Department of Health Services
Office of Administrative Counsel and Riles
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007

RE: Arizona Alliance of Boys & Girls Clubs Comments on the Arizona Department of Health Services Proposed Child Care Rules

Dear Ms. Bernal and Ms. Gravito,

On behalf of the Arizona Alliance of Boys & Girls Clubs, I am writing to provide feedback on the proposed child care rules published in the Arizona Administrative Register on November 29, 2024. We appreciate the Department's efforts to update and refine these regulations to better serve children and families across the state.

Our organization represents 70 Boys & Girls Club sites across Arizona, providing safe, supportive, and enriching environments for children and youth. Our mission aligns closely with ensuring high-quality standards in child care settings, and we value the opportunity to contribute to the important process.

We would like to express concerns and suggest revisions to ensure the rules support operational feasibility while maintaining high standards for health and safety.
Specifically:

1. **R9-5-506 (A)(1)(2) - Supplemental Standards for School-Age Out-of-School Time Programs and R9-5-728, Supplemental Standards**: We recommend additional flexibility for school-age children bathroom usage. In large programs, a single child could occupy the bathroom for extended periods, requiring a staff member to continuously supervise children to and from the bathroom. Adjustments to this requirement would alleviate operational challenges.

BOYS & GIRLS CLUBS
ARIZONA ALLIANCE

2. **R9-5-703 (A)(5)(f) - Architectural Plans**: We propose revising the requirement for the Department to approve architectural plans, suggesting instead that the Department review them. Requiring approval is unnecessary and may delay construction or changes to existing facilities. Retaining the Departments ability to issue findings upon review ensures oversight without imposing unnecessary delays, especially since guidance is already provided in rules.
3. **R9-5-718 (B)(1) - Documentation of Presence in Activity Areas**: The requirement to maintain daily documentation of a child's presence in each activity area is operationally burdensome. Our programs track attendance via rosters maintained at the front desk, documenting when children enter and exit the facility. Children are grouped together in activity areas by age group and move frequently with their age group to other activity areas throughout the day. As long as attendance is maintained at the front desk, we know which area children are located based on program schedule and age group. Children are also checked in and out of the facility at different times of the day. Given the frequent movement of children from program activity to program activity, real-time tracking within specific areas is impractical. We recommend revising this requirement to reflect more practical, facility-wide tracking methods.
4. **R9-5-728 - Supplemental Standards**: These supplemental standards are redundant since the general rules in this chapter already apply to school-aged children. For clarity and consistency, we suggest removing these supplemental standards.
5. **R9-5-739 (A)(1)(2)- Field Trip Rules**: While obtaining parental permission for field trips is reasonable, flexibility is needed for routine use of adjacent parks. Programs may not always know exact times or dates for park use. We recommend allowing such permissions to be included as part of a child's enrollment process.

We believe that incorporating these adjustments will enhance the proposed rules, ensuring they are equitable and practical while continuing to prioritize the well-being of Arizona's children.

Thank you for the opportunity to provide input on this important initiative. The Arizona Alliance of Boys & Girls Clubs remains committed to partnering with the Arizona Department of Health Services to achieve our shared goals.

Sincerely,

Josh Stine
State Director
Arizona Alliance of Boys and Girls Clubs
602-954-8182
josh.stine@bgcaz.org

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

January 24, 2025

Sent Via Email: cthompson@madisoned.org

Christine M. Thompson
Governing Board Vice President
Madison Elementary School District
5601 N. 16th Street
Phoenix, AZ 85016

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 5. Department of Health Services – Child Care Facilities; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Thompson:

Thank you for your comments regarding the proposed rulemaking to Arizona Administrative Code Title 9, Chapter 5, related to child care facilities. We appreciate your engagement as both an elected member of the Madison Elementary School District Governing Board and a parent with experience with these programs.

Regarding your comment on A.A.C. R9-5-403, the increase in the annual training requirement is tied to the reduction in the qualification requirement for child educators working with school-aged children, which has been decreased from six (6) months to three (3) months of experience. The Department recognizes that this change may present challenges for part-time and seasonal staff; however, the Department believes this amendment may help enhance the health and safety of children and the effectiveness of child care programs.

Additionally, the Department understands your concerns about the 1:20 caregiver-to-child ratio in A.A.C. R9-5-726; however, this is consistent with the current ratio requirements in A.A.C. R9-5-404. Further adjustments to these ratios are outside the scope of this particular rulemaking. The Department has already initiated a subsequent rulemaking to address caregiver-to-child ratios and to provide more time for stakeholder engagement on this and other topics.

The Department appreciates your feedback and participation in this rulemaking process. If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

Gmail Lucinda Sallaway <lucinda.sallaway@azdhs.gov>

Re: Comment on Rulemaking re: AAC TITLE 9, CHAPTER 5 [Child Care Facilities]

1 message

Margaret Bernal <margaret.bernal@azdhs.gov> Mon, Jan 6, 2025 at 3:59 PM
To: Christine Thompson <cthompson@madisoned.org>
Cc: Lucinda Sallaway <lucinda.feeley@azdhs.gov>, Stacie.Gravito@azdhs.org

Good afternoon,

Thank you, the Department appreciates your feedback. If you have any additional comments, please let us know.

Thank you,

On Mon, Jan 6, 2025 at 2:56 PM Christine Thompson <cthompson@madisoned.org> wrote:

> To whom it may concern:
>
> I am writing today to submit a public comment regarding proposed rulemaking modifications to Arizona Administrative Code Title 9, Chapter 5 related to child care facilities. I am an elected member and Vice President of the Madison Elementary School District Governing Board (a district which provides preschool and after school care programs), as well as a parent whose children have engaged in the programs over many years.
>
> First, I would like to extend my appreciation for changes made that address some staffing challenges. As outlined in the changes to R9-5-301, allowing staff to complete a self-screening form instead of completing specific tuberculosis testing requirements is a huge help. This reduces undue burdens on staff applicants while maintaining safety. Additionally, changes to R9-5-401 that reduce the experience required for child educators working with school aged children from 6 months to 3 months are incredibly helpful.
>
> These rules still pose some challenges. Requiring 24 hours of training annually to staff (R9-5-403) regardless of their employment status (full/part time, seasonal/year-round) will be difficult to meet as we have some staff who only work 90 minutes one day a week to provide after school care services, while others work full-time. Requiring the same annual training for these disparate individuals is onerous.
>
> On a related note, I would also like to encourage the Department to seek exemptions or modified rules for state funded public school districts. As an example, the 1:20 caregiver to child ratio required (R9-5-726) is DRASTICALLY different from the ratio of teachers/admin to students on our public school campuses every day during school hours (classrooms across the state often have 1:35 or more). Parents have an expectation that their schools will maintain the same level of safety in the aftercare programs, and school board members hear about it. Requiring markedly different staffing in aftercare programs - difficult to fill part-time employment positions - leads to aftercare waitlists and an undue burden on working parents.
>
> I appreciate that these rules for licensure apply to school districts seeking to provide a licensed program as well as stand alone programs provided by other entities. However, the stated example is but one of several rules that are in dynamic tension with the state and federal laws and funding under which K12 public schools must operate. Such rules do not recognize that public district schools are governed by locally elected leaders, obligated to address the needs of their students & families, who are held accountable by their communities for such decisions.
>
> Thank you for your consideration. I'm available to answer any questions.
>
> Sincerely,
> Christine M. Thompson
> ---
> Christine M. Thompson
> Governing Board Vice President
> Madison Elementary School District
> 5601 N. 16th Street, Phoenix, AZ 85016
> cthompson@madisoned.org

--

Margaret Bernal
Bureau Chief
Bureau of Child Care Licensing
Arizona Department of Health Services

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DEPARTMENT OF
HEALTH SERVICES

January 24, 2025

Sent Via Email: diverson@tlecorp.com

Danielle Iverson
Director of Government Relations
210 Hillsboro Technology Drive
Deerfield Beach, FL 33441
561-886-6393

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 5. Department of Health Services – Child Care Facilities; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Iverson:

Thank you for your feedback regarding the proposed changes to A.A.C. R9-5-404 and the concerns you raised about the potential impacts on child care facilities. The Department values your input and recognizes the challenges this change may present to providers.

The Department has received several comments requesting the removal of the "bonus baby" provision. This issue was identified during the five-year review of the rules, where it was noted that the Department would explore changes to align with national standards. Arizona is one of the few states that still permits the bonus baby provision, and removing it is consistent with best practices adopted across the country. Since initiating this rulemaking in 2023, the Department has received numerous comments supporting this change, reflecting the broader community's interest in updating standards to enhance child safety and to align with national standards.

Furthermore, the Department understands the burden this change may place on facilities like yours that utilize the “bonus baby” allowance and acknowledges your concerns about reduced classroom capacities, potential revenue impacts, and the financial challenges associated with facility modifications. For this reason, the Department plans to reinstate the allowance of the “bonus baby,” keeping the rules as they are currently codified. However, since many stakeholders, including DES, expressed support for removing the "bonus baby," the Department intends to discuss this, along with the other ratio and group size issues in the next rulemaking. We hope that having robust conversations about these focused topics, and inviting

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input from all of our stakeholders will lead to a more comprehensive solution to address these related issues.

The Department appreciates your feedback and participation in this rulemaking process. If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

210 Hillsboro Technology Drive
Deerfield Beach, FL 33441
561.886.6393

January 7, 2025

Margaret Bernal
Bureau Chief
Division of Public Health Licensing Services
Arizona Department of Health Services
Bureau of Child Care Licensing
150 N. 18th Avenue, Suite 400
Phoenix, AZ 85007

RE: Title 9: Health Services, Chapter 5: Department of Health Services - Child Care Facilities Staff-to-Children Ratios (R9-5-404)

Bureau Chief Bernal,

On behalf of The Learning Experience Academy of Early Education® (TLE), we are pleased to provide comments to the Arizona Department of Health Services (ADHS) regarding the proposed changes to Title 9: Health Services, Chapter 5: Department of Health Services - Child Care Facilities Staff-to-Children Ratios (R9-5-404).

The Learning Experience (TLE) is one of the most trusted brands in the childcare industry with more than four hundred open schools and over 250 centers under development, serving approximately 50,000 children and their families. In Arizona, there are four corporate-owned TLE centers and seven franchisee-owned TLE centers that provide care and early education for more than 1,300 little learners aged six weeks to six years and employ over 250 Early Education and Care (ECE) professionals statewide.

We appreciate the Department's dedication to maintaining high-quality standards in licensed child care. The Learning Experience shares this commitment to ensuring the health, safety, and well-being of the children in our care as well as providing the best support for the early childhood development of each of our little learners. In collaboration, we offer the following comments to assist ADHS as it progresses in the potential rulemaking for early education and child care facilities.

The proposed rule would lower the staff-to-child ratio in the infant and toddler age-groups removing the allowance of a "bonus baby." The Department has indicated that this proposed change will be adopted[1] citing:

"In R9-5-404, the Department is removing the allowance of a "bonus baby" for infants and 1-year-olds due to stakeholder comments and national standards. About 80% of Arizona facilities are not using this allowance due to other requirements, and the change may incur minimal-to-moderate costs for some facilities but will ensure increased supervision."[2]

[1] ccf-stakeholder-comments.pdf pg. 1

[2] https://www.azdhs.gov/documents/policy-intergovernmental-affairs/administrative-counsel-rules/rules/rulemaking/child-care/npr-final-1.pdf

The Learning Experience’s corporate-owned and franchisee-owned centers have historically and currently utilize the "bonus baby" allowance. The removal of this allowance would reduce the number of infants that we can provide care for, leading to disenrollment of current families, and reduced access and availability for families seeking quality child care.

Under the current staff-to-child ratios, The Learning Experience and its franchisees ensure that each child receives the individual attention they need for optimal development and learning. Our safety practices allow teachers to effectively monitor and engage with each child, fostering a supportive and nurturing environment. For child care providers ensuring high level supervision under the “bonus baby” allowance, the removal of the allowance could result in increased operational costs, higher tuition fees, and make it more difficult for providers to remain financially competitive. We urge the Department to consider the unintended consequences of the proposed rule change and to not amend this section of the rule.

We appreciate the Arizona Department of Health Services commitment to collaborating with stakeholders to find the best solutions for child care. We ask you to consider our feedback when finalizing the rule so that we can continue to provide high-quality care for as many children as possible.

Sincerely,

Danielle Iverson
Director, Government Relations

cc:
Stacie Gravito
Office Chief
Arizona Department of Health Services
Office of Administrative Counsel & Rules
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007

Lucinda Feeley
Sr. Rules Analyst
Administrative Counsel & Rules
Arizona Department of Health Services
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

January 24, 2025

Sent Via Email: gsandweg@firstthingsfirst.org

Ginger Sandweg
Senior Director, Early Learning

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 5. Department of Health Services – Child Care Facilities; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Sandweg:

Thank you for submitting your thoughtful feedback regarding the proposed rule changes under A.A.C. Title 9, Chapter 5: Child Care Facilities. The Department values your commitment to the healthy development and learning of young children and appreciates the time you have taken to provide detailed suggestions. Below, are the Department's responses to your comments:

A.A.C. R9-5-301(I)(2)
The intent of this rule is for each staff member on-site at the time of the fire drill to participate. Additional guidance will be provided in a Department-issued guidance document once the rules are approved and in effect to ensure clarity and consistent understanding of this requirement.

A.A.C. R9-5-403(A)(14)
While the Department agrees that training on sun safety should include important topics like recognizing signs of dehydration, heat exhaustion, and heat stroke, the Department believes adding this level of specificity to the rule could inadvertently limit other essential sun safety requirements. This topic will be addressed in the Department's guidance documents following the implementation of the rules to ensure understanding.

A.A.C. R9-5-403(B)(1)(b)(xv)
Your suggestion to link training on physical restraint techniques to A.A.C. R9-5-510(D) is appreciated. While the rule does not explicitly make this connection because A.A.C. R9-5-510(D) does not define "physical restraint," the training requirement under A.A.C. R9-5-403(B)(1)(b)(xv) is applicable to A.A.C.

R9-5-510(D) and should be interpreted as such. This clarification may also be addressed in a guidance document to help providers align their training and practices with the rules.

A.A.C. R9-5-501(B)(5)(d)
The Department appreciates your recommendation to define "weather permitting." The Department recognizes the importance of clear guidelines for outdoor activities. While the current rule does not provide a specific definition, the Department agrees that your suggestion can be incorporated into a guidance document once the rules are effective. This will allow providers to make informed decisions about outdoor activities while ensuring the health and safety of children.

A.A.C. R9-5-502(B)(2) and A.A.C. R9-5-504(A)(1)
The current rules requiring thirty (30) consecutive minutes of physical activity are only the minimum standards. Facilities are welcome to implement more stringent practices, such as the 15 consecutive minutes. The Department has limitations on creating additional and more burdensome requirements in rulemaking, which is why this rule was not amended.

A.A.C. R9-5-503
The Department understands your request to clarify that a nonabsorbent paper liner is not acceptable. This may be something that can be addressed in a guidance document to ensure clarity for providers. Additionally, your suggestion to include the Department of Economic Security's form (CCA-1200A) on the Department's resources page will be reviewed for feasibility and implementation.

The Department appreciates your feedback and collaboration in this rulemaking process. If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

FIRST THINGS FIRST

4000 North Central Avenue, Suite 800, Phoenix, Arizona 85012
602.771.5100 | 877.803.7234 | firstthingsfirst.org

January 7, 2025

Margaret Bernal, Bureau Chief
Arizona Department of Health Services, Bureau of Child Care Licensing
150 N. 18th Avenue, Suite 400
Phoenix, Arizona 85007

Dear Ms. Bernal:

Thank you for the opportunity to provide feedback on the Proposed Rulemaking in the Arizona Register dated November 29, 2024. First Things First Would like the Department of Health Services, Bureau of Child Care Licensing to consider the following:

R9-5-301.I.2
While this is just a restructure of the text, it comes across unclear. Does this mean that all who are listed in the text that are on site at the time of the fire drill need to participate or all who are listed whether they are on site or not need to participate each month? Clarity in the text or in clarification would be helpful.

R9-5-403.A.14
Suggest to add, “including signs of dehydration, heat exhaustion,and heat stroke” as a part of the sun safety policies and procedures training requirements.

R9-5-403.B.1.b.xv
Suggest to add, “If using physical restraint as identified by R9-5-510D” as part of the physical restraint techniques health and safety issues topic options. The intent is to ensure that if providers are going to use physical restraint, that they are training their staff and connecting to the rule about use of physical restraint.

R9-5-501.B.5.d
Recommend defining weather and air quality to ensure clarity of when it is permitted. As an example, Quality First uses the following guidance in assessments: “Weather permitting” means almost every day, unless there is active precipitation or extremely hot or cold conditions. Weather does not permit outside activity for children when there are public announcements that advise people to remain indoors due to weather conditions, such as high levels of pollution or extreme cold or heat that might cause health problems. In addition to the weather permitting guidelines specified above, dangerous weather conditions that could potentially be harmful to children will also be acceptable reasons for not going outside, such as threat of severe weather (ex. hurricanes, tornadoes, thunder storms)." roughly 25-90

degrees, including windchill considerations, and if the environment has mitigating safety factors such as adequate shade, water, fans, etc. It is sometimes said, “There is no bad weather; only bad clothes.” Therefore, children should be dressed properly and allowed outdoors on most days. This might require that the schedule be changed to allow children outdoor play in the early morning if it will be hot later in the day. Or it might require that the program ensure that children have boots and a change of clothes for a day when the grass is wet. After bad weather, staff should check the outdoor area before children go out, dry off equipment, sweep away water, and block off puddles, as needed. Programs with protected outdoor areas, such as a deck or patio, are more likely to be able to meet the requirements for allowing outdoor activity daily, “weather permitting.”

Additional resources that define weather and air quality can be found here:

- Caring for Our Children 3.1.3.3: Protection from Air Pollution While Children Are Outside https://nrckids.org/CFOC/Database/3.1.3.3

R9-5-502.B.2 and R-9-5-504.A.1

Recommend lowering time from 30 consecutive minutes to “no more than 15 consecutive minutes twice per day.” If the rule must remain at 30 consecutive minutes, suggest adding additional wording, “as long as there is adult interaction directly with the confined child during the 30 minutes” to ensure there is adult awareness and contact with children who are awake and still in confined settings.

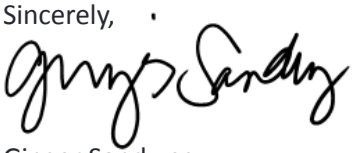
R9-5-503

Clarify that a nonabsorbent paper liner is not acceptable. This could be addressed as a clarification for the rules rather than changing the current rule.

Recommend adding this form https://des.az.gov/sites/default/files/dl/CCA-1200A.pdf?time=1688078378172 to the forms on the Resources tab on the home page ADHS - Child Care Facilities Licensing - Providers - Home (azdhs.gov)

Thank you for considering the feedback of First Things First. We are committed to the healthy development and learning of young children from birth to age 5 and believe the changes to the rule in the Notice of Proposed rulemaking as well as the suggestions above will support our efforts.

Sincerely,



Ginger Sandweg
Senior Director, Early Learning

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

December 20, 2024

Sent Via Email: kgresham@madisonaz.org

Karen Gresham
Governing Board President
Madison Elementary School District
5601 N 16th Street
Phoenix, AZ 85016
602-821-2809

Re: Title 9, Chapter 5. Department of Health Services – Child Care Facilities; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Gresham:

Thank you for submitting your comments regarding the proposed rules under Title 9, Chapter 5, Child Care Facilities. The Department appreciates your thoughtful feedback and your support for replacing the tuberculosis test with an attestation and reducing the time of service required for staff to work alone with school-age children.

The Department understands your concerns regarding the proposed increase in required training hours to 24 per year. The intent behind this proposal is to ensure that staff have adequate training to support student safety while accommodating the lowered qualifications for school-age staff. However, we recognize the challenges this requirement may pose, particularly for part-time employees and in meeting the specific needs of programs like yours.

Regarding your comments on background checks, the Department would like to note that these requirements are designed to align with the federal Child Care and Development Block Grant (CCDBG) requirements, which help ensure consistency and safety across child care programs.

Your suggestions, including maintaining the current 18-hour training requirement and streamlining qualifications to align with school district requirements, have been noted and will be carefully considered as we continue to evaluate the proposed changes.

If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Feeley, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

Karen Gresham
Governing Board President
Madison Elementary School District
5601 N 16th Street
Phoenix, AZ 85016
602-821-2809
kgresham@madisonaz.org

December 16, 2024

Margaret Bernal
Bureau Chief, Division of Public Health Licensing Services
Arizona Department of Health Services
Bureau of Child Care Licensing
150 N 18th Ave, Suite 400
Phoenix, AZ 85007

Dear Ms. Bernal,

I wish to comment on the Notice of Proposed Rulemaking filed on November 6, 2024. I am the current President of the Madison Elementary School District Governing Board, and licensing requirements affect our before and after school child care programs. Two items I support are replacing the tuberculosis test with an attestation, and reducing the time of service required in order for staff to be alone with school age children. The TB test has long been a burden on our new staff due to having to pay out of pocket prior to their employment, while this is not a requirement for any of our other departments. Our district has a constant wait list for our programs, mainly due to trouble hiring staff and the small ratios required (which are much smaller than our schools even though they are the same children). Changing the ratio to the same as K-8 would greatly reduce our staffing needs and the waitlist for those in need of childcare.

One item I am not in support of is increasing the required training hours to 24 per year. This requirement does not take into account the full time status of the employee or number of days/hours the employee works. For example, staff that work 90 minutes a week have the same number of hours as a full time preschool teacher. In addition, the topics required do not consider where and whether they will be needed. As another example, our staff have to train 2 hours per year on SIDS and infant requirements that they will never use in this position. Training is a large expense for any employer, and it is a burden to accomplish these hours for providers with many part-time employees. Please keep the requirement to the current 18 hours at a maximum.

There are many additional background checks and qualification documents required for our child care team that are above and beyond normal school district requirements. It is difficult to hire part time staff when they have to jump through so many hoops before they begin employment. Again, streamlining these requirements to agree with our schools' would go a long way toward hiring enough staff and reducing our waitlist accordingly.

Thank you for reading my concerns. I understand the goal is student safety, and I believe we can keep students safe without some of these limiting requirements. Our goal is to serve as many families as we can.

Sincerely,

Karen Gresham

Governing Board President

Madison Elementary School District

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

December 9, 2024

Ralph M. Shenefelt
Senior Vice President
Health and Safety Institute

Dear Mr. Shenefelt:

Thank you for your detailed comments and suggestions regarding the proposed rule language.

The Department recognizes the importance of ensuring that staff are well-prepared to handle emergencies involving individuals of all ages. For this reason, we believe it is essential to retain the requirement for both adult and pediatric CPR certification in the rules.

Based on previous Department research, we have found that most CPR training programs include adult CPR as a standard component and often offer pediatric CPR as an additional module. This structure ensures comprehensive training while minimizing any potential burden on childcare providers. Including both adult and pediatric CPR certification ensures staff are equipped with the necessary skills to respond effectively, particularly in situations where children may be adult-sized but still require pediatric-specific techniques.

We appreciate your engagement in this rulemaking process.

Sincerely,

Administrative Counsel & Rules
Arizona Department of Health Services

Gmail Lucinda Feeley <lucinda.feeley@azdhs.gov>

Fwd: Proposed Administrative Rule Comment, R9-5-301G

5 messages

Margaret Bernal <margaret.bernal@azdhs.gov> Tue, Dec 3, 2024 at 11:26 AM
To: Lucinda Feeley <lucinda.feeley@azdhs.gov>, Megan Whitby <megan.whitby@azdhs.gov>

FYI

---------- Forwarded message ---------
From: **Ralph Shenefelt** <rshenefelt@hsi.com>
Date: Tue, Dec 3, 2024 at 11:09 AM
Subject: Proposed Administrative Rule Comment, R9-5-301G
To: Margaret.Bernal@azdhs.gov <Margaret.Bernal@azdhs.gov>
CC: Nicole Printup <nprintup@hsi.com>

VIA EMAIL. DELIVERY & READ RECEIPT REQUESTED

December 3, 2024

Margaret Bernal

Bureau Chief

Division of Public Health Licensing Services

Arizona Department of Health Services

Bureau of Child Care Licensing

150 N. 18th Ave., Suite 400

Phoenix, AZ 85007

RE: Proposed Administrative Rule Comment, R9-5-301G

Dear Ms. Bernal,

The purpose of this letter is to request amendment of the proposed rules of the Arizona Department of Health Services ("Department").

I. **Proposed Rule Language** (R9-5-301G., *and all subsequent occurrences of similar language*)

a. “A licensee shall ensure that a staff member who has current ~~training~~ certification in adult and pediatric first aid and CPR, as required by R9-5-403(E), is present:…”

II. **Requested Amendment**

a. “A licensee shall ensure that a staff member who has current ~~training~~ certification in ~~adult and~~ pediatric first aid and CPR, as required by R9-5-403(E), is present:…”

I. **Reasons for Requesting Amendment**

a. The U.S. Department of Health & Human Services, Administration for Children & Families, Office of Child Care (“OCC”) specifically requires pediatric first aid and CPR for childcare providers that serve children receiving Child Care and Development Fund (“CCDF”) assistance.[1]
b. The OCC requirement for pediatric first aid and CPR is based on national standards for health and safety in childcare and early education that require all staff members involved in providing direct care to children complete and document training in pediatric first aid and CPR.[2]
c. The National Association for the Education of Young Children (“NAEYC”) standards for early childhood programs require that staff have training in pediatric first aid.[3]
d. First aid for children in the early care and education setting requires a more child-specific approach than standard adult-oriented first aid offers.[4] Consequently, pediatric first aid courses designed to meet national standards for health and safety in childcare and early education must be distinctly child-focused.[5],[6],[7]
e. An OCC National Database of Child Care Licensing Regulations search returns 157 state regulations and 22 statutes referencing pediatric first aid and only 4 that specifically reference "adult first aid."[8]
f. Requiring certification in adult first aid in addition to pediatric first aid will needlessly burden childcare facilities and staff with the added time and cost of an adult first aid training class that is not prescribed by either national standards or federal requirements.
g. Note that current guidelines for pediatric basic life support (CPR) apply to infants younger than approximately 1 year of age and child guidelines apply to children approximately 1 year of age until puberty. Puberty is defined as breast development in females and the presence of axillary hair in males. For those with signs of puberty and beyond, adult CPR guidelines are to be followed.[9] Therefore, training and certification in pediatric CPR for all ages of children necessarily includes adult CPR.

Additional Facts

a. The American Heart Association®, Inc. (“AHA”), American National Red Cross (“ARC”), and Health and Safety Institute (“HSI”) are the largest providers of CPR training in the United States.[10],[11]
b. The training business units of the HSI, AHA, and ARC are similar.

i. Each corporation develops and markets commercially available, proprietary training programs, products, and services to their approved Training Centers, either directly or via distributors.

ii. The business structures of the approved Training Centers include sole proprietorships, partnerships, corporations, LLCs, non-profits, as well as both large and small government agencies.

iii. Instructors are authorized to certify course participants. Certification requires instructor evaluation of hands-on skills to verify skill competency.

c. HSI's First Aid and CPR training programs are currently in use by, and accepted, approved, or recognized as meeting the requirements of thousands of employers, state regulatory agencies, occupational licensing boards, professional associations, commissions, and councils in hundreds of occupations and professions nationwide.
d. HSI publishes and administers a set of quality assurance standards designed to monitor and improve the performance of HSI, its approved Training Centers and Authorized Instructors so that the products and services provided meet or exceed the requirements of regulatory authorities and other approvers.
e. HSI is a member of the Council on Licensure, Enforcement and Regulation (CLEAR), the international resource for professional regulation stakeholders. HSI Quality Assurance representatives are Nationally Certified Regulatory Investigators.
f. HSI is a member of the American National Standards Institute (ANSI) and ASTM International (ASTM) – both globally recognized leaders in the development and delivery of international voluntary consensus standards.

Conclusion

National standards, federal requirements, state statutes, and regulations for health and safety in childcare and early education require *child-specific*, pediatric first aid and CPR training. Requiring certification in adult first aid in addition to pediatric first aid will needlessly burden childcare facilities and staff with the added time and cost of adult first aid training that is not required by national standards or federal requirements. We value, believe in, and promote successful completion of a valid pediatric first aid and CPR program as an important component in protecting public safety, health, and welfare. We look forward to helping the Department protect the health and safety of the children of Arizona.

Respectfully,

Ralph Shenefelt

SVP, Regulatory, Accreditation, & Quality Assurance

rshenefelt@hsi.com

Health & Safety Institute | 1450 Westec Drive, Eugene, OR 97402 | www.hsi.com

Making the Workplace and Community Safer™

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[1] Child Care and Development Fund Final Rule Frequently Asked Questions. Available: https://www.acf.hhs.gov/occ/faq/child-care-and-development-fund-final-rule-frequently-asked-questions#HEALTH_AND_SAFETY_REQUIREMENTS

[Retrieved 12/03/24].

[2] National Resource Center for Health and Safety in Child Care and Early Education. Caring for Our Children (CFOC). 1.4.3.1: First Aid and Cardiopulmonary Resuscitation Training for Staff. Available: https://nrckids.org/CFOC/Database/1.4.3.1 [Retrieved 12/03/24].

[3] The 10 NAEYC Program Standards. Available: https://www.naeyc.org/our-work/families/10-naeyc-program-standards#5 [Retrieved 12/03/24].

[4] id., 1.4.3.2: Topics Covered in Pediatric First Aid Training. Rationale. Available: https://nrckids.org/CFOC/Database/1.4.3.2

[Retrieved 12/03/24].

[5]American Heart Association®, Inc. Heartsaver® Pediatric First Aid CPR AED Training, Available: https://cpr.heart.org/en/cpr-courses-and-kits/heartsaver/heartsaver-pediatric-training [Retrieved 12/03/24].

[6]HSI Pediatric First Aid | CPR AED. Available: https://hsi.com/solutions/cpr-aed-first-aid-training/programs/pediatric-first-aid-cpr-aed [Retrieved 12/03/24].

[7] National Safety Council. Pediatric First Aid, CPR and AED Training. https://www.nsc.org/safety-training/first-aid/first-aid-cpr-and-aed-courses/pediatric-first-aid-cpr-aed [Retrieved 12/03/24].

[8] Available: https://licensingregulations.acf.hhs.gov/regulation-search?keys=pediatric%20first%20aid%20&items_per_page=10 [Retrieved 12/03/24].

[9] Pediatric Basic and Advanced Life Support: 2020 AHA Guidelines for CPR and ECC. Available: Circulation. 2020;142(suppl 2):S470. Available: https://www.ahajournals.org/doi/10.1161/CIR.0000000000000901 [Retrieved 12/03/24]

[10] Anderson ML, et al. Rates of cardiopulmonary resuscitation training in the United States. JAMA Intern Med. 2014 Feb 1;174(2):194-201 Available: https://pubmed.ncbi.nlm.nih.gov/24247329/ [Retrieved 12/03/24]

[11]2024 Heart Disease and Stroke Statistics: A Report of US and Global Data From the American Heart Association. Sudden Cardiac Arrest, Ventricular Arrhythmias, and Inherited Channelopathies. Awareness and Treatment. Available: https://www.ahajournals.org/doi/epub/10.1161/CIR.0000000000001209 [Retrieved 12/03/24]

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Margaret Bernal
Bureau Chief
Bureau of Child Care Licensing
Arizona Department of Health Services

150 North 18th Avenue, Suite #400
Phoenix, Arizona 85007

602-364-2539
Website: azdhs.gov / BCCL

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Proposed Administrative Rule Comment, R9-5-301G .pdf
349K

Lucinda Feeley <lucinda.feeley@azdhs.gov> Tue, Dec 3, 2024 at 11:34 AM
To: Stephanie Elzenga <stephanie.elzenga@azdhs.gov>, Stacie Gravito <stacie.gravito@azdhs.gov>

[Quoted text hidden]
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Lucinda Feeley
Senior Rules Analyst
Arizona Department of Health Services

150 N. 18th Ave, Suite 200
Phoenix, AZ 85007

480.978.9920
https://www.azdhs.gov/

Proposed Administrative Rule Comment, R9-5-301G .pdf
349K

Stacie Gravito <stacie.gravito@azdhs.gov> Tue, Dec 3, 2024 at 11:44 AM
To: Lucinda Feeley <lucinda.feeley@azdhs.gov>
Cc: Stephanie Elzenga <stephanie.elzenga@azdhs.gov>

Thanks for sending this along - has the program responded how they want to proceed?
[Quoted text hidden]

Stacie Gravito (she/they)
***Administrative Counsel and Chief,* Office of Administrative Counsel & Rules, Division of Policy & Intergovernmental Affairs**
ARIZONA DEPARTMENT OF HEALTH SERVICES
150 N. 18th Ave.
Phoenix, AZ 85007

602.509.3315
stacie.gravito@azdhs.gov
www.azdhs.gov

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[Quoted text hidden]

Lucinda Feeley <lucinda.feeley@azdhs.gov> Tue, Dec 3, 2024 at 12:41 PM
To: Stacie Gravito <stacie.gravito@azdhs.gov>
Cc: Stephanie Elzenga <stephanie.elzenga@azdhs.gov>

I spoke with Margaret briefly, and we'll collaborate on a response. I believe updating "training" to "certificate" might be okay, but I believe there was discussion on how there are staff trained but not certified. Based on my previous research, CPR courses often don't distinguish between "adult" and "pediatric." They typically cover adult CPR but don't always include pediatric techniques. Removing "adult" could raise safety concerns, as employees should be equipped to handle CPR for both adults and children—especially in cases where a child is adult-sized.
[Quoted text hidden]

Stacie Gravito <stacie.gravito@azdhs.gov> Tue, Dec 3, 2024 at 12:52 PM

To: Lucinda Feeley <lucinda.feeley@azdhs.gov>
Cc: Stephanie Elzenga <stephanie.elzenga@azdhs.gov>

Ok, thanks for the clarification. I think those justifications make sense. Once we have a response ready, we can have a look and go from there. So far, so good. Thank you!

[Quoted text hidden]

[Quoted text hidden]

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

January 24, 2025

Sent Via Email: tstewart@tlechildcare.com

Tali Stewart
Franchise Owner
Gilbert Phoenix Marana
The Learning Experience
903/669-9428

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 5. Department of Health Services – Child Care Facilities; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Stewart:

Thank you for your feedback regarding the proposed changes to A.A.C. R9-5-404 and the concerns you raised about the potential impacts on child care facilities. The Department values your input and recognizes the challenges this change may present to providers.

The Department has received several comments requesting the removal of the "bonus baby" provision. This issue was identified during the five-year review of the rules, where it was noted that the Department would explore changes to align with national standards. Arizona is one of the few states that still permits the “bonus baby” provision, and removing it is consistent with best practices adopted across the country. Since initiating this rulemaking in 2023, the Department has received numerous comments supporting this change, reflecting the broader community's interest in updating standards to enhance child safety and to align with national standards.

For facilities like yours that utilize the “bonus baby” allowance, the Department understands the burden this change may place and acknowledges your concerns about reduced classroom capacities, potential revenue impacts, and the financial challenges associated with facility modifications. For this reason, the Department plans to reinstate the allowance of the “bonus baby,” keeping the rules as they are currently codified. However, since many stakeholders, including DES, expressed support for removing the "bonus baby," the Department intends to discuss this, along with the other ratio and group size issues in the next rulemaking. We hope that having robust conversations about these focused topics, and inviting input from all of our stakeholders will lead to a more comprehensive solution to address these related issues.

The Department appreciates your feedback and participation in this rulemaking process. If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

Gmail

Lucinda Sallaway <lucinda.sallaway@azdhs.gov>

Fwd: Comments on potential licensing changes

1 message

Stacie Gravito <stacie.gravito@azdhs.gov> Tue, Jan 7, 2025 at 8:47 AM
To: Margaret Bernal <margaret.bernal@azdhs.gov>, Lucinda Feeley <lucinda.feeley@azdhs.gov>

---------- Forwarded message ---------
From: **Tali Stewart** <tstewart@tlechildcare.com>
Date: Mon, Jan 6, 2025 at 10:14 PM
Subject: Comments on potential licensing changes
To: Stacie.Gravito@azdhs.gov <Stacie.Gravito@azdhs.gov>

R9-5-404

After reviewing the proposed changes to licensing regulation R9-5-404 we have created a list of potential cons the proposed licensing regulation may cause.

- Reduced accessibility to quality childcare: Limiting enrollment may prevent members of our community from finding quality childcare in the area for specific age groups.

- Increase Cost: With fewer children allowed in each classroom, schools are at risk of losing revenue which will cause owners to have to increase tuition.

- Impact employment: The capping of classrooms will reduce employment opportunities for educators. Causing job loss and a reduction in job security for educators.

- Many programs were affected by the preschool programs that began enrollment in the public school setting, this impacted our schools significantly decreasing classroom ratios will cause a loss in revenue with potential closures of centers. Specifically, centers that are franchised.

- Is there a possibility for schools to be grandfathered in so this rule will not impact the facilities that have been operating at licensing capacity for their classrooms?

- If the rule is processed and put into regulation what does that look like for converting classroom? (I.E. adding pony wall, restrooms, overall conversion)

- If classrooms must be converted to be in compliance with this regulation the cost to covert classrooms can be detrimental to franchisees which potentially put us a risk of closures.

Tali Stewart
Franchise Owner
Gilbert Az
Phoenix Az
Marana Az

The Learning Experience
903/669-9428

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Stacie Gravito (she/they)
Chief Administrative Counsel,
Office of Administrative Counsel & Rules
Director's Office
ARIZONA DEPARTMENT OF HEALTH SERVICES
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Phoenix, AZ 85007

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ARIZONA
DEPARTMENT OF
HEALTH SERVICES

March 27, 2025

Sent Via Email: bianca.lopez@bgcaz.org and josh.stine@bgcaz.org

Josh Stine
State Director
Arizona Alliance of Boys and Girls Clubs
602-954-8182

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 5. Department of Health Services – Child Care Facilities; Response to Stakeholder Comment on Proposed Rules

Dear Mr. Stine:

Thank you for submitting your comments regarding the proposed rules under A.A.C. Title 9, Chapter 5, Child Care Facilities. The Department appreciates your thoughtful feedback and dedication to providing safe, supportive, and enriching environments for children and youth through the Arizona Alliance of Boys & Girls Clubs.

The requirements in A.A.C. R9-5-718(B)(1) to maintain daily documentation of a child's presence in each activity area are consistent with the current standards outlined in A.A.C. R9-5-306(B) for all licensed child care facilities. The Department believes this is a minimum standard for health and safety to ensure that children's whereabouts are always accounted for. Real-time tracking is important for maintaining a safe environment, as it allows staff to respond quickly in case of an emergency or other safety concerns. While the Department recognizes that meeting this requirement may involve minimal operational adjustments for a licensee, but believes this is essential for ensuring the safety and well-being of children in care.

Thank you again for your valuable feedback. The Department appreciates your time and input throughout this rulemaking.

If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

BOYS & GIRLS CLUBS
ARIZONA ALLIANCE

March 25, 2025

Margaret Bernal, Bureau Chief
Division of Public Health Licensing Services
Arizona Department of Health Services
Bureau of Child Care Licensing
150 N. 18th Avenue, Suite 400
Phoenix, AZ 85007

Stacie Gravito, Office Chief
Arizona Department of Health Services
Office of Administrative Counsel and Riles
150 N. 18th Avenue, Suite 200
Phoenix, AZ 85007

RE: Arizona Alliance of Boys & Girls Clubs Comments on the Arizona Department of Health Services Proposed Child Care Rules

Dear Ms. Bernal and Ms. Gravito,

On behalf of the Arizona Alliance of Boys & Girls Clubs, I am writing to provide feedback on the proposed child care rules published in the Arizona Administrative Register on February 21, 2025. We appreciate the Department's efforts to update and refine these regulations to better serve children and families across the state.

Our organization represents 77 Boys & Girls Club sites across Arizona, providing safe, supportive, and enriching environments for children and youth. Our mission aligns closely with ensuring high-quality standards in child care settings, and we value the opportunity to contribute to the important process.

We would like to express concerns and suggest revisions to ensure the rules support operational feasibility while maintaining high standards for health and safety. Specifically:

R9-5-718 (B)(1) - Admission and Release of Children: Attendance Records: The requirement to maintain daily documentation of a child's presence in each activity area is operationally burdensome. Our programs track attendance via rosters maintained at the front desk, documenting when children enter and exit the facility. Children are grouped together in activity areas by age group and move frequently with their age group to other activity areas throughout the day. As long as attendance is maintained at the front desk, we know which area children are located based on program schedule and age group. Additionally, staff conduct head counts and implement a hall pass system to ensure staff account for children outside of the activity room while in the bathroom. Children are also checked in and out of the facility at different times of the day. Given the frequent movement of children from program activity to program activity, real-time tracking within specific areas is impractical. We recommend revising this requirement to reflect more practical, facility-wide tracking methods.

BOYS & GIRLS CLUBS
ARIZONA ALLIANCE

We believe that incorporating this adjustment will enhance the proposed rules, ensuring they are equitable and practical while continuing to prioritize the well-being of Arizona's children.

Thank you for the opportunity to provide input on this important initiative. The Arizona Alliance of Boys & Girls Clubs remains committed to partnering with the Arizona Department of Health Services to achieve our shared goals.

Sincerely,

Josh Stine
State Director
Arizona Alliance of Boys and Girls Clubs
602-954-8182
josh.stine@bgcaz.org

FIRST THINGS FIRST

4000 North Central Avenue, Suite 800, Phoenix, Arizona 85012
602.771.5100 | 877.803.7234 | firstthingsfirst.org

March 13, 2025

Margaret Bernal
Department of Health Services, Bureau of Child Care Licensure
150 N. 18th Avenue, Suite 400
Phoenix, Arizona 85007

Dear Ms. Bernal:

Thank you for the opportunity to provide feedback on the Proposed Rulemaking in the Arizona Register dated February 21, 2025. First Things First Would like the Department of Health Services, Bureau of Child Care Licensing to consider the following:

R9-5-404
First Things First recommends that the ratios for infants are maintained at a maximum of 1:5 and 2:10 with the same logic for one-year-olds at 1:6 or 2:12. Although not recommended in any of the previous rules changes nor First Things First feedback, we also recommend reducing the ratios and adding group sizes that get as close as possible to the ratios and group sizes recommended by the America Academy of Pediatrics.

Research shows lower caregiver-to-child ratios lead to better interactions and improved developmental outcomes for children[1]. However, the current ratios make it difficult for caregivers to meet the care standards required by licensing regulations and meet the developmental and safety needs of the children. For instance, an infant teacher responsible for five infants (1:5 ratio) must supervise tummy time for one child, bottle-feed another, change a diaper, and still monitor two more infants—all at the same time. This workload is overwhelming and impractical. Even with two caregivers in the room, this ratio of infants and one-year-olds per caregiver makes it harder to provide quality care, including the individualized time and supervision that infants and toddlers need.

Required ratios and group sizes help staff provide better supervision and, in general, children who are younger should have more adults present and smaller group sizes. Specifically:

- Children feel safe and secure with one-on-one attention which also reduces feelings of being overwhelmed—for both children and adults. This type of responsive caregiving is very important to children's social-emotional development, physical well-being, and overall learning.
- Smaller group sizes allow adults to interact more easily with each child and quickly respond to each child's unique needs quickly.[2]

Additionally, The Center for Law and Social Policy (CLASP)[3] sets the stage for why improving ratios and group sizes are important for the well-being of infants and toddlers. This age group is completely reliant

[1] https://childcare.gov/consumer-education/ratios-and-group-sizes

[2] IBID

[3] https://www.clasp.org/improve-center-ratios-and-group-sizes/#:~:text=The%20landmark%20National%20Institute%20of,in%20care%20with%20worse%20ratios.

on their caregivers, optimally who they have a trusting and secure relationship with. Their language and social development is directly impacted by the interactions they have with trusted caregivers. Small ratios and group sizes allow caregivers to have more positive interactions with young children which, in turn, supports better language and social-emotional skills.

Higher adult/child ratio has been found to be associated with adults exhibiting more positive and less negative affect/emotion.[4] Previous studies further suggest that when fewer adults are in charge of a larger group of children, the caregivers become more focused on managing and controlling the children's behavior. This means that the adults will give more commands and corrections, exert more negative control and spend less time engaged in reciprocal conversations or playful interactions with the children.

The physical and emotional safety of children depends on caregivers who are available and not overwhelmed by the number of children in their care. This is especially crucial in environments that care for infants and one year olds, where individualized attention is necessary for tasks such as bottle feeding, diaper changing, tummy time, new walker safety, etc. The American Academy of Pediatrics recommends not more than 3 infants for 1 adult and no more than 6 infants in a group or class. Allowing for an extra child in a ratio that is already above the recommended ratio may contribute to environments with higher numbers of physical and emotional safety hazards.

In Arizona, we continue to see reports of incidents in which young children including infants and toddlers are not appropriately supervised in group care settings which currently allow an additional child when two adults are in the room. For example, a one-year child who could not walk independently was left behind on a playground, without any adult supervision. In another case, a one-year old child sustained an injury after falling from a bookcase, resulting in a trip to the emergency room. There have been multiple instances of infants not being closely supervised during tummy time, or left on soft Boppy pillows, placing them at risk for suffocation. Though shocking, these examples are not rare, and they are a direct result of staff being expected to supervise too many children at one time.

Children’s safety is our most fundamental responsibility. We must do better for Arizona’s youngest and most vulnerable. One additional child may disrupt the dynamics between the teachers and children. The ability to maintain one-on-one interactions is more difficult to maintain with additional children, especially when adding in the regular care routines that are necessary in infant and toddler settings.

Sincerely,

Ginger Sandweg
Senior Director, Early Learning

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[4] Dalgaard, N. T., Bondebjerg, A., Klokker, R., Viinholt, B. C. A., & Dietrichson, J. (2020). PROTOCOL: Adult/child ratio and group size in early childhood education or care to promote the development of children aged 0-5 years: A systematic review. Campbell systematic reviews, 16(1), e1079. https://doi.org/10.1002/cl2.1079

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

March 18, 2025

Sent Via Email: gsandweg@firstthingsfirst.org

Ginger Sandweg
Senior Director, Early Learning

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 5. Department of Health Services – Child Care Facilities; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Sandweg:

Thank you for your comment and for highlighting the importance of appropriate caregiver-to-child ratios for the safety and well-being of children. The Department appreciates your concerns regarding the current ratios and group sizes, and we agree that infants and toddlers require individualized attention for optimal development and safety.

In this rulemaking, the Department is not amending the current caregiver-to-child ratios. However, due to many comments and concerns expressed regarding the need to amend the current ratios, the Department recognizes the importance of ongoing discussion and the need to carefully consider amendments to the current ratios. To that end, the Department has initiated a separate rulemaking specifically focused on the caregiver-to-child ratios. This will allow for a more robust and thorough discussion, involving input from all stakeholders, to ensure that any changes made to the ratios will be effective and work for all providers, balancing the needs of children, caregivers, and providers. Once the current rulemaking starts to come to an end, the Department plans to have rulemaking drafts and stakeholder meetings to discuss this topic.

The Department appreciates your feedback and collaboration in this rulemaking process, and we look forward to engaging with you and other stakeholders during the upcoming rulemaking process. If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

ARIZONA
Early Childhood
Education Association

May 27, 2025

Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue
Phoenix, AZ 85007

Dear Members of the Governor's Regulatory Review Council,

I am writing to express my strong support for the adoption of the revised licensing rules for child care facilities in Arizona.

These updates were long overdue, as the current rules have not undergone a comprehensive review since 2010. The revised regulations started the process of aligning Arizona's standards with the federal requirements of the Child Care and Development Block Grant (CCDBG), ensuring that our policies reflect national best practices and uphold the safety and well-being of children across the state.

In addition to modernizing language and removing outdated provisions, the revised rules incorporate important advances in what we now understand about early childhood development, particularly brain development during the first five years of life. They also acknowledge how technology and operational practices in child care have evolved, bringing Arizona's child care licensing framework into the 21st century without being overly burdensome on child care providers.

These thoughtful updates will support providers in delivering high-quality care, offer clearer guidance for compliance, and, most importantly, ensure a safe, nurturing environment for Arizona's youngest children.

Thank you for your consideration and for your continued commitment to improving child care quality in Arizona.

Sincerely,

Barbie Prinster
Executive Director
Arizona Early Childhood Education Association

BOYS & GIRLS CLUBS
ARIZONA ALLIANCE

May 27, 2025

Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 302
Phoenix, AZ 85007

RE: Department of Health Services- Title 9, Chapter 5, Articles 1-7

Dear Members of the Governor's Regulatory Review Council,

On behalf of the Arizona Alliance of Boys & Girls Clubs (Alliance), I am writing to express our strong support for the Arizona Department of Health Service' (ADHS) efforts to amend and establish rules specifically for the care of school-aged children in licensed child care facilities that exclusively serve this age group.

Our organization represents 77 Boys & Girls Club sites across Arizona, providing safe, supportive, and enriching environments for over 44,000 children and youth. Our mission aligns closely with ensuring high-quality standards in child care settings.

For over two years, the Alliance has been engaged in the rule-making process with ADHS to create a child care license tailored for Out-of-School-Time (OST) providers. These rules are essential to ensure that licensing requirements reflect the unique structure and best practices of programs that serve school-aged children, rather than the traditional early childhood model. This thoughtful approach supports the operational realities of OST providers while maintaining the safety and well-being of the children in our care.

Out-of-school-time programs are a vital resource for Arizona's children and working families. These programs provide a safe space for youth to learn, grow, and engage in meaningful activities beyond the traditional school day. A 2020 survey found there are 493,000 children in Arizona who would be enrolled in an out-of-school-time program if one were available to them. At a time when families are struggling to find affordable, high-quality care, these proposed rules represent a crucial step toward expanding access to OST programs while maintaining the necessary safeguards for children's well-being.

We respectfully urge the Council to approve the proposed amendments and additions to the Child Care Rules. Doing so will support working families and ensure that out-of-school-time programs can continue to effectively serve Arizona's youth. Thank you for your time and consideration.

Sincerely,

Josh Stine
State Director
Arizona Alliance of Boys & Girls Clubs
602-954-8182
Josh.stine@bgcaz.org

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES – CHILD CARE FACILITIES

ARTICLE 1. GENERAL

ARTICLE 2. FACILITY LICENSURE

ARTICLE 3. FACILITY ADMINISTRATION

ARTICLE 4. FACILITY STAFF

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

ARTICLE 6. PHYSICAL PLANT OF A FACILITY

R9-5-605. Fire and Safety

ARTICLE 1. GENERAL

R9-5-101. Definitions

In addition to the definitions in A.R.S. § 36-881, the following definitions apply in this Chapter unless otherwise specified:

1. "Abuse" has the same meaning as in A.R.S. § 8-201.
2. "Accident" means an unexpected occurrence that:
   a. Causes injury to an enrolled child,
   b. Requires attention from a staff member, and
   c. May or may not be an emergency.
3. "Accommodation school" has the same meaning as in A.R.S. § 15-101.
4. "Accredited" means approved by the:
   a. New England Commission of Institution of Higher Education,
   b. Middle States Commission of Higher Education,
   c. North Central the Higher Learning Commission,
   d. Northwest Commission on Colleges and Universities,
   e. Commission on Colleges, or
   f. Western Association of Schools and Colleges.
5. "Activity" means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. "Activity area" means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. "Adaptive device" means equipment used to augment an individual's use of the individual's arms, legs, sight, hearing, or other physical part or function.
8. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
9. "Adult" means an individual who is at least 18 years of age.
10. "Age-appropriate" means consistent with a child's age and age-related stage of physical growth and mental development.
11. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. "Applicant" means a person or governmental agency requesting one of the following:
    a. A license, or
    b. Approval of a change affecting a license under R9-5-208.
13. "Application" means the documents that an applicant is required to submit to the Department for licensure or approval of a request for a change affecting a license.

14. “Assistant teacher-caregiver” means a staff member who aids a teacher-caregiver in planning, developing, or conducting child care activities.
15. “Association” means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.
16. “Background check” means results identified in searches according to A.R.S.§ 46-811(A) and consistent with the Child Care and Development Block Grant Act of 2014 (Public Law 113-186):
    a. The state sex offender registry within this state and each state where a staff member resided during the preceding five years;
    b. The state-based child abuse and neglect registries and databases within this state and each state where a staff member resided during the preceding five years;
    c. The National Crime Information Center; and
    d. The National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 A.S.C. 16901 et seq).
17. “Beverage” means a liquid for drinking, including water.
18. “Business organization” has the same meaning as “entity” in A.R.S. § 10-140.
19. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
20. “Calendar week” means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
21. “C.C.P.” means Certified Childcare Professional, a credential awarded by the National Early Childhood Program Accreditation.
22. “C.D.A.” means Child Development Associate, a credential awarded by the Council for Professional Recognition.
23. “Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.
24. “Charter school” has the same meaning as in A.R.S. § 15-101.
25. “Child care experience” means an individual’s documented work with children in:
    a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
    b. A public school, a charter school, a private school, or an accommodation school;
    c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or

d. One of the following professional fields:
    i. Nursing,
    ii. Social work,
    iii. Psychology,
    iv. Child development, or
    v. A closely-related field.

26. "Child care services" means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.
27. "Child with special needs" means:
    a. A child with a health care provider's diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
    b. A child with a "developmental disability" as defined in A.R.S. § 36-551; or
    c. A "child with a disability" as defined in A.R.S. § 15-761.
28. "Clean" means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.
29. "Closely-related field" means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.
30. "Communicable disease" has the same meaning as in A.A.C. R9-6-101.
31. "Compensation" means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
32. "Corporal punishment" means any physical action used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
33. "CPR" means cardiopulmonary resuscitation.
34. "Credit hour" means an academic unit earned at an accredited college or university:
    a. By attending a one-hour class session each calendar week during a semester or equivalent shorter course term, or
    b. Completing practical work for a course as determined by the accredited college or university.
35. "Designated agent" means an individual who meets the requirements in A.R.S. § 36-889(D).
36. "Developmentally-appropriate" means consistent with a child's physical, emotional, social, cultural, and cognitive development, based on the child's age and family background and the child's personality, learning style, and pattern and timing of growth.
37. "Discipline" means the on-going process of helping a child develop self-control and assume responsibility for the child's own actions.

38. “Documentation” means information in written, photographic, electronic, or other permanent form.
39. “Electronic signature” has the same meaning as in A.R.S. § 41-351(4).
40. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
41. “Endanger” means to expose an individual to a situation where physical injury or mental injury to the individual may occur.
42. “Enrolled” means placed by a parent and accepted by a licensee for child care services.
43. “Evening and nighttime care” means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.
44. “Facility” has the same meaning as “child care facility” in A.R.S. § 36-881.
45. “Facility director” means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.
46. “Facility premises” means property that is:
    a. Designated on an application for a license by the applicant; and
    b. Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.
47. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
48. “Field trip” means an activity planned by a staff member for an enrolled child:
    a. At a location or area that is not licensed for child care services by the Department, or
    b. At a child care facility in which the child is not enrolled.
49. “Final construction drawings” means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by local government for the construction, alteration, or addition of a facility.
50. “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
51. “Food preparation” means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
52. “Full-day care” means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.
53. “Governmental agency” has the same meaning as in A.R.S. § 44-7002.
54. “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-

esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.

55. "Hazard" means a source of endangerment.
56. "Health care provider" means a physician, physician assistant, or registered nurse practitioner.
57. "High school equivalency diploma" means:
    a. A document issued by the State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
    b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
    c. A document issued by another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental agencies.
58. "Hours of operation" means the specific time during a day for which a licensee is licensed to provide child care services.
59. "Illness" means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.
60. "Immediate" or "immediately" means without restriction, delay, or hesitation.
61. "Inaccessible" means:
    a. Out of an enrolled child's reach, or
    b. Locked.
62. "Infant" means:
    a. A child 12 months of age or younger, or
    b. A child 18 months of age or younger who is not yet walking.
63. "Infant care" means child care services provided to an infant.
64. "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
65. "Inspection" means:
    a. Examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
    b. Review of facility documents, records, or reports by the Department; or
    c. Examination of a facility by a local governmental agency.
66. "Lesson plan" means a written description of the activities scheduled in each activity area for a day.
67. "License" means the written authorization issued by the Department to operate a facility in Arizona.
68. "Licensed applicator" who complies with A.A.C. R3-8-201(C).

69. “Licensed capacity” means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.
70. “Licensee” means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.
71. “Local” means under the jurisdiction of a city or county in Arizona.
72. “Mat” means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child’s body.
73. “Medication” means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or available without a prescription for the treatment or prevention of illness or infestation.
74. “Menu” means:
    a. A written description of the food that a facility provides and serves as a meal or snack, or
    b. The combination of food that a facility provides and serves as a meal or snack.
75. “Motor vehicle” has the same meaning as in A.R.S. § 28-101.
76. “N.A.C.” means the National Administrator Credential, a credential issued by the National Institute of Child Care Management.
77. “Name” means, for an individual, the individual’s first name and the individual’s last name.
78. “Naptime” means any time during hours of operation, other than evening and nighttime hours, that is designated by a licensee for the rest or sleep of enrolled children.
79. “Neglect” has the same meaning as in A.R.S. § 8-201.
80. “One-year-old” means a child who is not an infant and at least 12 months of age but not yet two years of age.
81. “Outbreak” has the same meaning as in A.A.C. R9-6-101.
82. “Overall time-frame” has the same meaning as in A.R.S. § 41-1072.
83. “Parent” means:
    a. A natural or adoptive mother or father,
    b. A legal guardian appointed by a court of competent jurisdiction, or
    c. A “custodian” as defined in A.R.S. § 8-201.
84. “Part-day care” means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.
85. “Perishable food” means food that becomes unfit for human consumption if not stored to prevent spoilage.
86. “Pesticide” has the same meaning as in A.R.S. § 32-3601.
87. “Pesticide label” means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.
88. “Physical injury” means temporary or permanent damage or impairment to a child’s body.

89. "Physical plant" means a building that houses a facility, or the licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
90. "Physician" means an individual licensed as a doctor of:
    a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
    b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
    c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
    d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
    e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.
91. "Physician assistant" means:
    a. An individual who is licensed under A.R.S. Title 32, Chapter 25; or
    b. An individual who is licensed as a physician assistant under the law of another state.
92. "Private pool" has the same meaning as "private residential swimming pool" in A.A.C. R18-5-201.
93. "Private school" has the same meaning as in A.R.S. § 15-101.
94. "Program" means a variety of activities organized and conducted by a staff member.
95. "Public pool" has the same meaning as "public swimming pool" in A.A.C. R18-5-201.
96. "Public school" has the same meaning as "school" in A.R.S. § 15-101.
97. "Registered nurse practitioner" means:
    a. An individual who is licensed and certified as a "registered nurse practitioner" under A.R.S. § 32-1601, or
    b. An individual who is licensed or certified as a registered nurse practitioner under the law of another state.
98. "Regular basis" means at recurring, fixed, or uniform intervals.
99. "Responsible party" means an individual or a group of individuals who:
    a. Is assigned by a public school, charter school, or governmental agency; and
    b. Has general oversight of the child care facility.
100. "Sanitize" means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
101. "School-age child" means a child who:
    a. Meets one of the following:
        i. Is five years old on or before January 1 of the current school year, or
        ii. Is five years old on or before January 1 of the most recent school year; and
    b. Meets one of the following:

i. Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;

ii. Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;

iii. Is home-schooled at a kindergarten or higher level during the current school year; or

iv. Was home-schooled at a kindergarten or higher level during the most recent school year.

102. "School-age child care" means child care services provided to a school-age child.

103. "School campus" means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.

104. "School governing board" has the same meaning as "governing board" in A.R.S. § 15-101.

105. "Screen time" means the use of electronic media to watch television or to watch a video, a DVD, or a movie at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.

106. "Semi-public pool" has the same meaning as "semipublic swimming pool" in A.A.C. R18-5-201.

107. "Service classification" means one of the following:

a. Full-day care;

b. Part-day care;

c. Evening and nighttime care;

d. Infant care;

e. One-year-old child care;

f. Two-year-old child care;

g. Three-year-old, four-year-old, and five-year-old child care;

h. School-age child care; or

i. Weekend care.

108. "Signatory" means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.

109. "Signed" means affixed with an individual's signature or with a symbol representing an individual's signature if the individual is unable to write the individual's name.

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

111. "Space utilization" means the designated use of an area within a facility for specific child care services or activities.

112. "Staff" or "staff member" means the same as "child care personnel" as defined in A.R.S. § 36-883.02.

113. "Student-aide" means an individual less than 16 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.

114. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.

115. "Supervision" means:

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

b. For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual's actions to prevent harm to enrolled children.

116. "Swimming pool" has the same meaning as in A.A.C. R18-5-201.

117. "Teacher-caregiver" means a staff member responsible for developing, planning, and conducting child care activities.

118. "Teacher-caregiver-aide" means a staff member who provides child care services under the supervision of a teacher-caregiver.

119. "Training" means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.

120. "Tummy time" means a limited period-of-time no more than 20 minutes used to allow a non-crawling infant:

i. To strengthen the infant's head, neck, and upper body muscles; and

ii. To increase the infant's sensory perception, visual and hearing acuity, and social and emotional interaction.

121. "Volunteer" means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.

122. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday, federal holiday, or a statewide furlough day.

R9-5-102. Individuals to Act for Applicant or Licensee Regarding Document, Fingerprinting, and Department-provided Training Requirements

When an applicant or licensee is required by this Chapter to provide information on or sign documents, possess a fingerprint clearance card, or complete Department-provided training, the following shall satisfy the requirement on behalf of the applicant or licensee:

1. If the applicant or licensee is an individual, the individual;
2. If the applicant or licensee is a business organization, a designated agent who meets the requirements in A.R.S. § 36-889(D);
3. If the applicant or licensee is a public school, an individual designated in writing as signatory for the public school by the school district governing board or school district superintendent;
4. If the applicant or licensee is a charter school, the person approved to operate the charter school by the school district governing board, the Arizona State Board of Education, or the Arizona State Board for Charter Schools; and
5. If the applicant or licensee is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing as signatory by that individual.

ARTICLE 2. FACILITY LICENSURE

R9-5-201. Application for a License

A. An applicant for a license shall:

1. Be at least 21 years of age;
2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
5. Submit to the Department an application packet containing:
    a. An application on a form provided by the Department that contains:
        i. The applicant's name;
        ii. The applicant's date of birth;
        iii. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
        iv. The requested service classifications;
        v. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
        vi. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
        vii. A statement that the information provided in the application packet is accurate and complete; and
        viii. The applicant's signature and date the applicant signed the application;
    b. A copy of the applicant's:
        i. U.S. passport,
        ii. Birth certificate,

iii. Naturalization documents, or

iv. Documentation of legal resident alien status;

c. A copy of the applicant's valid fingerprint clearance card, both front and back, issued according to A.R.S. Title 41, Chapter 12, Article 3.1;

d. A copy of the applicant's valid background check document according to A.R.S. § 46-811(A);

e. A copy of the form required in A.R.S. § 36-883.02(C);

f. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department's role in licensing and regulating child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;

g. Except as provided in subsection (A)(5)(j), a site plan of the facility drawn to scale showing:

i. The drawing scale;

ii. The boundary dimensions of the property upon which the facility's physical plant is located;

iii. If more than one building is used for the facility, the location and perimeter dimensions of each building;

iv. The location of each driveway on the property;

v. The location and boundary dimensions of each parking lot on the property;

vi. The location and perimeter dimensions of each outdoor activity area;

vii. The location, type, and height of each fence and gate; and

viii. If applicable, the location of any swimming pool on the property;

h. Except as provided in subsection (A)(5)(j), a floor plan of each building to be used for child care services drawn to scale showing:

i. The drawing scale;

ii. The length and width dimensions for each indoor activity area;

iii. The requested licensed capacity and applicable service classification for each indoor activity area;

iv. The location of each diaper changing area;

v. The location of each hand washing, utility, and three-compartment sink, toilet, urinal, and drinking fountain; and

vi. The location and type of fire alarm system;

i. Except as provided in subsection (A)(5)(j):

i. A copy of a certificate of occupancy issued for the facility by the local jurisdiction;

ii. Documentation from the local jurisdiction that the facility was approved for occupancy; or

iii. If the documents in subsections (A)(5)(i)(i) and (ii) are not available, the seal of an architect registered as prescribed in A.R.S. § 32-121 on the site plan required in subsection (A)(5)(g) and the

floor plan required in subsection (A)(5)(h) verifying compliance with current local building and fire codes, local zoning requirements, and this Chapter;

j. For an applicant providing child care services to three-year-old, four-year-old, five-year-old, or school-age children in a facility located in a public school, a set of final construction drawings or a school map showing:
   i. The location of each school building;
   ii. The location and dimensions of each outdoor activity area to be used by enrolled children;
   iii. The length and width dimensions for each indoor activity area;
   iv. The requested licensed capacity and applicable service classification for each indoor activity area; and
   v. The location of each hand-washing sink, toilet, urinal, and drinking fountain to be used by enrolled children;

k. If the facility is located within one-fourth of a mile of agricultural land:
   i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the facility, and
   ii. A copy of an agreement complying with A.R.S. § 36-882 for each parcel of agricultural land;

l. The applicable fee in R9-5-206;

m. If the applicant is a business organization, a form provided by the Department that contains:
   i. The name, street address, city, state, and zip code of the business organization;
   ii. The type of business organization;
   iii. The name, date of birth, title, street address, city, state, and zip code of each controlling person;
   iv. A copy of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable;
   v. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application; and
   vi. A statement signed by the applicant stating:
      (1) That each controlling person has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
      (2) That each controlling person has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children;

n. If the applicant is a public school, a form provided by the Department that contains:
   i. The name of the school district;

ii. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

iii. A statement signed by the applicant stating:

(1) That each individual in subsection (A)(5)(n)(ii) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) That each individual in subsection (A)(5)(n)(ii) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iv. A letter from the school district governing board or school district superintendent designating a signatory, if applicable;

o. If the applicant is a charter school, a form provided by the Department that contains:

i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

ii. A statement signed by the applicant stating:

(1) That each individual in subsection (A)(5)(o)(i) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) That each individual in subsection (A)(5)(o)(i) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iii. A letter from the school district governing board in which the charter school is located, the Arizona State Board of Education, or the Arizona State Board for Charter Schools, approving the applicant to operate the charter school; and

p. If the applicant is a governmental agency, a form provided by the Department that contains:

i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;

ii. A statement signed by the applicant stating:

(1) That each individual in subsection (A)(5)(p)(i) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and

(2) That each individual in subsection (A)(5)(p)(i) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and

iii. A letter from the individual in the senior leadership position with the agency designating a signatory.

B. The Department requires a separate license and a separate application for:

1. Each facility owned by the same person at a different location, and
2. Each facility owned by a different person at the same location.

C. The Department does not require a separate application and license for a structure that is:

1. Located so that the structure and the facility:
   a. Share the same street address, or
   b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another,
2. Under the same ownership as the facility, and
3. Intended to be used as a part of the facility.

R9-5-202. Time-frames

A. The overall time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date that the Department receives an application packet.

1. An application packet for a license is not complete until the date, provided to the Department with the application packet or by written notice, that the child care facility is ready for an onsite licensing inspection.
2. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
   a. A notice of deficiencies shall list each deficiency and the items needed to complete the application packet.
   b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is issued until the date that the Department receives all of the missing items from the applicant.
   c. If an applicant for a license or an approval of a change affecting a license fails to submit to the Department all of the items listed in the notice of deficiencies within 180 calendar days after the date that the Department sent the notice of deficiencies, the Department shall consider the application or request for approval withdrawn.
3. If the Department issues a license or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame for each type of approval granted by the Department under this Article is listed in Table 2.1 and begins on the date of the notice of administrative completeness.

1. As part of the substantive review for a license application, the Department shall conduct an inspection that may require more than one visit to the facility.
2. As part of the substantive review for a request for approval of a change affecting a license that requires a change in the use of physical space at the facility, the Department shall conduct an evaluation of the request to determine compliance with applicable rules and statutes that may include an onsite inspection.
3. The Department shall send a license, a written notice of approval, or denial of a license or other request for approval to an applicant within the substantive review time-frame.
4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
    a. If the Department determines that an applicant or a facility is not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
    b. An applicant shall submit to the Department all of the information requested in the comprehensive written request for additional information and documentation of the corrections required in the statement of deficiencies, if applicable within 120 calendar days after the date of the comprehensive written request for additional information.
    c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department issues a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including documentation of corrections required in a statement of deficiencies, if applicable.
    d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including documentation of corrections required in a statement of deficiencies, if applicable, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.
5. The Department shall issue a license or other approval if the Department determines that the applicant and facility are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, and the applicant submits documentation of corrections that is acceptable to the Department for any deficiencies.
6. If the Department determines that a license or other approval is to be denied, the Department shall send to the applicant a written notice of denial complying with A.R.S. § 36-888 and stating the reasons for denial and all other information required by A.R.S. §§ 36-888 and 41-1076.

Table 2.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Substantive Review Time-Frame
License under R9-5-201	A.R.S. § 36-882	120	30	90
Approval of Change Affecting License under R9-5-208	A.R.S. §§ 36-882 and 36-883	75	30	45

R9-5-203. Fingerprinting and Background Check

A. A licensee shall ensure that a staff member completes, signs, dates, and submits to the licensee, before the staff member's starting date of employment or volunteer service:

1. The form required in A.R.S. § 36-883.02(C); and
2. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I).

B. A licensee shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03 and valid background check document issued under in A.R.S. § 46-811.

C. Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member, before starting date of employment or volunteer service, submits to the licensee a copy of the staff member's valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1.

D. A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed every six years.

E. If a staff member possesses a fingerprint clearance card that was issued before the staff member became a staff member at the facility, a licensee shall:

1. Contact the Department of Public Safety before the individual becomes a staff member to determine whether the fingerprint clearance card is valid; and
2. Document this determination, including the name of the staff member, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.

F. A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid:

1. Background check document issued under A.R.S. § 46-811(A) within 10 working days after starting date of employment or volunteer service; and
2. Background check document each time a background check is issued or renewed every five years.

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

H. A licensee shall not allow an individual to be a staff member if the individual:

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

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

J. Beginning November 1, 2021, staff members shall comply with A.R.S. § 46-811(A) and subsection (F) by November 1, 2022.

R9-5-204. Child Care Service Classifications

A. The Department licenses child care facilities using the following service classifications:

1. Full-day care;
2. Part-day care;
3. Evening and nighttime care;
4. Infant care;
5. One-year-old child care;
6. Two-year-old child care;
7. Three-year-old, four-year-old, and five-year-old child care;
8. School-age child care; and

9. Weekend care.

B. The Department shall designate on a facility's license each service classification that the facility is licensed to provide.

C. A licensee shall not provide child care services in a service classification for which the licensee is not licensed.

R9-5-205. Submission of Licensure Fees

A licensee shall submit to the Department, on an annual basis and no more than 60 calendar days before the anniversary date of the facility's license:

1. A form provided by the Department that contains:
   a. The licensee's name,
   b. The facility's name and license number, and
   c. Whether the licensee intends to submit the applicable fee:
      i. With the form, or
      ii. According to the payment plan in subsection (2)(b), and
2. Either:
   a. The applicable fee in R9-5-206, or
   b. One-half of the applicable fee in R9-5-206 with the form and the remainder of the applicable fee due no later than 120 calendar days after the anniversary date of the facility's license.

R9-5-206. Licensure Fees

A. Except as provided in subsection (B), the fees for an applicant submitting an application or a licensee submitting licensure fees are:

1. For a child care facility with a licensed capacity of five to 10 children, $330;
2. For a child care facility with a licensed capacity of 11 to 59 children, $1330; and
3. For a child care facility with a licensed capacity of 60 or more children, $2575.

B. The Department may discount the fee in subsection (A), based on available funding or if the applicant or licensee participates in a Department-approved program.

C. The fee for a licensee requesting an increase in a facility's licensed capacity is the difference between the applicable fee in this Section for the new licensed capacity and the applicable fee in this Section for the current licensed capacity, prorated from the date the licensee submitted the request for the increase for the number of months remaining before the facility's license anniversary date specified in R9-5-205.

R9-5-207. Invalid License

If a licensee does not submit the licensure fee as required in R9-5-205(2), the facility license is no longer valid and the facility is operating without a license.

R9-5-208. Changes Affecting a License

A. At least 30 calendar days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change and the Department shall issue an amended license that incorporates the name change but retains the anniversary date of the current license.

B. At least 30 calendar days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the intended change to the Department that includes:

1. The licensee's name;
2. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
3. The name, telephone number, and fax number of a point of contact for the request;
4. The facility's license number;
5. The type of change intended:
    a. Service classification,
    b. Space utilization, or
    c. Licensed capacity;
6. A narrative description of the intended change; and
7. The following additional information, as applicable:
    a. If the intended change affects an activity area, the following information about each affected activity area, as applicable:
        i. Identification of the activity area,
        ii. Current and intended square footage,
        iii. Current and intended operating hours,
        iv. Current and intended service classification,
        v. Current and intended licensed capacity, and
        vi. Whether the activity area has or will have a diaper changing area;
    b. If the intended change is to increase licensed capacity, the square footage of the outdoor activity area; and
    c. If the intended change includes an alteration or addition to the physical plant of a licensed facility, the following, as applicable:
        i. If the facility is not located in a public school or if providing child care services to infants, one-year-old children, or two-year-old children in a facility located in a public school, the information required in R9-5-201(A)(5)(g) and (h) showing the intended change; or

ii. If the facility is located in a public school and provides child care only for three-year-old, four-year-old, or five-year-old, or school-age children, a set of final construction drawings or a school map, including the information required in R9-5-201(5)(j) showing the intended change.

C. If the intended change in subsection (B) includes an increase in the licensed capacity, a licensee shall submit the fee for an increase in licensed capacity in R9-5-206(C) with the written request for approval.

D. If requesting a diaper changing area outside an infant room or indoor activity area to allow privacy for diapering an enrolled child with special needs, submit a written request for an approval; and

1. For a license application, submit physical plant documents required by R9-5-201(A)(5)(h) that designate the location of the proposed diaper changing area;
2. For a licensed facility, submit a drawing of the proposed diaper changing area to the Department before installing the diaper changing area. Within 30 calendar days after the date of the receipt of the request, the Department shall send written notice to the licensee of approval or disapproval. If the proposed diaper changing area:
   a. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and provides privacy for the enrolled child with special needs, the Department shall approve the proposed diaper changing area; or
   b. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter or provide privacy for the enrolled child with special needs, the Department shall provide the licensee with the requirements necessary for the Department to approve the requested change; and
3. Not use a diaper changing area located outside of an activity area until the Department approves the use of the diaper changing area;

E. The Department shall review a request submitted under subsection (B) according to R9-5-202. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and any applicable fee is submitted, the Department shall send the licensee written approval of the requested change or an amended license that incorporates the change but retains the anniversary date of the current license.

F. A licensee shall not implement any change described under subsection (B) until the Department issues an approval or amended license.

G. At least 30 days before the date of a change in ownership of a facility, a licensee shall send the Department written notice of the change. A new owner shall obtain a new license as prescribed in R9-5-201 before the new owner begins operating the facility.

H. A licensee changing a facility's location shall apply for a new license as prescribed in R9-5-201.

I. Within 30 calendar days after a change in a controlling person, a licensee shall send the Department written notice of the change that includes:

1. The name of the licensee;
2. A description of the change made;

3. The name, title, street address, city, state, and zip code of each controlling person;
4. A statement that each controlling person has not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
5. A statement that each controlling person has not had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
6. A statement that the information provided in the written notice is accurate and complete; and
7. The signature of the licensee.

J. If the change in subsection (I) is a change in a controlling person who is a designated agent, a licensee shall include a copy of one of the following for the designated agent:
1. A U.S. passport,
2. A birth certificate,
3. Naturalization documents, or
4. Documentation of legal resident alien status.

K. Within 30 calendar days after changing a responsible party, a licensee shall send the Department written notice of the change that includes:
1. The name of the licensee;
2. A description of the change made;
3. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals; and
4. A statement signed by the licensee stating:
   a. That each individual in subsection (K)(3) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
   b. That each individual in subsection (K)(3) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children.

R9-5-209. Inspections; Investigations

A. A licensee shall allow the Department immediate access to all areas of the facility affecting the health, safety, or welfare of an enrolled child or to which an enrolled child has access during hours of operation.

B. A licensee shall permit the Department to interview each staff member or enrolled child as part of an investigation.

R9-5-210. Denial, Revocation, or Suspension of License

A. The Department may deny, revoke, or suspend a license to operate a facility if an applicant or licensee:
1. Provides false or misleading information to the Department;

2. Has been denied a certificate or license to operate a child care group home or child care facility in any state, unless the denial was based on the applicant's failure to complete the certification or licensing process according to a required time-frame;
3. Has had a certificate or license to operate a child care group home or child care facility revoked or suspended in any state;
4. Has been denied a fingerprint clearance card or has had a fingerprint clearance card revoked under A.R.S. Title 41, Chapter 12, Article 3.1;
5. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter; or
6. Substantially complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, but refuses to carry out a plan acceptable to the Department to eliminate any deficiencies.

B. In determining whether to deny, suspend, or revoke a license, the Department shall consider the threat to the health and safety of children in a facility based on such factors as:

1. Repeated violations of statutes or rules,
2. A pattern of non-compliance,
3. The type of violation,
4. The severity of each violation, and
5. The number of violations.

ARTICLE 3. FACILITY ADMINISTRATION

R9-5-301. General Licensee Responsibilities

A. A licensee shall:

1. Designate a facility director who acts on behalf of the licensee and is responsible for the daily onsite operation of a facility;
2. Submit the name of the designated facility director in writing to the Department before a license is issued;
3. Except as provided in subsection (A)(4), within 10 calendar days before changing a facility director, submit written notice of the change including the new designated facility director's name and starting date;
4. If the licensee is not aware of a change in the facility director 10 calendar days before the effective date of the change, submit written notice of the change to the Department including the new designated facility director's name and starting date within 72 hours after becoming aware of the change.

B. A licensee shall ensure that a facility director:

1. Designates, in writing, an individual who meets the requirements of R9-5-401(2) to act on behalf of the facility director when the facility director is not present in the facility;
2. Supervises or assigns a teacher-caregiver to supervise each staff member who does not meet the qualifications of R9-5-401(3);

3. Prepares a dated attendance record for each day and ensures that each staff member documents on the attendance record the time of each arrival and departure of the staff member; and
4. Maintains on the facility premises, the dated attendance record required in subsection (B)(3) for 12 months after the date on the attendance record.

C. A licensee shall develop and implement written facility policies and procedures required for the daily onsite operation of the facility as prescribed in A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter.

D. A licensee shall ensure that the following individuals are allowed immediate access to facility premises during hours of operation:
1. A parent of an enrolled child or an individual designated in writing by the parent of an enrolled child; or
2. A representative of:
   a. The Department,
   b. The local health department,
   c. Arizona Department of Child Safety, or
   d. The local fire department or State Fire Marshal.

E. A licensee shall, with the exception of individuals listed in subsection (D)(2), ensure that a staff member supervises any individual that is not a staff member who is on facility premises where enrolled children are present.

F. A licensee shall ensure that a staff member submits, on or before the starting date of employment or volunteer services, one of the following as evidence of freedom from infectious active tuberculosis:
1. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of employment or volunteer service, that includes the date and the type of tuberculosis screening test; or
2. If the staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the staff member is free from infectious active tuberculosis that is signed and dated by a health care provider within six months before the starting date of employment or volunteer service.

G. A licensee shall ensure that a staff member who has current training in first aid and CPR, as required by R9-5-403(E), is present:
1. At all times during hours of operation on facility premises,
2. On field trips, and
3. While transporting enrolled children in the facility's motor vehicle or a vehicle designated by the licensee to transport enrolled children.

H. A licensee shall prohibit the use or possession of the following items when an enrolled child is on facility premises, during hours of operation, or in any motor vehicle used for transporting an enrolled child:
1. Any beverage containing alcohol;

2. A controlled substance as listed in A.R.S. Title 36, Chapter 27, Article 2, except where used as a prescription medication in the manner prescribed;
3. A dangerous drug as defined in A.R.S. § 13-3401, except where used as a prescription medication in the manner prescribed;
4. A prescription medication as defined in A.R.S. § 32-1901, except where used in the manner prescribed; or
5. A firearm as defined in A.R.S. § 13-105.

I. At least once a month, and at different times of the day, a licensee shall ensure that an unannounced fire and emergency evacuation drill is conducted and each staff member and enrolled child at the facility participates in the fire and emergency evacuation drill.

1. If child care services for a child with special needs are provided at a facility, the licensee shall provide for the enrolled child's participation in each fire and emergency evacuation drill according to the enrolled child's individualized plan as specified in R9-5-507(A)(1).
2. A licensee shall document each fire and emergency evacuation drill and maintain the documentation on facility premises for 12 months after the date of the fire and emergency evacuation drill.

J. Every September, a licensee shall provide to parents of enrolled children information related to recommendations for influenza vaccinations for children.

K. A licensee shall not allow a staff member who lacks proof of immunity against a disease listed in A.A.C. R9-6-702(A) to be present in the facility between the start and end of an outbreak of the disease at the facility.

L. A licensee shall ensure that the Department is notified orally or in writing within 24 hours after an enrolled child's death at the child care facility during hours of operation.

R9-5-302. Statement of Child Care Services

A. A licensee shall prepare a written statement of child care services provided by the licensee that includes the following:

1. A description of the facility's child care services classifications in R9-5-204;
2. Hours of operation;
3. The facility's street address, city, state, zip code, mailing address, and telephone number;
4. Child enrollment and disenrollment procedures;
5. Charges, fees, and payment requirements for child care services;
6. Child admission and release requirements;
7. Age-appropriate discipline guidelines and methods;
8. Transportation procedures;
9. Field trip requirements and procedures;
10. Responsibilities and participation of parents in facility activities;
11. A general description of activities and programs;

12. A description of the liability insurance required by R9-5-308 that is carried by the licensee and a statement that documentation of the liability insurance coverage is available for review on the facility premises;
13. Medication administration procedures;
14. Accident and emergency procedures;
15. A notice stating inspection reports are available onsite;
16. A provision stating that the facility is regulated by the Arizona Department of Health Services including the Department's local street address, city, state, zip code, and local telephone number;
17. The procedures for notifying a parent at least 48 hours before a pesticide is applied on a facility's premises; and
18. A statement that a parent has access to the areas on facility premises where the parent's enrolled child is receiving child care services.

B. A licensee shall provide a copy of the written statement of child care services:

1. To the Department:
   a. Before the facility receives a license, and
   b. Every 12 months after the date of the license as required by A.R.S. § 36-883.01; and
2. To a parent when the parent requests a copy of the written statement of child care services.

R9-5-303. Posting of Notices

A. A licensee shall post in a place that can be conspicuously viewed by individuals entering or leaving the facility or activity area the:

1. Facility's license;
2. Name of the facility director;
3. Name of the individual designated to act on behalf of the facility director when the facility director is not present in the facility, as prescribed by R9-5-301(B)(1);
4. Schedule of child care services fees and policy for refunding fees as prescribed by A.R.S. § 36-882(P);
5. Breakfast, lunch, dinner, and snack menus for each calendar week at the beginning of the calendar week;
6. Notice of the presence of any communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, from the date of discovery through the incubation period of the communicable disease or infestation;
7. Notice of the Department's intent to deny, revoke, or suspend as prescribed by A.R.S. § 36-888 at the expiration of time in the notice for the licensee to respond;
8. Notice of an intermediate sanction imposed as prescribed by A.R.S. § 36-891.01 within 10 calendar days after the licensee received notice of the intermediate sanction;
9. Notice of a legal injunction imposed as prescribed by A.R.S. § 36-886.01 when the licensee receives the legal injunction; and
10. Notice of the availability of facility inspection reports for public viewing at the facility premises.

B. A licensee shall ensure that the licensed capacity of each indoor activity area is posted in that activity area.

C. Except as prescribed in A.R.S. § 36-898(C), a licensee shall post a notification of pesticide application in each activity area and in each entrance of a facility, at least 48 hours before a pesticide is applied on the facility's premises, containing:

1. The date and time of the pesticide application, and
2. A statement that written pesticide information is available from the licensee upon request.

R9-5-304. Enrollment of Children

A. A licensee shall require that a child be enrolled by the child's parent or an individual authorized in writing by the parent.

B. Except as required in A.R.S. § 36-3009, before an enrolled child receives child care services, a licensee shall require the enrolled child's parent to complete a Department-provided Emergency, Information, and Immunization Record card that is signed by the enrolled child's parent containing:

1. The child's name, home address, city, state, zip code, home telephone number, sex, and date of birth;
2. The date of the child's enrollment;
3. The name, home address, city, state, zip code, and contact telephone number of each parent of the child;
4. The name and contact telephone number of at least two individuals authorized by the child's parent to collect the child from the facility in case of emergency, or if the child's parent cannot be contacted;
5. The name and contact telephone number of the child's health care provider;
6. The written authorization for emergency medical care of the enrolled child;
7. The name of the individual to be contacted in case of injury or sudden illness of the child;
8. The written instructions of a child's parent or health care provider for nutritional and dietary needs of the child including, if applicable, the request in R9-5-509(C)(9); and
9. A written record completed by the child's parent or health care provider noting the child's susceptibility to illness, physical conditions of which a staff member should be aware, and any individual requirements for health maintenance.

C. A licensee shall maintain a current Emergency, Information, and Immunization Record card for each enrolled child on facility premises in a place that provides a staff member ready access to the card in event of an emergency at, or evacuation of, the facility.

D. When an enrolled child is disenrolled from a facility, the licensee shall:

1. Enter the date of disenrollment on the child's Emergency, Information, and Immunization Record card; and
2. Maintain the records in subsection (D)(1) for 12 months after the date of disenrollment on facility premises in a place separate from the current Emergency, Information, and Immunization Record cards. If a licensee is a school governing board, a charter school, or a person operating multiple child care facilities, the licensee

may maintain disenrollment records in a single central administrative office located in the same city, town, or school attendance area as the facility.

R9-5-305. Child Immunization Requirements

A. A licensee shall not permit an enrolled child to attend a facility until the facility receives:

1. An immunization record for the enrolled child with the information required in 9 A.A.C. 6, Article 7, documenting that the enrolled child has received all current, age-appropriate immunizations required under 9 A.A.C. 6, Article 7:
   a. Provided by a health care provider, or
   b. Generated from the Arizona State Immunization Information System, which is the Department's child immunization reporting system established in A.R.S. § 36-135; or
2. An exemption affidavit for the enrolled child provided by the enrolled child's parent that contains:
   a. A statement, signed by the enrolled child's health care provider, that the immunizations required by 9 A.A.C. 6, Article 7 would endanger the enrolled child's health or medical condition; or
   b. A statement, signed by the enrolled child's parent, that the enrolled child is being raised in a religion whose teachings are in opposition to immunization.

B. A licensee shall attach an enrolled child's written immunization record or exemption affidavit, required in subsection (A), to the enrolled child's Emergency, Information, and Immunization Record card, required in R9-5-304(B).

C. A licensee shall ensure that a staff member updates an enrolled child's written immunization record required in subsection (A)(1)(a) each time the enrolled child's parent provides the licensee with a written statement from the enrolled child's health care provider that the enrolled child has received an age-appropriate immunization required by 9 A.A.C. 6, Article 7.

D. If an enrolled child's immunization record indicates that the enrolled child has not received an age-appropriate immunization required by 9 A.A.C. 6, Article 7, a licensee shall ensure that a staff member:

1. Notifies the enrolled child's parent in writing that the enrolled child may attend the facility for not more than 15 calendar days after the date of the notification unless the enrolled child's parent complies with the immunization requirements in 9 A.A.C. 6, Article 7; and
2. Documents on the enrolled child's Emergency, Information, and Immunization Record card the date on which the enrolled child's parent is notified of an immunization required by the Department.

E. A licensee shall not allow an enrolled child who lacks proof of immunity against a disease listed in A.A.C. R9-6-702(A) to attend the child care facility between the start and end of an outbreak of the disease at the facility.

F. If a parent of an enrolled child, excluded from a child care facility because of the lack of documented immunity to a disease during an outbreak of the disease at the child care facility, submits any of the documents in A.A.C.

R9-6-704 as proof of the enrolled child's immunity to the disease, a licensee shall allow the enrolled child to attend the child care facility during the outbreak of the disease.

R9-5-306. Admission and Release of Children; Attendance Records

A. A licensee shall maintain a dated attendance form containing an enrolled child's name with the time of each admission and release of the enrolled child.

1. Except as provided in subsection (A)(2), a licensee shall ensure that the attendance form is signed with at least a first initial of an individual's first name and the individual's last name by each enrolled child's parent or individual designated by the enrolled child's parent, each time the enrolled child is admitted or released.
2. An electronic fingerprint verification or an electronic signature may be used in place of a signature of the enrolled child's parent or designated individual to admit or release the enrolled child.
3. If an electronic signature is used to admit or release the enrolled child, the licensee shall adopt policies and procedures to ensure that the individual whose signature the electronic or digital method of identification represents is accountable for the use of the electronic or digital method;
4. A licensee shall develop, document, and implement policies and procedures to ensure that the identity of an individual is known to the staff member or is verified with picture identification before releasing an enrolled child to the individual.
5. A licensee shall not release the enrolled child to an individual other than the enrolled child's parent or other individual designated in writing by the enrolled child's parent except when the enrolled child's parent is unable to collect the enrolled child and authorizes the licensee by telephone to release the enrolled child to an individual not so designated.
    a. The licensee shall verify the telephone authorization using a means of verification that has been agreed upon between the licensee and the enrolled child's parent at the time of enrollment.
    b. The licensee shall document the means of verification in subsection (A)(5)(a) on the enrolled child's Emergency, Information, and Immunization Record card.
6. A licensee shall not permit the self-admission or self-release of an enrolled child unless the enrolled child is of school age and the licensee has obtained and verified written permission from the enrolled child's parent.
7. A licensee shall maintain the attendance form on facility premises for 12 months after the date of attendance.

B. A licensee shall:

1. Develop, document, and implement policies and procedures to ensure that a staff member maintains daily documentation of the presence of an enrolled child in an activity area that includes a method to account for any temporary absences of the enrolled child from the activity area; and

2. Maintain the documentation of the presence of enrolled children in an activity area required in subsection (B)(1) on facility premises for 12 months after the date of the documentation.

R9-5-307. Suspected or Alleged Child Abuse or Neglect

A licensee shall ensure that the licensee or a staff member documents and reports all suspected or alleged cases of child abuse or neglect.

1. The licensee or staff member shall report the suspected or alleged child abuse or neglect to the Arizona Department of Child Safety or to a local law enforcement agency as prescribed in A.R.S. § 13-3620. The licensee or staff member shall also send documentation to the Arizona Department of Child Safety and any local law enforcement agency previously notified within three calendar days of the initial report, and maintain documentation of a child abuse or neglect report on facility premises for 12 months after the date of a report.
2. The licensee or staff member shall report the suspected or alleged child abuse by a staff member to the Department and to a local law enforcement agency as prescribed in A.R.S. § 13-3620. A licensee or staff member shall also send documentation to the Department and to any law enforcement agency previously notified within three calendar days of the initial report, and maintain documentation of a child abuse report on facility premises for 12 months after the date of a report.

R9-5-308. Insurance Requirements

A. A licensee shall secure and maintain the following minimum insurance coverage:

1. General facility liability insurance of at least $300,000; and
2. Motor vehicle insurance coverage, required by A.R.S. Title 28, Chapter 9, Article 4, for each motor vehicle provided by a licensee to transport enrolled children.

B. A licensee shall maintain documentation of the insurance coverage required in subsection (A) on facility premises.

C. A licensee shall provide a copy of documentation of insurance to the Department before issuance of a license and at any time that the licensee's insurance coverage expires, is canceled, or changes.

R9-5-309. Gas and Fire Inspections

A. An applicant shall obtain the following inspections of a facility and make any repairs or corrections stated on an inspection report before a license is issued by the Department:

1. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a gas inspection by a licensed plumber or individual authorized by the local jurisdiction that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on facility premises; and
2. A fire inspection by a local fire department.

B. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a licensee shall ensure that a licensed plumber or individual authorized by the local jurisdiction conducts a gas inspection

that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on facility premises at least once every 12 months after the issue date of the license.

C. A licensee shall maintain on facility premises:

1. A current fire inspection report including documentation of any repairs or corrections required by the fire inspection report; and
2. If there are gas pipes that run from a gas meter to an appliance or location on the facility premises, a current gas inspection report including documentation of any repairs or corrections required by the gas inspection report.

R9-5-310. Pesticides

A. A licensee shall make written pesticide information available to a parent, upon a parent's request, at least 48 hours before a pesticide application occurs on facility premises, containing:

1. The brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide;
2. The date and time of the pesticide application;
3. The pesticide label; and
4. The name and telephone number of the pesticide business licensee and the name of the licensed applicator providing pesticide services.

B. A licensee is exempt from the provisions in subsection (A), as prescribed by A.R.S. § 36-898(C).

ARTICLE 4. FACILITY STAFF

R9-5-401. Staff Qualifications

A licensee shall ensure that staff members meet the following qualifications for employment or volunteer service at a facility:

1. A facility director is 21 years of age or older and provides the licensee with documentation of one of the following:
   a. At least 24 months of child care experience, a high school or high school equivalency diploma, and
      i. Six credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or
      ii. At least 60 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field, and an additional 12 hours of instruction, provided in conferences, seminars, lectures, or workshops in the area of program administration, planning, development, or management;
   b. At least 18 months of child care experience; and
      i. An N.A.C., C.D.A., or C.C.P. credential; or

ii. At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;

c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or

d. At least three months of child care experience and a bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field;

2. A facility director's designee is 21 years of age or older and provides the licensee with documentation of one of the following:

a. At least 12 months of child care experience, a high school or high school equivalency diploma; and

i. Three credit hours or more in early childhood, child development, or a closely-related field from an accredited college or university; or

ii. At least 30 actual hours of instruction, provided in conferences, seminars, lectures, or workshops in early childhood, child development, or a closely-related field;

b. At least 12 months of child care experience; and

i. An N.A.C., C.D.A., or C.C.P. credential; or

ii At least 24 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;

c. At least six months of child care experience and an associate degree from an accredited college or university in early childhood, child development, or a closely-related field; or

d. At least three months of child care experience and a bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field;

3. A teacher-caregiver is 18 years of age or older and provides the licensee with documentation of one of the following:

a. Six months of child care experience; and

i. A high school diploma or high school equivalency diploma; or

ii. At least 12 credit hours from an accredited college or university, including at least six credit hours in early childhood, child development, or a closely-related field;

b. Associate or bachelor's degree from an accredited college or university in early childhood, child development, or a closely-related field; or

c. N.A.C., C.D.A., or C.C.P. credential;

4. An assistant teacher-caregiver is 16 years of age or older and provides the licensee with documentation of one of the following:

a. Current and continuous enrollment in high school or a high school equivalency class;

b. High school or high school equivalency diploma;

c. Enrollment in vocational rehabilitation, as defined in A.R.S. § 23-501;
d. Employment as a teacher-caregiver aide for 12 months; or
e. Service as a volunteer in a child care facility for 12 months;

5. A teacher-caregiver aide is 16 years of age or older;
6. A student-aide provides the licensee with documentation of participation in:
   a. An educational, curriculum-based course in child development, parenting, or guidance counseling; or
   b. A vocational education or occupational development program; and
7. A volunteer is 15 years of age or older.

R9-5-402. Staff Records and Reports

A. A licensee shall maintain a file for each staff member containing:

1. The staff member's name, date of birth, home address, and telephone number;
2. The staff member's starting date of employment or volunteer service;
3. The staff member's ending date of employment or volunteer service, if applicable;
4. The name and telephone number of an individual to be notified in case of an emergency;
5. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
6. The form required in A.R.S. § 36-883.02(C);
7. Documents required by R9-5-203;
8. Documents required by R9-5-301;
9. Documents required by R9-5-401, if applicable;
10. If applicable:
    a. The form required in A.R.S. § 8-804(I),
    b. Documentation of the submission required in A.R.S. § 8-804 and the information received as a result of the submission, and
    c. Documentation of training provided by a licensee as required by R9-5-403;
11. A copy of any current license or certification required by A.R.S. Title 36, Chapter 7.1, Article 1, or this Chapter; and
12. Documentation of the requirements in A.R.S. § 36-883.02(D).

B. A licensee shall ensure that, for a staff member who is currently working at the facility, the staff member's information required by:

1. Subsections (A)(1) through (11) is maintained in a single location on facility premises, and
2. Subsection (A)(12) is maintained and provided to the Department within two hours of the Department's request.

C. A licensee shall ensure that, for an individual who is not currently working at the facility, the information required in subsections (A)(1) through (12) is:

1. Maintained for 12 months after the date the individual last worked at the facility, and
2. Provided to the Department within two hours of the Department's request.

R9-5-403. Training Requirements

A. Within 10 calendar days of the starting date of employment or volunteer service, a licensee shall provide, and each staff member who provides child care services shall complete, training for new staff members that includes all of the following:

1. Facility philosophy and goals;
2. Names and ages of and developmental expectations for enrolled children for whom the staff member will provide child care services;
3. Health needs, nutritional requirements, any known allergies, and information about adaptive devices of enrolled children for whom the staff member will provide child care services;
4. Lesson plans;
5. Child guidance and methods of discipline;
6. Hand washing techniques;
7. Diapering techniques and toileting, if assigned to diaper changing duties;
8. Food preparation, service, sanitation, and storage, if assigned to food preparation;
9. If a staff member is assigned to feeding infants, the preparation, handling, and storage of infant formula and breast milk;
10. Recognition of signs of illness and infestation;
11. Child abuse or neglect detection, prevention, and reporting;
12. Accident and emergency procedures;
13. Staff responsibilities as required by A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
14. Sun safety policies and procedures;
15. Safety in outdoor activity areas;
16. Transportation procedures, if applicable; and
17. Field trip procedures, if applicable.

B. A licensee shall ensure that:

1. Each staff member who provides child care services completes 18 or more actual hours of training every 12 months after the effective date of this Chapter or the staff member's starting date of employment or volunteer service in at least two topics listed in this subsection:
    a. Child growth and development, including:
        i. Infant growth and development, which may include sudden infant death syndrome prevention;

ii. Developmental psychology;
iii. Language development;
iv. Observation and child assessment;
v. Developmentally-appropriate activities;
vi. Child guidance and methods of discipline which may include training on the appropriate techniques to prevent a child from harm or to prevent the child from harming others; and
vii. Developmentally-appropriate activity areas;

b. Health and safety issues, including:
i. Accident and emergency procedures, including CPR and first aid for infants and children;
ii. Recognition of signs of illness and infestation;
iii. Nutrition and developmentally-appropriate eating habits;
iv. Child abuse detection, reporting, and prevention;
v. Safety of indoor and outdoor activity areas; and
vi. Sun safety policies and procedures;

c. Program administration, planning, development, or management; and
d. Availability of community services and resources, including those available to children with special needs; and

2. As part of the required 18 hours of training in subsection (B)(1):
a. A staff member who has less than 12 months of child care experience before the staff member's starting date, completes at least 12 hours in one or more of the topics in subsection (B)(1)(a) in the staff member's first 12 months at the facility;
b. A staff member who has 12 months or more of child care experience, completes at least six hours in one or more of the topics in subsection (B)(1)(a) every 12 months after the staff member's starting date;
c. A staff member who provides child care services to an infant completes at least six hours in subsection (B)(1)(a)(i) every 12 months after the staff member's starting date; and
d. A facility director completes at least six hours in subsection (B)(1)(c) every 12 months after the facility director's starting date.

C. A licensee shall ensure that documentation of a staff member's completion of training required by subsection (A) is signed by the facility director and dated.

D. A licensee shall ensure that a staff member submits to the licensee documentation of training received as required by subsection (B) to the licensee as the training is completed.

E. A licensee shall ensure that a staff member required by R9-5-301(G) meets all of the following:
1. The staff member obtains first aid training specific to infants and children;

2. The staff member obtains CPR training specific to infants and children, which includes a demonstration of the staff member's ability to perform CPR;
3. The staff member maintains current training in first aid and CPR; and
4. The staff member provides the licensee with a copy of the front and back of the current card issued to the staff member upon completing first aid and CPR training as proof of completion of the requirements of this subsection.

R9-5-404. Staff-to-Children Ratios

A. A licensee shall ensure that at least the following staff-to-children ratios are maintained at all times when providing child care services to enrolled children:

Age Group	*Staff: Children*
Infants	1:5 or 2:11
1-year-old children	1:6 or 2:13
2-year-old children	1:8
3-year-old children	1:13
4-year-old children	1:15
5-year-old children not school-age	1:20
School-age children	1:20

B. A licensee shall:
1. Determine and maintain the required staff-to-children ratio for each group of enrolled children based on the age of the youngest child in the group;
2. Allow a volunteer qualified as a director, teacher-caregiver, or a assistant-teacher caregiver to be counted as staff in staff-to-children ratios; and
3. Not allow a student-aide or an individual qualified as a teacher-caregiver-aide to be counted as staff in staff-to-children ratios.

C. A licensee shall ensure that:
1. When there are six or more enrolled children present in a facility, the following individuals are present in the facility:
   a. A facility director or a director's designee who meets the requirements in R9-5-401 for a director's designee, and

b. One additional staff member;

2. When five or fewer enrolled children are present in a facility, the facility director or director's designee who meets the requirements in R9-5-401 is present in the facility, and an additional staff member is available by telephone or other equally expeditious means and able to reach the facility within 15 minutes after notification; and
3. When six or more enrolled children are present in a facility, an infant is not placed for supervision with a child who is not an infant.

D. A licensee shall ensure that a staff member assigned to provide child care services to enrolled children does not perform duties that may affect the staff member's ability to provide child care services to the enrolled children.

E. In addition to maintaining the required staff-to-children ratios, a licensee shall ensure that:

1. Staff members are present on facility premises to perform facility administration, food preparation, food service, and maintenance responsibilities; and
2. Facility maintenance does not depend on the work of enrolled children.

F. If a licensee conducts swimming activities at a swimming pool, the licensee shall ensure that there is a lifeguard on the premises who has current lifeguard certification that includes a demonstration of the lifeguard's ability to perform CPR. If the lifeguard is a staff member, the staff member cannot be counted in the staff-to-children ratios required by subsection (A).

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

R9-5-501. General Child Care Program, Equipment, and Health and Safety Standards

A. A licensee shall ensure that:

1. In addition to complying with the requirements in this Chapter, the health, safety, or welfare of an enrolled child is not placed at risk of harm;
2. Except for an enrolled school-age child, drinking water is provided sufficient for the needs of and accessible to each enrolled child in both indoor and outdoor activity areas;
3. For an enrolled school-age child, if drinking water is not accessible in an indoor or outdoor activity area, drinking water sufficient to meet the individual needs of each enrolled school-aged child is available;
4. An enrolled child is placed in an age-appropriate or developmentally-appropriate group;
5. Indoor activity areas used by enrolled children are decorated with age-appropriate articles such as mirrors, bulletin boards, pictures, and posters;
6. Age-appropriate toys, materials, and equipment are provided to enable each enrolled child to participate in an activity;
7. Storage space is provided in the facility for indoor and outdoor toys, materials, and equipment in areas accessible to enrolled children;
8. Clean clothing is available to an enrolled child when the enrolled child needs a change of clothing;

9. If a staff member places an enrolled child in a feeding chair when feeding the enrolled child:
    a. The feeding chair is constructed to prevent toppling;
    b. The tray or feeding surface of the feeding chair is smooth and free of cracks; and
    c. The staff member:
        i. Cleans the feeding chair before and after each enrolled child's use;
        ii. Sanitizes the tray or feeding surface before and after each enrolled child's use; and
        iii. If the feeding chair was manufactured with a safety strap, fastens the feeding chair's safety strap while the enrolled child is in the feeding chair;
10. At least one indoor activity area in the facility is equipped with at least one cot or mat, a sheet, and a blanket, where an enrolled child can rest quietly away from other enrolled children;
11. Outdoor activities are scheduled to allow not less than 75 square feet for each enrolled child occupying the facility's outdoor activity area or indoor activity area substituted for outdoor activity area at any time;
12. The facility premises, including the buildings, are maintained free from hazards;
13. Toys and play equipment, required in this Article, are maintained:
    a. Free from hazards, and
    b. In a condition that allows the toy or play equipment to be used for the original purpose of the toy or play equipment;
14. Temperatures are maintained between 68° F and 82° F in each room used by enrolled children;
15. Except when an enrolled child is napping or sleeping, each room used by an enrolled child is maintained at a minimum of 30 foot candles of illumination;
16. When an enrolled child is napping or sleeping in a room, the room is maintained at a minimum of 5 foot candles of illumination;
17. Each enrolled child's toothbrush, comb, washcloth, cloth towel, and clothing is maintained in a clean condition and stored in an identified space separate from those of other enrolled children;
18. Each enrolled child's pacifier is labeled with an identifier that is specific to the enrolled child and maintained in a clean condition;
19. Except as provided in subsection (A)(20), the following are stored separate from food storage areas and are inaccessible to an enrolled child:
    a. All materials and chemicals labeled as a toxic or flammable substance;
    b. All substances that have a child warning label and may be a hazard to a child; and
    c. Lawn mowers, ladders, toilet brushes, plungers, and other facility equipment that may be a hazard to a child;
20. Hand sanitizers:

a. When being stored, are stored separate from food storage areas and are inaccessible to enrolled children; and

b. When being provided for use, are accessible to enrolled children; and

21. Except when used as part of an activity, the following are stored in an area inaccessible to an enrolled child:

a. Garden tools, such as a rake, trowel, and shovel; and

b. Cleaning equipment and supplies, such as a mop and mop bucket.

B. A toy or piece of play equipment, which is free from hazards and in a condition that does not allow the toy or play equipment to be used for the toy or play equipment's original purpose, may be in an activity area but is not counted as one of the toys or play equipment required in this Article.

C. A licensee shall ensure that a staff member:

1. Supervises each enrolled child at all times;
2. Does not smoke or use tobacco:
   a. On facility premises, except in designated areas separated from the children; or
   b. On a field trip or when transporting an enrolled child;
3. Except for an enrolled child who can change the enrolled child's own clothing, changes an enrolled child's clothing when wet or soiled;
4. Except as provided in subsection (D), prepares and posts in each indoor activity area, a current schedule of children's age-appropriate activities, including the times the following are provided:
   a. Meals and snacks;
   b. Naps;
   c. Indoor activities;
   d. Outdoor or large muscle development activities;
   e. Quiet and active activities;
   f. Teacher-directed activities;
   g. Self-directed activities;
   h. Activities for individuals, groups of five or fewer children, and groups of six or more children; and
   i. Activities that develop small muscles;
5. Except as provided in subsection (D), prepares and posts a dated lesson plan in each indoor activity area for each calendar week, which is maintained on facility premises for 12 months after the lesson plan date and provides opportunities for each child to:
   a. Gain a positive self-concept;
   b. Develop and practice social skills;
   c. Think, reason, question, and experiment;
   d. Acquire language skills;

e. Develop physical coordination skills;
f. Participate in structured large muscle physical activity;
g. Develop habits that meet health, safety, and nutritional needs;
h. Express creativity;
i. Learn to respect cultural diversity of children and staff;
j. Learn self-help skills; and
k. Develop a sense of responsibility and independence;

6. If an activity in the lesson plan required in subsection (C)(5) includes screen time, include in the lesson plan the duration of the screen time in minutes;
7. Except as provided in subsection (C)(8), implements the schedule in subsection (C)(4) and lesson plan in subsection (C)(5);
8. If the schedule in subsection (C)(4) or lesson plan in subsection (C)(5) is not implemented, writes on the schedule or the lesson plan the activity that is implemented;
9. Does the following when a parent permits or asks a staff member to apply personal products on an enrolled child, such as petroleum jelly, diaper rash ointments, sun screen or sun block preparations, toothpaste, and baby diapering preparations:
   a. Obtains the enrolled child's personal products from the enrolled child's parent or, if the licensee provides the personal products for use by the enrolled child, obtains written approval for use of the products from the enrolled child's parent;
   b. Labels the personal products with the enrolled child's name; and
   c. Keeps the personal products inaccessible to enrolled children;
10. When a parent permits, allows an enrolled school-age child to possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.
11. In an indoor activity area that does not have a diaper changing area:
   a. Stores an enrolled child's wet or soiled clothing in a sealed plastic bag labeled with the enrolled child's name; and
   b. Sends an enrolled child's wet or soiled clothing home with the enrolled child when the facility releases the enrolled child to the enrolled child's parent; and
12. Monitors an enrolled child for overheating or overexposure to the sun. If the enrolled child exhibits signs of overheating or overexposure to the sun, a staff member who has the first aid training required by R9-5-403(E) shall evaluate and treat the enrolled child.

D. A licensee is not required to have a schedule required in subsection (C)(4) or a lesson plan required in subsection (C)(5) for an indoor activity area that is approved and used:

1. By enrolled children only for:

a. Snacks or meals, or
b. A specific activity,

2. To provide child care services to infants, or
3. As a substitute for an outdoor activity area.

R9-5-502. Supplemental Standards for Infants

A. A licensee providing child care services for infants shall:

1. Provide a wall-enclosed room for infants that provides exits required by R9-5-601(1);
2. Provide age-appropriate active and quiet activities for each infant;
3. Provide age-appropriate indoor and outdoor activities for each infant;
4. Permit an infant to maintain the infant's pattern of sleeping and waking;
5. Develop, document, and implement tummy time policies and procedures that:
   a. Provide an opportunity for a non-crawling infant to experience tummy time each day:
      i. While the infant is awake, and
      ii. On the infant's stomach;
   b. Ensure a staff member who is supervising a non-crawling infant while the infant is flat on their stomach and on the floor:
      i. Is within reach of the infant;
      ii. Does not perform any other duties while supervising the infant;
      iii. Does not allow the use of pillows, comforters, sheepskins, stuffed toys, or other soft products in the same floor space as the infant; and
      iv. Does not allow any product specified in subsection (A)(5)(b)(iii) to be within reach of the infant;
   c. Require continuous interaction between a non-crawling infant and the staff member who is supervising the non-crawling infant during tummy time;
   d. Ensure, as an infant demonstrates ability and strength to control physical movement and greater sensory perception and social interaction, an assigned staff member provide a tummy-time period to:
      i. A 2 - 3 month old infant of no more than 15 minutes;
      ii. A 3 - 4 month old infant of no more than 20 minutes; and
      iii. A 5 - 6 month old infant of 20 minutes; and
   e. Ensure a non-crawling infant's tummy time period specified in subsection (A)(5)(d):
      i. Is determined by the assigned staff member's assessment of the infant;
      ii. Is gradually increased as the infant's ability, strength, and perception increases; and
      iii. Does not exceed tummy time periods specified in subsection (5)(D)(i) through (iii).
6. Provide an outdoor activity area or an indoor activity area for large muscle development substituted for an outdoor activity area that is used by infants when enrolled children older than infants are not present;

7. Provide space, materials, and equipment in an infant room that includes the following:
    a. An area with nonabrasive flooring for sitting, crawling, and playing;
    b. Toys, materials, and equipment, that are too large for a child to swallow and free from sharp edges and points, in a quantity sufficient to meet the needs of the infants in attendance that include:
        i. Toys to enhance physical development such as toys for stacking, pulling, and grasping;
        ii. Soft toys;
        iii. Books;
        iv. Toys to enhance visual development such as crib mobiles and activity mats with an object or objects suspended above the infant's head; and
        v. Unbreakable mirrors; and
    c. At least one adult-size chair for use by a:
        i. Staff member when holding or feeding an infant, or
        ii. Nursing mother when breastfeeding her infant;
8. Provide a crib for each infant that:
    a. Has bars or openings spaced no more than 2 3/8 inches apart and a crib mattress measured to fit not more than 1/2 inch from the crib side;
    b. Has a commercially waterproofed mattress; and
    c. Is furnished with clean, sanitized, crib-size bedding, including a fitted sheet and top sheet or a blanket;
9. Prohibit the use of stacked cribs;
10. Ensure that an occupied crib with a crib side that does not have a non-porous barrier is placed at least 2 feet from another occupied crib side that does not have a non-porous barrier; and
11. Label each food container received from the parent with the infant's name.

B. A licensee providing child care services for infants shall not:

1. Allow an infant room to be used as a passageway to another area of the facility;
2. Permit an infant who is awake to remain for more than 30 consecutive minutes in a crib, swing, feeding chair, infant seat, or any equipment that confines movement;
3. Permit an infant to use a walker; or
4. Allow screen time in an infant room.

C. A licensee shall ensure that:

1. A staff member providing child care services in an infant room:
    a. Plays and talks with each infant;
    b. Holds and rocks each infant;
    c. Responds immediately to each infant's distress signals;
    d. Keeps dated, daily, documentation of each infant including:

i. A description of any activities the infant participated in,
ii. The infant's food consumption,
iii. Diaper changes, and
iv. Tummy time;

e. Maintains the documentation in subsection (C)(1)(d) on facility premises for 12 months after the date on the documentation;
f. Provides a copy of the documentation in subsection (C)(1)(d) to the infant's parent upon request;
g. Does not allow bumper pads, pillows, comforters, sheepskins, stuffed toys, or other soft products in a crib when an infant is in the crib;
h. Cleans and sanitizes each crib and mattress used by an infant when soiled;
i. Changes each crib sheet and blanket before use by another infant, when soiled, or at least once every 24 hours;
j. Cleans and sanitizes all sheets and blankets before use by another infant;
k. Places an infant to sleep on the infant's back, unless the infant's parent submits written instructions from the infant's health care provider that states otherwise;
l. Obtains written, current, and dated dietary instructions from a parent or health care provider regarding the method of feeding and types of foods to be prepared or fed to an infant at the facility;
m. Posts the current written dietary instructions in the infant room and the kitchen and maintains the instructions on facility premises for 12 months after the date of the instructions; and
n. Follows the current written dietary instructions of a parent when feeding the infant;

2. A staff member providing child care services in an infant room does not:
   a. Place an infant directly on a waterproof mattress cover; or
   b. Place an infant to sleep using a positioning device that restricts movement, unless the infant's health care provider has instructed otherwise in writing;
3. When preparing, using, or caring for an infant's feeding bottles, a staff member:
   a. Labels each bottle received from the parent with the infant's name;
   b. Ensures that a bottle is not:
      i. Heated in a microwave oven;
      ii. Propped for an infant feeding; or
      iii. Permitted in an infant's crib unless the written instructions required by subsection (C)(1)(l) state otherwise;
   c. Empties and rinses bottles previously used by an infant; and
   d. Cleans and sanitizes a bottle, bottle cover, and nipple before reuse; and
4. When feeding an infant, a staff member:

a. Provides an infant with food for growth and development that includes:
   i. Formula provided by the infant's parent or the licensee or breast milk provided by the infant's parent, following written instructions required by subsection (C)(1)(l); and
   ii. Cereal as requested by the infant's parent or health care provider;
b. If the staff member prepares an infant's formula, prepares the infant's formula in a sanitary manner;
c. Stores formula and breast milk in a sanitary manner at the facility;
d. Does not mix cereal with formula and feed it to an infant from a bottle or infant feeder unless the written instructions required by subsection (C)(1)(l) state otherwise;
e. Except for finger food, feeds solid food to an infant by spoon from an individual container;
f. Uses a separate container and spoon for each infant;
g. Holds and feeds an infant under 6 months of age and an infant older than 6 months of age who cannot hold a bottle for feeding; and
h. If an infant is no longer being held for feeding, seats the infant in a feeding chair or at a table with a chair that allows the infant to reach the food while sitting.

R9-5-503. Standards for Diaper Changing

A. A licensee shall ensure that each diaper changing area required in R9-5-601(4) contains:
1. A nonabsorbent, sanitizable diaper changing surface that is:
   a. Seamless and smooth, and
   b. Kept clear of items not required for diaper changing;
2. A hand-washing sink next to the diaper changing surface for staff use when changing diapers and for washing an enrolled child during or after diapering, that provides:
   a. Running water between 86° F and 110° F,
   b. Soap from a dispenser, and
   c. Single-use paper hand towels from a dispenser;
3. At least one waterproof, sanitizable container with a waterproof liner and a tight fitting lid for soiled diapers; and
4. At least one waterproof, sanitizable container with a waterproof liner and a tight fitting lid for soiled clothing.

B. A licensee shall ensure that a staff member does not:
1. Permit a bottle, formula, food, eating utensil, or food preparation in a diaper changing area;
2. Draw water for human consumption from a diaper changing area sink; or
3. Except as provided in subsection (C), if responsible for food preparation, change diapers until food preparation duties have been completed for the day.

C. A staff member who provides child care services to an infant:

1. May throughout the time the staff member provides child care services to the infant:
    a. Change the infant's diaper, and
    b. Prepare the infant's formula or cereal; and
2. Is prohibited from other food preparation after changing the infant's diaper.

D. A licensee shall ensure that a written diaper changing procedure is posted and implemented in each diaper changing area.

E. A licensee shall ensure that the written diaper changing procedure in subsection (D) states that an enrolled child's diaper is changed as soon as it is soiled, and that a staff member, when diapering:

1. Uses a separate wash cloth and towel only once for each enrolled child;
2. Washes and dries the enrolled child using the enrolled child's individual personal products labeled with the enrolled child's name;
3. Uses single-use non-porous gloves;
4. Washes the staff member's own hands with soap and running water between 86° F and 110° F before and after each diaper change;
5. Washes each enrolled child's hands with soap and running water between 86° F and 110° F after each diaper change;
6. Cleans, sanitizes, and dries the diaper changing surface following each diaper change; and
7. Uses single-use paper towels from a dispenser to dry the diaper changing surface or the hands of the enrolled child or staff member.

F. A licensee shall ensure that in an activity area with a diaper changing area:

1. The containers required in subsections (A)(3) and (4) are inaccessible, and
2. A staff member:
    a. Documents each diaper change:
        i. For an infant, in the infant's dated, daily, documentation required in R9-5-502(C)(1)(d); or
        ii. For an enrolled child who is not an infant, in a dated diaper changing log.
    b. Maintains the diaper changing log on facility premises for 12 months after the date of the diaper changing log;
    c. Empties clothing soiled with feces into a flush toilet without rinsing;
    d. Places an enrolled child's clothing soiled by feces or urine in a plastic bag labeled with the enrolled child's name, stores the clothing in a container used for this purpose, and sends the clothing home with the enrolled child's parent; and
    e. Removes disposable diapers and disposable training pants from a diaper changing area as needed or at least twice every 24 hours to a waste receptacle outside the facility building.

R9-5-504. Supplemental Standards for 1-year-old and 2-year-old Children

A licensee providing child care services for 1-year-old and 2-year-old children shall:

1. Ensure that a staff member does not permit a 1-year-old or 2-year-old enrolled child who is awake to spend more than 30 minutes of consecutive time in a crib, feeding chair, or other place of confinement;
2. Consult with each enrolled child's parent to develop a plan for individual toilet training of the enrolled child and ensure that a staff member does not force toilet training on any enrolled child;
3. Ensure that each activity area has a supply of age-appropriate toys, materials, and equipment that are too large for a child to swallow and free from sharp edges and points, in a quantity sufficient to meet the needs of the enrolled children in attendance including:
    a. Art supplies,
    b. Books,
    c. Rubber or soft plastic balls,
    d. Puzzles and toys to enhance manipulative skills,
    e. Blocks,
    f. Washable soft toys and dolls,
    g. Musical instruments, and
    h. Indoor and outdoor equipment to enhance large muscle development;
4. Prohibit screen time in an activity area where child care services are provided to a 1-year-old child; and
5. Ensure that:
    a. If finger food is served, the food is of a size and texture that does not present a choking hazard;
    b. A staff member serves food to an enrolled child in a feeding chair or at a table with a chair that allows the enrolled child to reach the food while sitting;
    c. If a child is fed with a bottle, a staff member complies with the requirements in R9-5-502(C)(3); and
    d. If a parent brings a sippy cup for the parent's enrolled child, the sippy cup is labeled with the enrolled child's name.

R9-5-505. Supplemental Standards for 3-year-old, 4-year-old, and 5-year-old Children

A licensee providing child care services for 3-year-old, 4-year-old, and 5-year-old children shall provide a supply of age-appropriate toys, materials, and equipment accessible to enrolled children in each activity area in a quantity sufficient to meet the needs of the enrolled children in attendance including:

1. Art supplies,
2. Blocks,
3. Books and posters,
4. Toys and dress-up clothes,
5. Indoor and outdoor equipment to enhance large muscle development,

6. Puzzles and toys to enhance manipulative and categorization skills,
7. Science materials, and
8. Musical instruments.

R9-5-506. Supplemental Standards for School-age Children

A licensee providing child care services for school-age children shall:

1. Ensure that a staff member supervises an enrolled school-age child to and from a bathroom and allows the enrolled child privacy while in the bathroom;
2. Ensure that if an enrolled child remains in the bathroom for more than three minutes, the supervising staff member checks on the enrolled child to ensure the child's safety;
3. Provide age-appropriate toys, materials, and equipment accessible to enrolled children in each activity area in a quantity sufficient to meet the needs of the enrolled children in attendance including:
   a. Arts and crafts,
   b. Games,
   c. Puzzles and toys to enhance manipulative skills,
   d. Books,
   e. Science materials,
   f. Sports equipment, and
   g. Outdoor play equipment; and
4. Provide enrolled school-age children with a quiet study area.

R9-5-507. Supplemental Standards for Children with Special Needs

A. A licensee providing child care services for a child with special needs shall:

1. Except as provided in subsection (A)(2), before a child with special needs receives child care services, obtain from the enrolled child's parent a copy of an existing individualized plan for the enrolled child that can be reviewed, adopted, and implemented by the licensee when providing child care services to the enrolled child that includes the following as needed for the enrolled child:
   a. Medication schedule;
   b. Nutrition and feeding instructions;
   c. Qualifications required of a staff member who feeds the enrolled child;
   d. Medical equipment or adaptive devices;
   e. Medical emergency instructions;
   f. Toileting and personal hygiene instructions;
   g. Specific child care services to be provided to the enrolled child at the facility;
   h. Information from health care providers, including the frequency and length of any prescribed medical treatment or therapy;

i. Training required of a staff member to care for the enrolled child's special needs; and

j. Participation in fire and emergency evacuation drills;

2. If an enrolled child with special needs does not have an existing individualized plan, obtain from the enrolled child's parent written instructions for providing services to the enrolled child until a written individualized plan required in subsection (A)(1) is developed by a team consisting of staff members, the enrolled child's parent, and health care providers that is completed within 30 calendar days after the enrolled child's initial date of receiving child care services;

3. Maintain an enrolled child's current individualized plan on facility premises and if the current individualized plan was developed according to subsection (A)(2), provide a copy to the enrolled child's parent; and

4. Ensure the individualized plan is updated at least every 12 months after the date of the initial plan or as changes occur.

B. If an enrolled child with special needs who is 18 months of age or older and does not walk is placed in an infant group, a licensee may move the enrolled child after the enrolled child's parent and licensee determine that the proposed move is developmentally-appropriate.

C. A licensee shall ensure that:

1. When tube feeding an enrolled child, a staff member only uses:

   a. Commercially prepackaged formula in a ready-to-use state,

   b. Formula prepared by the enrolled child's parent and brought to the facility in an unbreakable container, or

   c. Breast milk brought to the facility in an unbreakable container; and

2. Only a staff member instructed by an enrolled child's parent or individual designated by the enrolled child's parent:

   a. Feeds the enrolled child using the enrolled child's tube-feeding apparatus, and

   b. Cleans the enrolled child's tube-feeding apparatus.

D. A licensee shall provide an enrolled child with special needs with:

1. Developmentally-appropriate toys, materials, and equipment; and

2. Assistance from staff members to enable the enrolled child to participate in the activities of the facility.

E. In addition to complying with the transportation requirements in R9-5-517, a licensee transporting an enrolled child with special needs in a wheelchair in a facility's motor vehicle shall ensure that:

1. The enrolled child's wheelchair is manufactured to be secured in a motor vehicle;

2. The enrolled child's wheelchair is secured in the motor vehicle using a minimum of four anchorages attached to the motor vehicle floor, and four securement devices, such as straps or webbing that have buckles and fasteners, that attach the wheelchair to the anchorages;

3. The enrolled child is secured in the wheelchair by means of a wheelchair restraint that is a combination of pelvic and upper body belts intended to secure a passenger in a wheelchair; and
4. The enrolled child's wheelchair is placed in a position in the motor vehicle that does not prevent access to the enrolled child in the wheelchair or passage to the front and rear in the motor vehicle.

F. A licensee providing child care services for an enrolled child who uses a wheelchair or is not able to walk shall locate the enrolled child on the ground floor of the facility.

G. If a child care facility requires a separate diaper changing area to allow privacy while providing diapering to an enrolled child with special needs, the licensee shall submit a written request for approval of the intended change to the Department according to R9-5-208 prior to adding a diaper changing area.

R9-5-508. General Nutrition Standards

A. A licensee shall:
1. Make breakfast available to an enrolled child who is present at a facility before 8:00 a.m.,
2. Serve lunch to an enrolled child who is present at a facility between 11:00 a.m. through 1:00 p.m., and
3. Serve dinner to an enrolled child who is present from 5:00 p.m. through 7:00 p.m. and who will remain at the facility after 7:00 p.m.

B. A licensee shall serve the following meals or snacks to an enrolled child present at a facility for the following periods of time:
1. If an enrolled child is present two to four hours, one or more snacks;
2. If an enrolled child is present during any of the meal times stated in subsection (A), a meal that meets the meal pattern requirements in subsection (C);
3. If an enrolled child is present four to eight hours, one or more snacks and a meal;
4. If an enrolled child is present nine or more hours, two snacks and one or more meals; and
5. Before bedtime, one snack.

C. If a licensee provides food, a licensee shall prepare and serve food according to the meal pattern requirements found in Table 5.1, "Meal Pattern Requirements for Children."

D. If an enrolled child's parent provides food for the parent's enrolled child, the licensee shall provide milk or juice to the enrolled child if not provided by the parent.

E. If a licensee plans and serves meals, the licensee shall ensure that the meals:
1. Meet the age-appropriate nutritional requirements of an enrolled child; and
2. For each calendar week, provide a variety of foods within each food group from the meal pattern requirements.

F. If a licensee provides food, the licensee shall maintain on the facility premises at least a one day supply of food needed to provide the meals and snacks required by subsections (B) and (C) to each enrolled child attending the facility.

G. In addition to the required daily servings of food stated in subsection (C), a licensee:

1. Shall make second servings of food available to each enrolled child at meals and at snack time,
2. May substitute a food that is equivalent to a specific food component if second servings of the specific food component are not available, and
3. Shall ensure that a food substitution in subsection (G)(2) is written on the posted weekly menu by the end of the meal or snack service.

Table 5.1 Meal Pattern Requirements for Children

TABLE OF MEAL PATTERN REQUIREMENTS FOR CHILDREN			
Food Components	Ages 1 through 2 years	Ages 3 through 5 years	Ages 6 and Older
Breakfast:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable, fruit, or both	1/4 cup	1/2 cup	1/2 cup
3. Grains	1/2 oz. eq[1]	1/2 oz. eq[1]	1 oz. eq[1]
Lunch or Supper:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetables	1/8 cup	1/4 cup	1/2 cup
Fruits	1/8 cup	1/4 cup	1/4 cup
3. Grains	1/2 oz. eq[1]	1/2 oz. eq[1]	1 oz. eq[1]
4. Meat or meat alternates	1 oz.	1 1/2 oz.	2 oz.
Snack: (select 2 of these 4 components)***			
1. Milk, fluid	1/2 cup	1/2 cup	1 cup
2. Vegetables	1/2 cup	1/2 cup	3/4 cup

Fruits	1/2 cup	1/2 cup	3/4 cup
3. Grains	1/2 oz.	1/2 oz.	1 oz.
4. Meat or meat alternates	1/2 oz.	1/2 oz.	1 oz.

[1] Meat and meat alternates may be used to substitute the entire grains component a maximum of three times per week. Oz eq = ounce equivalents

* In the same meal service, dried beans or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components.

** At lunch and supper, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat or meat alternative to fulfill the requirement. Two tablespoons of nut butter or one ounce of nuts or seeds equals one ounce of meat.

*** Juice may not be served when milk is served as the only other component.

R9-5-509. General Food Service and Food Handling Standards

A. A licensee that prepares food for enrolled children on facility premises shall, if required by 9 A.A.C. 8, Article 1, and the local ordinances of the local health department where the facility is located, obtain a food establishment permit issued under 9 A.A.C. 8, Article 1, and:

1. Provide the Department with a copy of the facility's food establishment permit before the Department issues a license to the facility,
2. Maintain the facility's current food establishment permit on the facility's premises, and
3. Provide a copy of the facility's current food establishment permit to the Department upon request.

B. If a licensee contracts with a food establishment to prepare and deliver food to the facility, the licensee shall obtain and provide the Department with a copy of the food establishment's permit, issued under 9 A.A.C. 8, Article 1, at the following times:

1. Before the Department issues a license to the facility,
2. Upon contracting with the food establishment, and
3. Every 12 months after the date the contract is entered into while the contract is in effect.

C. A licensee shall ensure that:

1. Enrolled children, except infants and children with special needs who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
2. A staff member:
   a. Washes the hands of an infant or a child with special needs who cannot wash the child's own hands before and after the infant or child with special needs handles or eats food using:

i. A washcloth,
ii. A single-use paper towel, or
iii. Soap and running water; and

b. If using a washcloth, uses each washcloth on only one child and only one time before it is laundered or discarded;

3. An enrolled child is not permitted to eat food directly off the floor, carpet, or ground or with utensils placed directly on the floor, carpet, or ground;
4. A staff member encourages, but never forces, enrolled children to eat food;
5. A staff member assists each enrolled child who needs assistance with eating;
6. A staff member teaches self-feeding skills and habits of good nutrition to each enrolled child as necessary;
7. Lunch and dinner are family-style meals as demonstrated by at least one of the following:
   a. Food is served from a serving container on the table where enrolled children are seated;
   b. Enrolled children serve themselves, independently or with the help of a staff member, from a serving container on the table where enrolled children are seated;
   c. Enrolled children pass a serving container from individual to individual;
   d. In a facility where lunch or dinner is provided by the facility, a staff member sits at the table and eats the lunch or dinner with enrolled children; or
   e. In a facility where each enrolled child brings the enrolled child's own lunch or dinner, a staff member sits at the table with the enrolled children and eats the staff member's own lunch or dinner;
8. Fresh milk is served from the original, commercially filled container, to a container used for meal service or a cup, and unused portions are not returned to the original container;
9. Milk served to an enrolled child older than two years of age is fat-free or 1% lowfat milk unless the enrolled child's parent requests otherwise;
10. Reconstituted dry milk is not served to meet the fluid milk requirement;
11. Juice served to children for a meal or snack is full-strength 100% vegetable or 100% fruit juice from an original, commercially filled container or reconstituted from a concentrate according to manufacturer instructions;
12. Fruit juice served to an enrolled child is limited to the following amounts:
    a. For an enrolled child younger than six years of age, four ounces per day; or
    b. For an enrolled child six years of age or older, six ounces per day;
13. A beverage sweetened with any kind of sugar product is not provided by the facility;
14. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent or health care provider, and the modified diet is posted in the kitchen and in the child's activity area;

15. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent or health care provider;
16. An enrolled child is not permitted in the kitchen during food preparation or food service except as part of an activity;
17. An enrolled child does not use the kitchen or a food storage area as a passageway;
18. A staff member:
    a. Prepares a weekly menu at least one week in advance,
    b. Includes on the menu the specific foods to be served on each day,
    c. Dates each menu,
    d. Posts each menu at least one day before the first meal on the menu will be served, and
    e. Writes food substitutions on a posted menu no later than the morning of the day of meal service;
19. Non-single-use utensils and equipment used in preparing, eating, or drinking food are:
    a. After each use:
        i. Washed in an automatic dishwasher and air dried or heat dried; or
        ii. Washed in hot soapy water, rinsed in clean water, sanitized, and air dried or heat dried; and
    b. Stored in a clean area protected from contamination;
20. Single-use utensils and equipment are disposed of after being used;
21. Perishable foods are covered and stored in a refrigerator at a temperature of 41° F or below;
22. A refrigerator at the child care facility maintains a temperature of 41° F or below, as shown by a thermometer kept in the refrigerator at all times;
23. A freezer at the child care facility maintains a temperature of 0° F or below, as shown by a thermometer kept in the freezer at all times; and
24. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:
    a. Cold held at a temperature of 45° F or below or hot held at a temperature of 130° F or above until served, or
    b. Cold held at a temperature of 45° F or below and then reheated to a temperature of at least 165° F before being served.

R9-5-510. Discipline and Guidance

A. A licensee shall ensure that a staff member:

1. Defines and maintains consistent and reasonable guidelines and limitations for an enrolled child's behavior;
2. Teaches, models, and encourages orderly conduct, personal control, and age-appropriate behavior;
3. Explains to an enrolled child why a particular behavior is not allowed, suggests an alternative, and assists the enrolled child to become engaged in an alternative activity; and

4. After determining that an enrolled child's behavior may result in harm to self or others, holds the enrolled child until the enrolled child regains control or composure.

B. A licensee shall ensure that a staff member does not use or permit:

1. A method of discipline that could cause harm to the health, safety, or welfare of an enrolled child;
2. Corporal punishment;
3. Abusive language;
4. Discipline associated with:
   a. Eating, napping, sleeping, or toileting;
   b. Medication; or
   c. Mechanical restraint; or
5. Discipline administered to any enrolled child by another enrolled child.

C. A licensee may allow a staff member to separate an enrolled child from other enrolled children for unacceptable age-appropriate behavior.

1. The separation period shall be for no longer than three minutes after the enrolled child has regained control or composure.
2. A staff member shall not allow an enrolled child to be separated for longer than 10 minutes without the staff member interacting with the enrolled child.

R9-5-511. Sleeping and Napping

A. A licensee shall provide each enrolled child who naps or sleeps at the facility with a separate cot or mat or a crib that meets the requirements of R9-5-502(A)(8) and ensure that:

1. A cot, mat, or crib used by the enrolled child accommodates the enrolled child's height and weight;
2. A staff member covers each cot, crib mattress, or mat with a clean sheet that is laundered when soiled, or at least once every seven days and before use by a different enrolled child;
3. A clean blanket or sheet is available for each enrolled child;
4. A rug, carpet, blanket, or towel is not used as a mat; and
5. Each cot, mat, or crib is maintained in a clean and repaired condition.

B. A licensee shall not use bunk beds or waterbed mattresses.

C. A licensee shall provide an unobstructed passageway at least 18 inches wide between each row of cots or mats to allow a staff member access to each enrolled child.

D. A licensee shall ensure that if an enrolled child is present at the facility during evening and nighttime hours, the licensee:

1. Permits the enrolled child to use a mat only when used on top of a cot;
2. Before bathing the enrolled child at the facility, obtains written consent and bathing instructions from the enrolled child's parent and follows the instructions when bathing the enrolled child;

3. Requires that a staff member cleans and sanitizes a bathtub or shower stall after bathing each enrolled child;
4. Requires that a staff member remains awake while supervising the sleeping enrolled child; and
5. Prohibits the operation of a television set in a room where the enrolled child is sleeping.

E. A licensee shall ensure that if an enrolled child is present at the facility during naptime, the licensee:

1. Does not permit the enrolled child to lie in direct contact with the floor while napping,
2. Prohibits the operation of a television set in a room where the enrolled child is napping,
3. Ensures naptime accommodations are available for the enrolled school-age child if requested by the enrolled child or the enrolled child's parent,
4. Requires that a staff member remain awake while supervising the enrolled sleeping child, and
5. Prohibits the enrolled child from napping in an attic or a loft during naptime.

F. A licensee shall ensure that storage space is provided in the facility for cots, mats, sheets, and blankets, that is:

1. Accessible to an area used for naptime or sleeping; and
2. Separate from food service and preparation areas, toilet rooms, and laundry rooms.

R9-5-512. Cleaning and Sanitation

A. A licensee shall maintain facility premises free of insects and vermin.

B. A licensee shall maintain facility premises and furnishings:

1. In a clean condition, and
2. Free from odor.

C. A licensee shall ensure that floor coverings are:

1. Clean, and
2. Free from:
   a. Dampness,
   b. Odors, and
   c. Hazards.

D. A licensee shall ensure that toilet bowls, lavatory fixtures, and floors in toilet rooms and kitchens are cleaned and sanitized as often as necessary to maintain them in a clean and sanitized condition or at least once every 24 hours.

E. If laundry belonging to a facility is done on facility premises, a licensee shall:

1. Not use a kitchen or food storage area for sorting, handling, washing, or drying laundry;
2. Locate the laundry equipment in an area that is separate from licensed activity areas and inaccessible to enrolled children;
3. Not permit an enrolled child to be in a laundry room or use a laundry area as a passageway for enrolled children; and

4. Ensure that laundry soiled by vomitus, urine, feces, blood, or other body fluid is stored, cleaned, and sanitized separately from other laundry.

F. A licensee shall ensure that:

1. Each toilet room in a facility contains, within easy reach of enrolled children:
   a. Mounted toilet tissue; and
   b. Except as provided in subsection (G):
      i. A sink with running water;
      ii. Soap contained in a dispenser; and
      iii. Disposable, single-use paper towels in a mounted dispenser, or a mechanical air hand dryer;
2. Staff members wash their hands with soap and running water after toileting;
3. An enrolled child's hands are washed with soap and running water after toileting;
4. Except for a cup or receptacle used only for water, food waste is stored in a covered container and the container is clean and lined with a plastic bag;
5. Food waste and other refuse is removed from the facility building at least once every 24 hours or more often as necessary to maintain a clean condition and avoid odors;
6. A staff member or an enrolled child does not draw water for human consumption from a toilet room handwashing sink;
7. Toys, materials, and equipment are maintained in a clean condition;
8. Plumbing fixtures are maintained in a clean and working condition; and
9. Chipped or cracked sinks and toilets are replaced or repaired.

G. A licensee may have a sink with running water, soap contained in a dispenser, and single-use paper towels in a mounted dispenser or a mechanical air hand dryer located directly outside a toilet room if an enrolled child exiting the toilet room can access the sink, soap, and paper towels or air hand dryer without having to cross space that is used for any activity.

R9-5-513. Pets and Animals

A. A licensee shall maintain written documentation of current immunization against rabies for each ferret, dog, or cat owned by a licensee or staff member that is present on facility premises.

B. A licensee shall ensure that a staff member:

1. Keeps all pet and animal habitats clean;
2. Prohibits reptiles, such as turtles, iguanas, snakes, and lizards, in the facility;
3. Prohibits birds in food preparation and eating areas;
4. Keeps pets and animals clean;
5. Prohibits pets and animals from endangering an enrolled child, staff member, or other individual on facility premises; and

6. Keeps birds and animals such as horses, sheep, cattle, and poultry in an enclosure that is not accessible to an enrolled child except as part of an activity.

R9-5-514. Accident and Emergency Procedures

A. A licensee shall ensure that there is a first aid kit on facility premises that contains first aid supplies in a quantity sufficient to meet the needs of the enrolled children including the following:

1. Sterile bandages including:
   a. Adhesive bandages of assorted sizes,
   b. Sterile gauze pads, and
   c. Sterile gauze rolls;
2. Antiseptic solution or sealed antiseptic wipes;
3. A pair of scissors;
4. Adhesive tape;
5. Single-use, non-porous gloves; and
6. Reclosable plastic bags of at least one-gallon size.

B. A licensee shall ensure that the first aid kit required in subsection (A) is accessible to staff members but inaccessible to enrolled children.

C. A licensee shall:

1. Prepare and date a written fire and emergency plan that contains:
   a. The location of the first aid kit;
   b. The names of staff members who have the first aid training required by R9-5-403(E);
   c. The names of staff members who have the CPR training required by R9-5-403(E);
   d. The directions for:
      i. Initiating verbal notification of an enrolled child's parent by telephone or other equally expeditious means within 30 minutes of a fire or emergency, and
      ii. Providing written notification to the enrolled child's parent within 24 hours, and
   e. The facility's street address and the emergency telephone numbers for the local fire department, police department, ambulance service, and poison control center;
2. Maintain the plan required in subsection (C)(1) in a location on facility premises that has an operable telephone service or two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out operable telephone service;
3. Post the plan required in subsection (C)(1) in any indoor activity area that does not have an operable telephone service or two-way voice communication system that connects the indoor activity area with an individual who has direct access to an in-and-out operable telephone services; and

4. Update the plan in subsection (C)(1) every 12 months after the date of initial preparation of the plan or when any information changes.

D. A licensee shall post, near an activity area or a room's designated exit, a building evacuation plan that details the designated exits from the activity area or room and the facility.

E. A licensee shall maintain and use a communication system that contains:

1. A direct-access, in-and-out, operating telephone service at the facility; or
2. A two-way voice communication system that connects the facility with an individual who has direct access to an in-and-out, operating telephone service.

F. If while attending a facility an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, requires medical treatment by a health care provider, a licensee shall ensure that a staff member:

1. Notifies the enrolled child's parent immediately after the accident, injury, or emergency;
2. Documents:
   a. A description of the accident, injury, or emergency, including the date, time, and location of the accident, injury, or emergency;
   b. The method used to notify the enrolled child's parent; and
   c. The time the enrolled child's parent was notified; and
3. Maintains documentation required in subsection (F)(2) on facility premises for 12 months after the date of the child's disenrollment.

G. If an enrolled child's parent informs a staff member at the facility that the enrolled child's parent obtained medical treatment from a health care provider for an accident, injury, or emergency the enrolled child had while attending the facility, a licensee shall ensure that a staff member:

1. Documents any information about the enrolled child's accident, injury, or emergency received from the enrolled child's parent; and
2. Maintains documentation required in subsection (G)(1) on facility premises for 12 months after the date of the child's disenrollment.

R9-5-515. Illness and Infestation

A. A licensee shall not permit an enrolled child to remain at the facility if a staff member determines that the enrolled child shows signs of illness or infestation.

B. If an enrolled child exhibits signs of illness or infestation at a facility, a licensee shall ensure that a staff member:

1. Immediately separates the enrolled child from other enrolled children,
2. Immediately notifies the enrolled child's parent by telephone or other expeditious means to arrange for the enrolled child's removal from the facility, and

3. Maintains documentation of the notification on facility premises for 12 months after the date of the notification.

C. A licensee shall ensure that a staff member who has signs of illness or infestation is excluded from a facility.

D. A facility director shall not permit a staff member to return to a facility until free from signs of illness or infestation or until the staff member provides documentation by a health care provider that the individual may return to the facility.

E. If a staff member or enrolled child contracts a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, a licensee shall ensure that, within 24 hours of notice of the communicable disease or infestation, written notice is provided to each staff member, parent, and the local health department.

F. A licensee shall ensure that:

1. A dated, written notice of the communicable disease or infestation is prepared and posted in the facility's entrance as required by R9-5-303;
2. Documentation of the notification is maintained on facility premises for 12 months from the date of the notification; and
3. Documentation of the absences of staff members and enrolled children due to a communicable disease or infestation listed in 9 A.A.C. 6, Article 2, Table 2, is prepared and maintained on facility premises for 12 months from the first date of absence.

R9-5-516. Medications

A. A licensee shall ensure that a written statement is prepared and maintained on facility premises that specifies:

1. Whether prescription or nonprescription medications are administered to enrolled children; and
2. If prescription or nonprescription medications are administered, the requirements in subsection (B) for administering the prescription or nonprescription medications.

B. If prescription or nonprescription medications are administered, a licensee shall ensure that:

1. A facility director, or a staff member designated in writing by the facility director, is responsible for the administration of all medications in the facility, including storing, supervising an enrolled child's ingestion of a medication, and documenting all medications administered to an enrolled child;
2. A facility director ensures that only one staff member in the facility at any given time is responsible for the administration of medications;
3. A facility director, or a staff member designated in writing by the facility director, does not administer a medication to an enrolled child unless the facility receives written authorization signed by the enrolled child's parent or health care provider that includes the:
   a. Name of the enrolled child;
   b. Type of the medication;
   c. Prescription number, if any;

d. Instructions for administration specifying the:
   i. Dosage and route of administration;
   ii. If indicated, starting and ending dates of the dosage period; and
   iii. Times and frequency of administration;
e. Reason for the medication; and
f. Date of authorization; and

4. A staff member:
   a. Administers a prescription medication provided by a parent only from a container dispensed by a pharmacy;
   b. Administers a nonprescription medication provided by a parent for an enrolled child only from a container prepackaged and labeled for use by the manufacturer and labeled with the enrolled child's name;
   c. Does not administer any medication that has been transferred from one container to another; and
   d. Does not administer a nonprescription medication to an enrolled child inconsistent with the instructions on the nonprescription medication's label, unless the facility receives written authorization from the enrolled child's health care provider.

C. A licensee shall allow an enrolled child to receive an injection only after obtaining a written authorization from a health care provider.

D. A licensee shall maintain the health care provider's written authorization required in subsection (C) on facility premises for 12 months after the date of the written authorization.

E. An individual authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).

F. A licensee shall maintain documentation of all medications administered to an enrolled child.

1. Documentation shall contain:
   a. The name of the enrolled child;
   b. The name and amount of medication administered and the prescription number, if any;
   c. The date and time the medication was administered; and
   d. The signature of the staff member who administered the medication to the enrolled child; and
2. A licensee shall maintain the documentation on facility premises for 12 months after the date the medication is administered.

G. A licensee shall return all unused prescription and nonprescription medications to a parent when the medication prescription date has expired or the medication is no longer being administered to the enrolled child or dispose of the medication if unable to locate the enrolled child's parent after the child's disenrollment.

H. Except as provided in subsection (J), a licensee shall ensure that prescription and nonprescription medications are stored as follows:

1. An enrolled child's medication is kept in a locked, leak-proof storage cabinet or container that is used only for storing enrolled children's medications and is located out of reach of children;
2. Medication for a staff member is kept in a locked, leak-proof storage cabinet or container that is separate from the storage container for enrolled children's medications and is located out of reach of children; and
3. Medications requiring refrigeration are kept in a locked, leak-proof container in a refrigerator.

I. Except as specified in A.R.S. § 36-2229(B) through (D), a licensee shall ensure that a facility does not stock a supply of medications for administration to enrolled children, including:

1. Any prescription medication; or
2. A nonprescription medication such as aspirin, acetaminophen, ibuprofen, or cough syrup.

J. A staff member's or enrolled child's prescription medication necessary to treat life-threatening symptoms:

1. May be kept in the activity area where the staff member or enrolled child is present; and
2. Except when the prescription medication is administered to treat life-threatening symptoms, is inaccessible to an enrolled child.

K. A licensee of a licensed child care facility owned and located on a public school premises shall ensure that enrolled school-aged children are allowed to possess emergency medications and self-administer auto-injectable epinephrine and handheld inhaler devices according to A.R.S. § 15-341, if an enrolled school-aged child:

1. Has a written prescription from a physician,
2. Is named on the prescription label, and
3. Has written documentation from the enrolled school-aged child's parent approving the enrolled school-aged child to possess and self-administer emergency medication.

R9-5-517. Transportation

A. A licensee who transports an enrolled child in a motor vehicle that the licensee owns, or acquires for use by contract, shall:

1. Obtain dated, written permission from the enrolled child's parent before the licensee transports the enrolled child;
2. Maintain written permission required in subsection (A)(1) on facility premises for 12 months after the date on the written permission;
3. Ensure that the motor vehicle is registered by the Arizona Department of Transportation as required by A.R.S. Title 28, Chapter 7;
4. Maintain documentation of current motor vehicle insurance coverage inside the motor vehicle;
5. Contact the Department no later than 24 hours after a motor vehicle accident that occurs while transporting an enrolled child;

6. Submit a written report to the Department within seven calendar days after a motor vehicle accident that occurs while transporting an enrolled child;
7. Not permit an enrolled child to be transported in a truck bed, camper, or trailer attached to a motor vehicle;
8. Use a child passenger restraint system, as required by A.R.S. § 28-907, for each enrolled child who is:
   a. Under eight years of age, and
   b. Not more than four feet nine inches tall.
9. Ensure that the motor vehicle has:
   a. A working mechanical heating system capable of maintaining a temperature throughout the motor vehicle of at least 60° F when outside air temperatures are below 60° F;
   b. Except as provided in subsection (E), a working air-conditioning system capable of maintaining a temperature throughout the motor vehicle at or below 86° F when outside air temperatures are above 86° F;
   c. Except as provided in subsection (F), a first aid kit that meets the requirements of R9-5-514(A);
   d. Two large, clean towels or blankets; and
   e. Sufficient drinking water available to meet the needs of each enrolled child in the motor vehicle and sufficient cups or other drinking receptacles so that each enrolled child can drink from a different cup or receptacle;
10. Ensure that the motor vehicle is:
    a. Maintained in a clean condition,
    b. In a mechanically safe condition, and
    c. Free from hazards; and
11. Maintain the service and repair records of the motor vehicle as follows:
    a. A person operating a single child care facility shall maintain the service and repair records for at least 12 months after the date of an inspection or repair in a single location on facility premises;
    b. A public or private school that uses a school bus, as defined in A.R.S. § 28-101, shall maintain the service and repair records for the school bus as provided in A.A.C. R17-9-108(F); and
    c. A school governing board, charter school, or person operating multiple child care facilities shall maintain the service and repair records for any motor vehicle other than a school bus for at least 12 months after the date of an inspection or repair in a single administrative office located in the same city, town, or school attendance area as the facility.

B. A licensee shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:

1. Is 18 years of age or older;
2. Holds a valid driver's license issued by the Arizona Department of Motor Vehicles as prescribed by A.R.S. Title 28, Chapter 8;

3. Carries a list stating the name of each enrolled child being transported and a copy of each enrolled child's Emergency, Information, and Immunization Record card including the attached immunization record or exemption affidavit, in the motor vehicle;
4. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
5. Does not permit an enrolled child to be seated in front of a motor vehicle's air bag;
6. Requires that each enrolled child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
7. Except as provided in subsection (E), requires that each enrolled child be secured in a seat belt before the motor vehicle is set in motion and while the motor vehicle is in motion;
8. Does not permit an enrolled child to open or close a door or window in the motor vehicle;
9. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
10. Ensures that each enrolled child is loaded into or unloaded from the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose; and
11. Does not use audio headphones or a telephone while the motor vehicle is in motion.

C. When transporting an enrolled school-age child in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled school-age child in a motor vehicle, if the motor vehicle driver meets the qualifications of a teacher-caregiver.

D. When transporting an enrolled child who is not school-age in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled child who is not school-age in a motor vehicle, only if four or fewer enrolled children are being transported and the motor vehicle driver meets the qualifications of a teacher-caregiver.

E. A licensee who is transporting an enrolled child in a commercial vehicle, as defined in A.R.S. § 28-1301, is exempt from the provisions in subsections (A)(9), (A)(10)(b), and (B)(7).

F. A licensee who is transporting an enrolled child in a school bus, as defined in A.R.S. § 28-101, is exempt from the provision in subsection (A)(10)(c) and shall comply with A.A.C. R17-9-110.

R9-5-518. Field Trips

A. A licensee providing a field trip for an enrolled child shall:

1. Obtain written permission from a parent before the enrolled child participates in a field trip including:
   a. The date and description of the field trip;
   b. The times of departure from and return to the facility; and

c. The name, street address, and telephone number, if any, of the field trip destination;

2. Prepare a written field trip plan including:
   a. The name of each participating enrolled child, staff member, and other individuals on the field trip;
   b. The times of departure from and return to the facility;
   c. If applicable, license plate number of any motor vehicle used on the field trip; and
   d. The name, street address, and telephone number, if any, of the field trip destination; and
3. Maintain the written permission in subsection (A)(1) and written field trip plan in subsection (A)(2) on facility premises for 12 months after the date of the field trip.

B. A licensee shall ensure that a staff member taking enrolled children on a field trip carries the following on the field trip:

1. A copy of the Emergency, Information, and Immunization Record card including the attached immunization record or exemption affidavit, of each enrolled child participating in the field trip;
2. A copy of the written field trip plan required in subsection (A)(2);
3. A list stating the name of each participating enrolled child; and
4. Sufficient water to meet the needs of each enrolled child participating in the field trip.

C. A staff member shall verify the presence of each enrolled child and place a checkmark next to the enrolled child's name on the list required in subsection (B)(3) for each enrolled child who is present at the following times:

1. At the beginning of the field trip or when boarding the motor vehicle,
2. Upon arrival and each hour while at the field trip destination,
3. When preparing to leave the field trip destination or when boarding the motor vehicle to return to the facility, and
4. When reentering the facility at the conclusion of the field trip.

D. A licensee shall ensure that each enrolled child participating in a field trip is wearing in plain view a written identification stating the facility's name, address, and telephone number.

E. A licensee shall also ensure that each enrolled child is wearing out of view a written identification stating the enrolled child's name.

F. If a licensee uses a motor vehicle volunteered by a parent or other individual for a field trip, a licensee shall determine before the field trip begins that the motor vehicle is in compliance with R9-5-517(A)(3) and (4) and that the motor vehicle driver is in compliance with R9-5-517(B)(1) and (2).

G. When six or more enrolled children are participating in a field trip, a licensee shall ensure that a teacher-caregiver and at least one additional staff member are present on the field trip.

ARTICLE 6. PHYSICAL PLANT OF A FACILITY

R9-5-601. General Physical Plant Standards

A licensee shall comply with the following physical plant requirements:

1. When a facility is licensed to care for more than five infants in an infant room as described in R9-5-502(A)(1), each infant room has two or more designated exits from the room;
2. Not including infants and children who use diapers, toilets and hand-washing sinks are available to enrolled children in a facility as follows:
   a. At least one flush toilet and one hand-washing sink for 10 or fewer children,
   b. At least two flush toilets and two hand-washing sinks for 11 to 25 children, and
   c. At least one flush toilet and one hand-washing sink for each additional 20 children;
3. A hand-washing sink required in R9-5-503(A)(2) or subsection (2) provides running water with a drain connected to a sanitary sewer as defined in A.R.S. § 45-101;
4. Except as provided in subsection (5), when providing child care services for infants or children who require diapering, a diaper changing area that meets the requirements in R9-5-503 is available in each infant room or indoor activity area used by an enrolled infant or child who wears diapers or disposable training pants;
5. A diaper changing area is not required in an activity area that is:
   a. Only used by enrolled children for snacks or meals,
   b. Used for a specific activity by enrolled children who are two years of age or older, or
   c. An indoor activity area that is being substituted for an outdoor activity area under R9-5-602(D); and
6. A glass mirror, window, or other glass surface that is located within 36 inches of the floor is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken, or is shielded by a barrier to prevent impact by or physical injury to an enrolled child.

R9-5-602. Facility Square Footage Requirements

A. A licensee shall ensure that the facility meets the following square footage requirements for indoor activity areas based on the child care services classifications:

1. At least 35 square feet of indoor activity space for each infant and 1-year-old child;
2. At least 25 square feet of indoor activity space for each child who is not an infant or 1-year-old child; and
3. When 1-year-old children are grouped together with children older than 1-year-old children in the same activity area, at least 35 square feet of indoor activity space for each child.

B. When computing indoor activity space for subsections (A)(1) through (3) to determine licensed capacity, the floor space occupied by the following shall be excluded:

1. The interior walls;
2. A kitchen, bathroom, closet, hallway, stair, entryway, office, a room designated for isolating an enrolled child from other children, storage rooms, and a room designated for the sole use of child care staff; and

3. Room space occupied by teacher-caregiver desks, file cabinets, storage cabinets, and hand washing sinks for staff use.

C. To provide activities that develop large muscles and an opportunity to participate in structured large muscle physical activities, a licensee shall:

1. Provide at least 75 square feet of outdoor activity area per child for at least 50% of the facility's licensed capacity, or
2. Comply with one of the following:
   a. If no enrolled child attends the facility for more than four hours per day, provide at least 50 square feet of indoor activity area for each child, based on the facility's licensed capacity;
   b. If no enrolled child attends the facility for more than six hours per day, provide at least 75 square feet of indoor activity area per child for at least 50% of the facility's licensed capacity in addition to the indoor activity area required in subsection (A); or
   c. Provide at least 37.5 square feet of outdoor activity area and 37.5 square feet of indoor activity area per child for at least 50% of the facility's licensed capacity in addition to the indoor activity area required in subsection (A).

D. A licensee substituting indoor activity area for outdoor activity area shall:

1. Designate, on the site plan and the floor plan submitted with the license application or request for approval of an intended change, the indoor activity area that is being substituted for an outdoor activity area; and
2. In the indoor activity area substituted for outdoor activity area, install and maintain a mat or pad designed to provide impact protection in the fall zone of indoor swings and climbing equipment.

E. An indoor activity area that is substituted for an outdoor activity area is not assigned a licensed capacity.

F. The Department shall review and approve or deny the request for exemption or substitution.

1. For a request that is part of a license application, the Department shall review the proposed exemption or substitution and provide written notice according to the procedures in R9-5-202.
2. For a licensed facility, within 30 calendar days after the date of the receipt of the request, the Department shall review the proposed exemption or substitution and provide written notice of the review to the licensee. If the proposed exemption or substitution:
   a. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter, the Department shall approve the proposed exemption or substitution; or
   b. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter, the Department shall provide the licensee with the requirements necessary to approve the requested exemption or substitution.
3. A licensee shall provide at least 75 square feet of outdoor activity area per child for 50% of the facility's licensed capacity, until the Department approves the exemption or substitution.

R9-5-603. Outdoor Activity Areas

A. Except as provided in subsection (B), a licensee shall not permit an enrolled child to cross a driveway or parking lot to access an outdoor activity area on the facility premises or a school campus unless the licensee obtains written approval from the Department.

B. If a licensee requests approval from the Department for enrolled children to cross a driveway or parking lot to access an outdoor activity area, the Department shall inspect the facility premises or school campus to determine whether the health, safety, or welfare of enrolled children would be endangered. The Department shall notify the licensee of approval or disapproval within 30 calendar days of receipt of the request. If disapproved, the Department shall provide the licensee with the requirements necessary to approve the proposed crossing.

C. Except as provided in subsection (D), a licensee shall ensure that an outdoor activity area:

1. Is enclosed by a fence:
    a. A minimum of 4 feet high,
    b. Secured to the ground, and
    c. With either vertical or horizontal open spaces on the fence or gate that do not exceed 4.0 inches;
2. Is maintained free from hazards, such as exposed concrete footings and broken toys; and
3. Has gates that are kept closed while an enrolled child is in the outdoor activity area.

D. A licensee shall ensure that a playground used only for enrolled school age children at a facility operating at a public school meets the fencing requirements of the public school. If the Department determines by inspection that a facility fence at a public school does not ensure the health, safety, or welfare of enrolled children, the licensee shall meet the fencing requirements of subsection (C).

E. A licensee shall ensure that the following is provided and maintained within the fall zones of swings and climbing equipment in an outdoor activity area:

1. A shock-absorbing unitary surfacing material manufactured for such use in outdoor activity areas; or
2. A minimum depth of 6 inches of a nonhazardous, resilient material such as fine loose sand or wood chips.

F. A licensee shall ensure that hard surfacing material such as asphalt or concrete is not installed or used under swings or climbing equipment unless used as a base for a rubber surfacing.

G. A licensee shall ensure that a swing or climbing equipment is not located in the fall zone of another swing or climbing equipment.

H. A licensee shall provide a shaded area for each enrolled child occupying an outdoor activity area at any time of day.

R9-5-604. Swimming Pools

A. If a licensee uses a public or semi-public swimming pool for an enrolled child, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by local government. If no ordinance has been adopted, the swimming pool shall meet the requirements in A.A.C. R9-8-801 through R9-8-813.

B. A licensee that uses a private pool for an enrolled child shall ensure that the swimming pool and its equipment meet the following requirements:

1. If a licensee uses a private pool that is a minimum of 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of the swimming pool ordinance enacted by local government and, at a minimum, be equipped with the following:
    a. A recirculation system consisting of piping, pumps, filters, and water conditioning and disinfecting equipment that conforms to the swimming pool manufacturer's specifications for installation and operation, and is adequate to clarify and disinfect the pool water continuously;
    b. Two swimming pool inlets located on opposite sides of the swimming pool to produce uniform circulation of water and maintain uniform chlorine residual throughout the entire swimming pool without the existence of dead spots;
    c. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed by bathers;
    d. A swimming pool water vacuum system in operating condition;
    e. A removable strainer to prevent hair, lint, or other objects from reaching the pump and filter;
    f. An automatic mechanical water disinfectant system in use and in operating condition. The disinfecting agents shall maintain the swimming pool water as follows:
        i. A free chlorine level between 1.0 and 3.0 parts per million as tested by the diethyl-p-phenylene diamine method or 0.4 to 1.0 parts per million when tested by the orthotolidine method;
        ii. A pH level between 7.0 and 8.0 as tested by the diethyl-p-phenylene diamine method or the orthotolidine method; or
        iii. A bromine level between 2.0 and 4.0 parts per million as tested by the diethyl-p-phenylene diamine method;
    g. A shepherd's crook; and
    h. A ring buoy attached to a 1/2 inch diameter rope at least 25 feet in length;
2. If a licensee uses a private pool that is less than 2 feet in depth for enrolled children, the swimming pool shall meet the requirements of subsection (B)(1) except that:
    a. The swimming pool shall have a minimum of one swimming pool inlet;
    b. The swimming pool is not required to have a bottom drain;
    c. A pool water vacuum cleaning system is not required, and
    d. A ring buoy with attached rope is not required;
3. A portable pool that does not meet the requirements of subsection (B)(1) or (2) is prohibited;

4. On each day an enrolled child uses the swimming pool, a licensee shall test the water in the swimming pool at least once every day to verify that the swimming pool water meets the swimming pool water chemical ranges in subsection (B)(1)(f);
5. A licensee shall create a written swimming pool log and:
    a. Document the results of tests required in subsection (B)(4) in the written swimming pool log;
    b. Have the written swimming pool log at the swimming pool site while enrolled children are using the swimming pool; and
    c. Maintain the written swimming pool log on facility premises for three months after the last date the swimming pool water was tested and documented; and
6. If the swimming pool water does not meet the swimming pool water chemical ranges in subsection (B)(1)(f), the licensee shall:
    a. Add liquid or dissolved dry chemicals to the swimming pool water,
    b. Document any actions taken by the licensee to restore the swimming pool water chemical ranges in the written swimming pool log required in subsection (B)(5)(a), and
    c. Not allow enrolled children to use the swimming pool until tests of the swimming pool water verify that the swimming pool water meets the swimming pool water chemical ranges in subsection (B)(1)(f).

C. A licensee shall ensure that a public, semi-public, or private pool used by an enrolled child is enclosed by a wall, fence, or barrier that complies with:

1. The requirements of a swimming pool barrier ordinance adopted by the local government where the swimming pool is located; or
2. If the local government where the swimming pool is located has not adopted a swimming pool barrier ordinance, the requirements in A.R.S. § 36-1681.

D. A licensee that uses any semi-public or private swimming pool for enrolled children shall ensure that the swimming pool has been inspected by the Department or a city or county health department before it is used by enrolled children.

1. If a licensee operates or uses a swimming pool that is inspected by a city or county health department, the licensee shall provide the Department with a current written report of the swimming pool inspection.
2. A licensee shall maintain the current swimming pool inspection reports of a swimming pool used by enrolled children on the facility premises.

E. A licensee shall ensure that written permission is:

1. Obtained from an enrolled child's parent before allowing the enrolled child to participate in a swimming activity, and
2. Maintained on facility premises for 12 months after the date the enrolled child participated in the swimming activity.

R9-5-605. Fire and Safety

A. A licensee shall install and maintain a portable, pressurized fire extinguisher that meets, at a minimum, a 2A-10-BC rating of the Underwriters Laboratories in a facility's kitchen and any other location required by Standard 10-1 of the International Fire Code, incorporated by reference in A.A.C. R9-1-412.

B. A licensee shall ensure that:

1. All designated exits, corridors, and passageways that provide escape from the building are unobstructed and unlocked during hours of operation;
2. Combustible material, such as paper, boxes, or rags, is not permitted to accumulate inside or outside the facility premises;
3. An unvented or open-flame space heater or portable heater is not used on the facility premises;
4. A gas valve on an unused gas outlet is removed and capped where it emerges from the wall or floor;
5. Electrical extension cords are not used;
6. Except for a room used only for an enrolled school-age child, each unused electrical outlet is covered with a safety plug cover or insert;
7. Slow cookers and hot plates are used only in a kitchen and are inaccessible to an enrolled child;
8. Heating and cooling equipment is inaccessible to an enrolled child;
9. Fans are mounted and inaccessible to an enrolled child;
10. Toilet rooms are ventilated to the outside of the building, either by a screened window open to the outside air or by an exhaust fan and duct system that is operated when the toilet room is in use;
11. A toilet room with a door that opens to the exterior of a building is equipped with a self-closing device that keeps the door closed except when an individual is entering or exiting;
12. A toilet room door does not open into a kitchen;
13. A smoke detector is installed in each indoor activity area and kitchen;
14. Each smoke detector required in subsection (B)(13) is:
    a. Maintained in an operable condition;
    b. Either battery operated or, if hard wired into the electrical system of the child care facility, has a back-up battery; and
    c. Tested monthly;
15. If the local fire jurisdiction requires a sprinkler system, the sprinkler system is:
    a. Installed,
    b. Operable,
    c. Tested quarterly, and
    d. Serviced at least once every 12 months;
16. The fire extinguisher required in subsection (A):

a. Is serviced at least once every 12 months, and
b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher; and

17. The testing required in subsections (B)(14) and (15) and servicing required in subsection (B)(16) is documented and the documentation is:
    a. Maintained by the licensee, and
    b. Available for at least 12 months after the date of the testing or servicing.

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

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

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

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

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

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

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

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

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

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

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

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

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the

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

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

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

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

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

A. The director shall:

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

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

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

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

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

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop,

tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of

performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

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

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

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

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

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

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

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

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

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

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

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

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

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking

receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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

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

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

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

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of

all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

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

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

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

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

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

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

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

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

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This

procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

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

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

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

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

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

36-882. License; posting; transfer prohibited; fees; provisional license; renewal; exemption from rule making

A. A child care facility shall not receive any child for care, supervision or training unless the facility is licensed by the department of health services.

B. An application for a license shall be made on a written or electronic form prescribed by the department and shall include:

1. Information required by the department for the proper administration of this chapter and rules adopted pursuant to this chapter.

2. The name and business or residential address of each controlling person.

3. An affirmation by the applicant that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. An application for an initial license shall include:

1. The form that is required pursuant to section 36-883.02, subsection C and that is completed by the applicant.

2. A copy of a valid fingerprint clearance card issued to the applicant pursuant to section 41-1758.07.

3. If the applicant's facility is located within one-fourth mile of any agricultural land, the names and addresses of the owners and lessees of the agricultural land and a copy of the agreement required pursuant to subsection D of this section.

D. The department shall deny any license that affects agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may license the child care facility to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care facility, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection shall not apply to the issuance or renewal of a license for a child care facility located in the same location for which a child care facility license was previously issued.

E. On receipt of an application for an initial license, the department shall inspect the applicant's physical space, activities and standards of care. If the department determines that the applicant and the applicant's facility are in substantial compliance with this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the department to eliminate any deficiencies, the department shall issue an initial license to the applicant.

F. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program for licensing fees paid by child care facilities, including a public health discount.

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

H. Pursuant to available funding, the department shall collect annual fees.

I. A license is valid from the date of issuance unless it is subsequently revoked or suspended or the licensee does not pay the licensure fee and shall specify the following:

1. The name of the applicant.

2. The exact address where the applicant will locate the facility.

3. The maximum number and age limitations of children that shall be cared for at any one time.

4. The classification of services that the facility is licensed to provide.

J. The department may issue a provisional license, not to exceed six months, to an applicant or a licensed child care facility if:

1. The facility changes director.

2. The department determines that an applicant for an initial license or a licensed child care facility is not in substantial compliance with this chapter and rules adopted pursuant to this chapter and the immediate interests of children, families and the general public are best served if the child care facility or the applicant is given an opportunity to correct deficiencies.

K. A provisional license shall state the reason for the provisional status.

L. On the expiration of a provisional license, the department shall issue a regular license if the department determines that the licensee and the child care facility are in substantial compliance with this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the department to eliminate any deficiencies.

M. The licensee shall notify the department in writing within ten days of any change in the child care facility's director.

N. The license is not transferable from person to person and is valid only for the quarters occupied at the time of issuance.

O. The license shall be conspicuously posted in the child care facility.

P. The licensee shall conspicuously post a schedule of fees charged for services and the established policy for a refund of fees for services not rendered.

Q. The licensee shall keep current department inspection reports at the child care facility and shall make them available to parents on request. The licensee shall conspicuously post a notice that identifies the location where these inspection reports are available for review.

R. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a licensee who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.

2. Falsified information on any form required by section 36-883.02.

S. Licensees may pay licensure fees by installment payments based on procedures established by the department.

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

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

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

36-883. Standards of care; rules; classifications

A. The director of the department of health services shall prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility. These rules shall include standards for the following:

1. Adequate physical facilities for the care of children, such as building construction, fire protection, sanitation, sleeping facilities, isolation facilities, toilet facilities, heating, ventilation, indoor and outdoor activity areas and, if provided by the facility, transportation safely to and from the premises.

2. Adequate staffing per number and age groups of children by persons who are qualified by education or experience to meet their respective responsibilities in the care of children.

3. Activities, toys and equipment to enhance the development of each child.

4. Nutritious and well-balanced food.

5. Encouragement of parental participation.

6. Exclusion of any person from the facility whose presence may be detrimental to the welfare of children.

B. The department shall adopt rules pursuant to title 41, chapter 6 and section 36-115.

C. Any rule that relates to educational activities, physical examination, medical treatment or immunization shall include appropriate exemptions for children whose parents object on the ground that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member.

D. The department of health services shall conduct a comprehensive review of its rules at least once every two years. Before conducting this review, the department shall consult with agencies and organizations that are knowledgeable about the provision of child care facilities to children, including:

1. The department of economic security.

2. The department of education.

3. The office of the state fire marshal.

4. The league of Arizona cities and towns.

5. Citizen groups.

6. Licensed child care facility representatives.

7. The department of child safety.

E. The department shall designate appropriate classifications and establish corresponding standards pertaining to the type of care offered. These classifications shall include:

1. Facilities offering infant care.

2. Facilities offering specific educational programs.

3. Facilities offering evening and nighttime care.

F. Rules for the operation of child care facilities shall be stated in a way that clearly states the purpose of each rule.

36-883.01. Statement of services

Each child care facility shall annually furnish to the department, and make available to parents on request, an explicit and up-to-date written statement of the services it offers.

36-883.02. Child care personnel; fingerprints; exemptions; definition

A. Except as provided in subsection B of this section, child care personnel, including volunteers, shall submit the form prescribed in subsection C of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to section 41-1758.07 before starting employment or volunteer work.

B. Exempt from the fingerprinting requirements of subsection A of this section are parents, including foster parents and guardians, who are not employees of the child care facility and who participate in activities with their children under the supervision of and in the presence of child care personnel.

C. Applicants, licensees and child care personnel shall attest on forms that are provided by the department that:

1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.07, subsection B in this state or similar offenses in another state or jurisdiction.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.

3. They have not been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility in this or any other state or that they have not been denied or had revoked a certification to work in a child care facility or child care group home.

D. Employers of child care personnel shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a child care facility.

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

F. A child care facility shall not allow a person to be employed or volunteer in the facility in any capacity if the person has been denied a fingerprint clearance card pursuant to section 41-1758.07 or has not received an interim approval from the board of fingerprinting pursuant to section 41-619.55, subsection I.

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

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.

2. Falsified information on the form required by subsection C of this section.

H. For the purposes of this section, "child care personnel" means any employee or volunteer working at a child care facility.

36-883.03. Employer-subsidized child care; immunity from liability

A. An employer that subsidizes child care on a nondiscriminatory basis to its employees through a child care facility licensed pursuant to this article or through a person or facility exempt from licensure pursuant to this article but screened pursuant to section 41-1964 or 46-321 is not liable for damages as a result of an act or omission by the child care facility, person or exempt facility unless the employer is guilty of gross negligence in recommending the child care facility, person or facility or unless the employer is acting as the owner or has an ownership interest in or is an operator of the child care facility or exempt facility.

B. For purposes of this section, an employer is deemed to be subsidizing an employee's child care costs if the employer pays, either directly or indirectly, at least twenty-five per cent of the cost of the child care service rendered to the employee by the child care facility, person or exempt facility described in subsection A of this section.

36-883.04. Standards of care; rules; enforcement

The director shall prescribe reasonable rules and standards regarding the health, safety and well-being of children cared for in any public school child care program. These rules shall be comparable to the rules and standards prescribed pursuant to section 36-883. The director shall also prescribe rules regarding the enforcement of the standards of care including penalties for noncompliance with these standards. These enforcement and penalty provisions shall be comparable to those existing for private child care facilities.

36-883.05. Child care facilities; infants; floor bedding; requirements; emergency evacuation; notice; definitions

A. A child care facility that provides child care services utilizing the practice of a documented educational philosophy including least restrictive environment for infants and meets the requirements of this section may use floor bedding in the facility instead of cribs.

B. Floor bedding pursuant to subsection A of this section must meet all of the following requirements:

1. Be a mat that meets the following dimensions:

(a) Is not less than two inches and not more than three inches thick.

(b) Is not less than three feet and not more than four feet long.

(c) Is not less than two feet and not more than three feet wide.

2. Not be elevated or raised in any way.

3. Be covered with a waterproof and washable mattress pad, a washable zip cover and an individually assigned sheet.

4. Be assigned to an individual infant and not shared with another infant.

5. Be turned over at least once a week.

6. Be placed at least eighteen inches apart, eighteen inches from any wall and two feet from any other object.

7. Be placed on a floor that is vacuumed and sanitized every day and, if the floor is carpeted, is shampooed at least twice a month.

C. The ratio of staff members to resting infants in the resting area must be at least one staff member to every four infants. A staff member in the resting area must be supervised for the first ninety days of employment to ensure the staff member's proper use of the floor bedding pursuant to this section. Any staff member in the resting area shall have current certification in cardiopulmonary resuscitation and first aid.

D. If an emergency requiring evacuation occurs, the infant nursery staff shall place the infants in an evacuation crib and move the infants in the crib to a designated evacuation assembly area. Evacuation cribs must be stored not more than ten feet from the exterior exit. If stored on the outside of the building, an evacuation crib must be protected from weather. On arrival at the designated evacuation assembly area, all infants must be physically accounted for against the sign-in log and the results reported to the director of the child care facility immediately. The infant nursery supervisor is responsible for bringing all attendance sheets, child rosters and information sheets to the evacuation assembly area. The child care facility staff shall take appropriate supplies during the evacuation to protect the children, if possible, during inclement weather.

E. A facility shall provide the department written notice thirty days before implementing the use of floor bedding pursuant to this section.

F. If a licensed facility does not comply with the requirements of this section, the department may require the installation of cribs.

G. For the purposes of this section:

1. "Infant" means either:

(a) A child who is twelve months or younger.

(b) A child who is eighteen months or younger if not walking.

2. "Resting area" means a space within the classroom that is separate from the activity area and that contains only the floor bedding, infants and staff members.

36-884. Exemptions

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

1. The homes of parents or blood relatives.

2. A religious institution conducting a nursery in conjunction with its religious services or conducting parent-supervised occasional drop-in care.

3. A unit of the public school system, including specialized professional services provided by school districts for the sole purpose of meeting mandated requirements to address the physical and mental impairments prescribed in section 15-771. If a public school provides child care other than during the school's regular hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school that provides child care is subject to standards of care prescribed pursuant to section 36-883.04.

4. A regularly organized private school engaged in an educational program that may be attended in substitution for public school pursuant to section 15-802. If the school provides child care beyond regular public school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school providing such care shall be considered a child care facility and is subject to this article.

5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion and tutoring provided by public schools solely to improve school performance.

6. Any facility that provides only recreational or instructional activities to school age children who may enter into and depart from the facility at their own volition. The facility may require the children to document their entrance into and departure from the facility. This documentation does not affect the exemption under this paragraph. The facility shall post a notice stating it is not a licensed child care facility under section 36-882.

7. Any of the Arizona state schools for the deaf and the blind.

8. A facility that provides only educational instruction for children who are at least three and not older than six years of age if all the following are true:

(a) The facility instructs only in the core subjects of math, reading and science.

(b) The facility does not accept state-subsidized tuition for the children.

(c) A child is present at the facility for not more than two and one-quarter hours a day and not more than three days a week.

(d) The instruction is not provided in place of care ordinarily provided by a parent or guardian.

(e) The facility posts a notice that the facility is not licensed under this article.

(f) The facility requires fingerprint cards of all personnel pursuant to section 36-883.02.

9. A facility that operates a day camp that provides recreational programs to children if all of the following are true:

(a) The day camp is accredited by a nationally recognized accrediting organization for day camps as approved by the department.

(b) The day camp operates for less than twenty-four hours a day and less than ten weeks each calendar year.

(c) The day camp posts a notice at the facility and on its website that it is not licensed under the laws of this state as a child care facility.

(d) The day camp provides programs only to children who are at least five years of age.

(e) The day camp requires fingerprint cards of all personnel pursuant to section 36-883.02.

36-885. Inspection of child care facilities

A. The department or designated local health departments or its agents may at any time visit during hours of operation and inspect a child care facility to determine if it complies with this article and rules adopted under this article.

B. The department shall visit each child care facility as often as necessary to assure continued compliance with this article and department rules. The department shall make at least one unannounced visit annually.

36-886. Operation without a license; classification

A. If it appears that any person is maintaining or operating a child care facility without a license, the department shall notify the facility's operator either by mail, by certified mail with return receipt requested or by delivery in person. The person affected by the notice shall, within ten days from its receipt, cease and desist operation or show proof of having a valid license. The person may, within ten days, request in writing a hearing before the director.

B. On application of the department, a magistrate shall issue a warrant to the department authorizing inspection of a child care facility if there is probable cause to believe that a person is operating the facility without a license.

C. If a person does not comply with this section the department shall notify the county attorney of the county in which the child care facility is being operated of the violation and request that criminal prosecution be commenced against the violator. The department may request the attorney general to apply for injunctive relief.

D. Any person who continues to maintain or operate a child care facility without a license ten days after receipt of notice from the department is guilty of a class 1 misdemeanor.

36-886.01. Injunctions

If the department believes that a child care facility is operating under conditions that present possibilities of serious harm to children, the department shall notify the county attorney or the attorney general who shall immediately seek a restraining order and injunction against the facility.

36-887. Procedure for inspection of records

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

B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:

1. Pursuant to a court order.

2. Pursuant to a written consent signed by the parent or guardian.

3. To a law enforcement officer who requires it for official purposes.

4. To an official of a governmental agency who requires it for official purposes.

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

36-888. Denial, revocation or suspension of license

A. The department may deny, suspend or revoke a license for a violation of this article or department rules. At least thirty days before the department denies, revokes or suspends a license it shall mail the applicant or licensee a notice of that person's right to a hearing. The department shall issue this notice by registered mail with return receipt requested. The notice shall state the hearing date and the facts constituting the reasons for the department's action and shall cite the specific statute or rule that the person is not conforming to.

B. If the person does not respond to the written notice the department, at the expiration of the time fixed in the notice, shall take the action prescribed in the notice. If the person, within the period fixed in the notice, conforms the application or the operation of the child care facility to the applicable

statute or rule, the department may grant the license or withdraw the notice of suspension or revocation.

36-889. Licensees; applicants; residency; controlling persons; requirements

A. Each licensee, other than a corporation, a limited liability company, an association or a partnership, shall be a citizen of the United States who is a resident of this state, or a legal resident alien who is a resident of this state. A corporation, association or limited liability company shall be a domestic entity or a foreign entity that is qualified to do business in this state. A partnership shall have at least one partner who is a citizen of the United States and who is a resident of this state, or who is a legal resident alien and who is a resident of this state.

B. The department shall not issue or renew a license unless a list of each of the applicant's or licensee's controlling persons is on file with the department and no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or other state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. The applicant or licensee shall notify the department within thirty days after the election of any new officer or director or of any change in the controlling persons and shall provide the department the name and business or residential address of each controlling person and an affirmation by the applicant that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or has had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

D. Each applicant or licensee shall designate an agent who is authorized to receive communications from the department, including legal service of process, and to file and sign documents for the applicant or licensee. The designated agent shall be all of the following:

1. A controlling person.

2. A citizen of the United States or a legal resident alien.

3. A resident of this state.

36-890. Decisions

All decisions rendered by the director, pursuant to the applicable law and regulations, shall be in writing and filed of record in the office of the department. Notice of such decisions shall be given to the affected person or licensee. If no appeal is taken by any such person or licensee within the time provided by law, the decision of the director shall be final and conclusive.

36-891. Civil penalty; inspection of centers; training program

A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. If a person requests a hearing to

appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.

B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:

1. Repeated violations of statutes or rules.

2. Patterns of noncompliance.

3. Types of violations.

4. Severity of violations.

5. Potential for and occurrences of actual harm.

6. Threats to health and safety.

7. Number of children affected by the violations.

8. Number of violations.

9. Size of the facility.

10. Length of time during which violations have been occurring.

C. If a civil penalty imposed pursuant to subsection A is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.

D. Unless a license is revoked or suspended, the director shall place the license of a child care facility subject to a civil penalty pursuant to subsection A on provisional license status for a period of time not to exceed six months in addition to other penalties imposed pursuant to this article.

E. Civil penalties collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

F. The department shall develop an instrument that documents compliance and noncompliance of child care facilities according to the criteria prescribed in its rules governing child care facility licensure. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

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

36-891.01. Intermediate sanctions; notification of compliance; hearing

A. If the director has reasonable cause to believe that a licensee is violating this article or rules adopted pursuant to this article and that the health or safety of the children is endangered, the director may impose, on written notice to the licensee, one or more of the following intermediate sanctions until the licensee is in substantial compliance with this article:

1. Immediate restrictions on new admissions to the child care facility.

2. Termination of specific services that the facility may offer.

3. Reduction of the facility's capacity.

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

C. A person who has been ordered by the director to restrict admission, reduce capacity or terminate specific services may request a hearing to review the director's action. The person shall make this request in writing within ten days after the person receives notice of the director's action. The office of administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.

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

36-892. Violation; classification

Any person violating the provisions of the applicable law, or regulations, is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this article.

36-893. Legal action or sale; effect on licensure

A. The department shall not act on an application for licensure of a currently licensed child care facility while any enforcement or court action related to child care facility licensure is pending against that facility's current licensee.

B. The director may continue to pursue any court, administrative or enforcement action against the licensee even though the facility is in the process of being sold or transferred to a new owner.

C. The department shall not approve a change in facility ownership unless it determines that there has been a transfer of all legal and equitable interests, control and authority in the facility so that

persons other than the transferring licensee, that licensee's agent or other parties exercising authority or supervision over the facility's daily operations or staff are responsible for and have control over the facility.

36-894. Medical marijuana; child care facilities; prohibition

(Added with a 1998 Prop. 105 clause pursuant to L12, Ch. 159)

A person, including a cardholder as defined in section 36-2801, may not lawfully possess or use marijuana in any child care facility in this state.

36-894.01. Use of sunscreen in child care facilities

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

D-10.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Articles 1 & 8

Amend: R9-10-101; R9-10-102; R9-10-106; R9-10-111; R9-10-121; R9-10-801; R9-10-803; R9-10-806; R9-10-808; R9-10-811; R9-10-815; R9-10-819

Renumber: R9-10-818; R9-10-819; R9-10-820; R9-10-821

Repeal: R9-10-816

New Section: R9-10-122; R9-10-123; R9-10-124; R9-10-125; R9-10-126; R9-10-816; R9-10-817

New Table: Table 1.2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 13, 2025

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Articles 1 & 8

Amend: R9-10-101; R9-10-102; R9-10-106; R9-10-111; R9-10-121; R9-10-801; R9-10-803; R9-10-806; R9-10-808; R9-10-811; R9-10-815; R9-10-819

Renumber: R9-10-818; R9-10-819; R9-10-820; R9-10-821

Repeal: R9-10-816

New Section: R9-10-122; R9-10-123; R9-10-124; R9-10-125; R9-10-126; R9-10-816; R9-10-817

New Table: Table 1.2

Summary:

This regular rulemaking from the Department of Health Services (Department) seeks to amend twelve (12) rules, renumber four (4) rules, repeal one (1) rule, add seven (7) new sections and one (1) new table in Title 9, Chapter 10, Articles 1 and 8 regarding assisted living facilities. Specifically, the Department plans to amend the rules to comply with new statutory changes imposed by Laws 2024, Chapter 100, which requires the new rules to take effect by June 30, 2025. These rules will establish memory care services standards in assisted living facilities, requiring eight (8) hours of initial training and four (4) hours of annual continuing education for

staff and contractors, as well as specific training for managers. Rehired staff and contractors after a 12-month gap must complete the initial training within 30 days. Facilities must document staff and contractor training for compliance inspections, and penalties apply for non-compliance. On-site monitoring, associated fees, and in-service training requests will be formalized. Additionally, civil money penalties will increase up to $1,000 per resident or patient impacted, per day, and take other considerations into account (i.e. repeats, etc.). The Department indicates it may pursue court, administrative, or enforcement action against a licensee, even if the health care institution is in the process of being sold or transferred or has closed. Health care institutions failing to pay penalties may have their licenses revoked, and applications may be denied if resident or patient safety is at risk. The rulemaking also establishes an on-site monitoring fee as authorized by A.R.S. § 36-405(D). In addition, A.R.S. § 36-405(E) authorizes the Department to provide in-service training to a health care institution that requests in-service training relating to regulatory compliance outside of the survey process.

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

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

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

Pursuant to A.R.S. § 41-1008(A)(1), an agency shall not charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute. The Department indicates the rulemaking establishes an on-site monitoring fee as authorized by A.R.S. § 36-405(D). In addition, A.R.S. § 36-405(E) authorizes the Department to provide in-service training to a health care institution that requests in-service training relating to regulatory compliance outside of the survey process.

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

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

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

The Department plans to amend the rules in Title 9, Chapter 10, Articles 1 and 8, to comply with new statutory changes imposed by Laws 2024, Chapter 100, which requires the new rules to take effect by June 30, 2025. The Department states that these rules will establish memory care services standards in assisted living facilities, requiring eight hours of initial training and four hours of annual continuing education for staff and contractors, as well as specific training for managers. Rehired staff and contractors after a 12-month gap from working at an assisted living facility licensed to provide directed care services must complete the initial training within 30 days after the date of hire, rehire or returning to work. On-site monitoring inspections, in-service training requests, and associated fees will be formalized. Additionally, civil penalties will increase up to $1,000 per resident or patient impacted, per day, and take other

considerations into account (i.e. repeats, etc.). The Department may pursue court, administrative, or enforcement action against a licensee, even if the health care institution is in the process of being sold or transferred or has closed. Health care institutions failing to pay penalties may have their licenses voided, and applications may be denied if resident or patient safety is at risk. The Department anticipates that the rules may increase the regulatory burden or cost on some affected persons. However, the Department believes that the benefits of the rules will far outweigh any potential cost due to increasing the health and safety for residents or patients

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

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

6. What are the economic impacts on stakeholders?

The Department states the proposed rule changes to Title 9, Chapter 10, Articles 1 and 8 are designed to enhance the safety, quality, and regulatory oversight of health care institutions, particularly in memory care services within assisted living facilities. The Department believes that by establishing clear training, compliance, and enforcement standards, these amendments aim to improve resident and patient care while ensuring facilities meet rigorous health and safety requirements. The Department states that although some financial and operation impacts are expected, especially for facilities with repeated violations, the long-term benefits—including improved compliance, reduced enforcement actions, and enhanced public trust—outweigh the potential costs. The Department believes that strengthening monitoring, increasing civil money penalties, and formalizing memory care services training will ultimately lead to a more accountable and higher-quality health care system in Arizona, benefiting residents, families, and providers alike.

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

The Department indicates, between the Notice of Proposed Rulemaking which was published in the Administrative Register on March 7, 2025 and the Notice of Final Rulemaking now before the Council for consideration, it corrected the numbering in the subsection labels in R9-10-125(A) and (B) and R9-10-816(A)(1)(i) to follow the proper rulewriting format. The Department indicates it also changed the word “controls" to "monitors" in R9-10-815(F)(2)(a)(ii) and (b)(ii) and clarified that the facility is secured.

Council staff does not believe these changes make the rule language in the Notice of Final Rulemaking substantially different from the language in the Notice of Proposed Rulemaking and the Department is in compliance with A.R.S. § 41-1025.

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

The Department indicates it received 122 public comments related to this rulemaking. Of those, the Department indicates almost all of those comments were in support of the rulemaking. Summaries of the comments and the Department's responses are found in Section 12 of the Preamble to the Notice of Final Rulemaking. Copies of the comments and the Department's responses are also included in the final materials for the Council's reference.

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

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

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

The Department states it does not use a general permit. Specifically, the Department indicates it believes that under A.R.S. § 41-1037(A)(3) a general permit is not applicable in that "[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements." Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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

The Department indicates there is no corresponding federal law for these rules.

11. Conclusion

This regular rulemaking from the Department seeks to amend twelve (12) rules, renumber four (4) rules, repeal one (1) rule, add seven (7) new sections and one (1) new table in Title 9, Chapter 10, Articles 1 and 8 regarding assisted living facilities. Specifically, the Department plans to amend the rules to comply with new statutory changes imposed by Laws 2024, Chapter 100, which requires the new rules to take effect by June 30, 2025. These rules will establish memory care services standards in assisted living facilities.

The Department is requesting an effective date of June 30, 2025 to comply with the requirements of Laws 2024, Chapter 100. A.R.S. § 41-1032(A) allows an agency to request an immediate effective date rather than the standard 60-day delayed effective date. Additionally, A.R.S. § 41-1032(B) allows an agency to specify an effective date more than sixty days after the filing of the rule in the office of the secretary of state if the agency determines that good cause exists for and the public interest will not be harmed by the later date. However, nothing in A.R.S. § 41-1032 allows an agency to request an effective date less than 60 days that is not immediate.

Nevertheless, the Department cites to four statutory bases to justify an immediate effective date pursuant to A.R.S. § 41-1032(A)(1) through (4). Council staff believes the Department has provided adequate justification for an immediate effective date under these bases and would recommend the Council approve the rulemaking with an immediate effective date pursuant to A.R.S. § 41-1032(A)(1) through (4).

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

April 22, 2025

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

RE: Department of Health Services, 9 A.A.C. 10, Article 1. General and Article 8. Assisted Living Facilities

Dear Ms. Klein:

Enclosed are the administrative rules identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council (Council). The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-202:

1. The close of record date: April 8, 2025

2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking does not relate to a five-year-review report.

3. Whether the rulemaking establishes a new fee and, if so, the statutes authorizing the fee:
The rulemaking establishes an on-site monitoring as authorized by A.R.S. § 36-405(D). In addition, A.R.S. § 36-405(E) authorizes the Department to provide in-service training to a health care institution that requests in-service training relating to regulatory compliance outside of the survey process.

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

5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:

The Department is not requesting an immediate effective date for the rules. However, the Department is requesting an effective date of June 30, 2025 to comply with Laws 2024, Chapter 100.

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

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee there are no new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. General and specific statutes authorizing the rules, including Laws 2024, Chapter 100;
4. Current rules;
5. Formal comments; and
6. Rulemaking approval pursuant to A.R.S. § 41-1039 (A) and (B).

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

Sincerely,

Stacie Gravito
Director's Designee

SG: ls

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES –

HEALTH CARE INSTITUTIONS: LICENSING

PREAMBLE

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

April 21, 2025

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R9-10-101	Amend
R9-10-102	Amend
R9-10-106	Amend
R9-10-111	Amend
R9-10-121	Amend
R9-10-122	New Section
R9-10-123	New Section
R9-10-124	New Section
R9-10-125	New Section
R9-10-126	New Section
Table 1.2	New Table
R9-10-801	Amend
R9-10-803	Amend
R9-10-806	Amend
R9-10-808	Amend
R9-10-811	Amend
R9-10-815	Amend
R9-10-816	Repeal
R9-10-816	New Section
R9-10-817	New Section
R9-10-818	Renumber
R9-10-819	Renumber
R9-10-819	Amend
R9-10-820	Renumber
R9-10-821	Renumber

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

Authorizing statute: A.R.S. §§ 36-132(A)(1) and (17), 36-136(G), 36-405 and 36-406

Implementing statute: A.R.S. §§ 36-405, 36-405.03, 36-411, 36-420.05, 36-425, and 36-431.01, as amended by Laws 2024, Chapter 100

4. The effective date of the rule:

This rule shall become effective June 30, 2025 pursuant to Laws 2024, Chapter 100.

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

Pursuant to Laws 2024, Chapter 100, the rules need to be effective June 30, 2025. In addition, the rulemaking should be in effect earlier than the general 60-day effective date pursuant to A.R.S. § 41-1032(A)(1) through (4).

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

Not applicable

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

Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, [R24-197]

Notice of Proposed Rulemaking: 31 A.A.R. 703, March 7, 2025, Issue Number: 10, [R25-23]

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

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

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

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) and (17) requires the Arizona Department of Health Services (Department) to protect the health of the people in Arizona, and license and regulate health care institutions. In order to ensure public health, safety, and welfare, A.R.S. §§ 36-405 and 36-406 requires the Department to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions. The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. The Department plans to amend the rules in 9 A.A.C. 10, Articles 1 and 8, to comply with new statutory changes imposed by Laws 2024, Chapter 100, which requires the new rules to take effect by June 30, 2025. These rules will establish memory care services standards in assisted living facilities, requiring eight hours of initial training and four hours of annual continuing education for staff and contractors, as well as specific training for managers. Rehired staff and contractors after a 12-month gap must complete the initial training within 30 days. Facilities must document staff

and contractor training for compliance inspections, and penalties apply for non-compliance. On-site monitoring, associated fees, and in-service training requests will be formalized. Additionally, civil money penalties will increase up to $1,000 per resident or patient impacted, per day, and take other considerations into account (i.e. repeats, etc.). The Department may pursue court, administrative, or enforcement action against a licensee, even if the health care institution is in the process of being sold or transferred or has closed. Health care institutions failing to pay penalties may have their licenses revoked, and applications may be denied if resident or patient safety is at risk. After receiving rulemaking approval pursuant to A.R.S. § 41-1039, the Department plans to conduct a rulemaking to adhere to the statutory changes identified above. The Department anticipates that the rules may increase the regulatory burden or cost on some affected persons. However, the Department believes that the benefits of the rules will far outweigh any potential cost due to increasing the health and safety for residents or patients. Any proposed changes will conform to the rulemaking format and style requirements of the Governor's Regulatory Review Council (GRRC) and the Office of the Secretary of State.

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

The Department did not review or rely on any study related to this rulemaking package.

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

Not applicable

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

The Arizona Department of Health Services (Department) is required by A.R.S. § 36-132(A)(1) and (17) to protect public health and regulate health care institutions, including establishing minimum standards under A.R.S. §§ 36-405 and 36-406. To comply with Laws 2024, Chapter 100, the Department is amending the rules in 9 A.A.C. 10, Articles 1 and 8. In Article 1, changes that affected all licensed health care institutions include on-site monitoring inspections, in-service training requests, increased civil money penalties up to $1,000 per resident or patient impacted by a violation, and an enforcement matrix that outlines violation severities and remedies. The Department may pursue legal action against non-compliant licensees, even if a facility is being sold or closed, and health care institutions failing to pay penalties may have their licenses revoked. Furthermore, Laws 2024, Chapter 100, establishes memory care services for in assisted living facilities authorized to provide directed care services, requiring staff and contractor training, compliance documentation, and penalties for non-compliance. While the rules may increase regulatory costs for some affected persons, the Department believes the benefits—enhancing health and safety for residents—will outweigh any financial impact. The cost/benefit analysis categorizes financial impacts as minimal, moderate, or substantial based on the extent of costs or revenue changes. Directly affected parties include the Department, assisted living facilities, training providers, health care providers and institutions, patients, residents and their families, and the general public.

Laws 2024, Chapter 100 also mandates a memory care services training program, increasing the Department’s administrative responsibilities in approving training providers and ensuring compliance with new standards. The proposed rulemaking for memory care services in assisted living facilities authorized to provide directed care services aims to enhance care quality for residents receiving memory care services. The rules establish clear staffing, training, service planning, and environmental adaptation requirements, including a minimum of eight hours of specialized memory care services training within 30 days of hire, a minimum of four hours of annual continuing education, semi-annual elopement drills, and resident-specific service plans. While assisted living facilities licensed to provide directed care services may face minimal costs related to training and environmental

modifications, these measures are expected to improve operational efficiency, reduce liability risks, and enhance resident safety. Additionally, expanding directed care services to include memory care services may offer facilities greater flexibility in their scope of care. Overall, the economic impact on assisted living facilities is anticipated to be minimal to moderate and is expected to provide a significant benefit from having new rules for memory care services.

The Department is introducing five new sections in Article 1 for rules regulating new memory care services training programs. Memory care services training programs must apply for approval by submitting detailed applications, including training course descriptions covering cognitive impairments, communication, behavioral management, emergency protocols, and palliative care. Approved memory care services training programs must renew annually and comply with the applicable rules and statutes, while non-compliance may result in denial or revocation. Additional requirements for providers ensure transparency, including mandatory notifications of significant changes and Department access to records. The eligibility criteria for memory care services trainers emphasize education, experience, and certification. The rules also specify the criteria to be included on a certificate of completion when a participant successfully completes the memory care services training. While these regulations may impose administrative costs, the Department expects the new rules will improve care quality by having well trained staff and contractors on current evidence-based information. The overall economic impact is expected to be minimal to moderate, balancing compliance costs with long-term benefits and improved memory care services in Arizona.

The proposed rule changes to A.A.C. Title 9, Chapter 10 aim to strengthen oversight, improve compliance, and enhance enforcement across all health care institutions. Key updates include granting the Department authority to conduct on-site monitoring inspections for facilities with repeated violations, imposing fees for monitoring and in-service training, and clarifying conditions under which a facility's license may be revoked for unpaid penalties or fees. These measures prioritize high-risk facilities, improve patient safety, and encourage compliance. While initial enforcement activity may increase as facilities adjust, the long-term impact is expected to be enhanced regulatory clarity, improved care quality, and fewer severe violations. Financially, the new rules introduce fees to offset regulatory costs, with on-site monitoring inspections fees of up to $1,000 per inspection and training fees of up to $500 per hour. Additionally, Laws 2024, Chapter 100 raises the cap on civil money penalties from $500 to $1,000, potentially increasing annual penalty collections for the state general fund. While these changes may introduce minimal-to-moderate financial and operational impacts, they are expected to significantly improve patient safety, compliance, and enforcement efficiency across health care institutions.

The new regulations, mandated by Laws 2024, Chapter 100, clarify enforcement actions and introduce on-site monitoring inspections for institutions with significant deficiencies or repeated violations. This includes the possibility of charging up to $1,000 for monitoring inspections and implementing civil money penalties of up to $1,000 per violation per affected patient. While these measures may create financial burdens, particularly for smaller facilities, they are designed to enhance regulatory compliance and patient safety. The rules also introduce a fee structure for in-service training on regulatory compliance, allowing the Department to charge up to $500 per hour. Despite the potential costs, these changes are expected to provide long-term benefits by improving compliance, reducing the need for frequent enforcement actions, and ultimately enhancing the quality of care. The overall financial impact will largely depend on each institution's compliance level, with fully compliant facilities experiencing minimal effects while those with persistent violations may face more substantial costs. Therefore, the proposed rule changes regarding the enforcement measures that are applicable to all health care institutions are expected to have a minimal to moderate cost on health care institution depending on the amount of noncompliance at that health care institutions.

The new rules in Article 1 and Article 8 are expected to provide significant benefits to patients, residents, and their families. The enforcement standards, on-site monitoring, and in-service training requirements aim to improve compliance with Title 9, Chapter

10, enhancing overall health and safety in health care institutions. Stricter monitoring and enforcement are anticipated to reduce risks and create a safer environment, particularly for vulnerable populations. The new memory care service rules for assisted living facilities are designed to expand health care options and improve the quality of care for individuals receiving memory care services. These regulations require personalized service plans, behavior management strategies, and regular medical evaluations, as well as specialized staff and contractor training. While there may be potential for increased costs due to compliance measures, the Department expects the economic impact on patients, residents, and their families to be none-to-minimal. The enhanced safety, improved quality of care, and greater peace of mind for residents, patients, and their families are expected to significantly outweigh any possible incurred costs.

The proposed rule changes are expected to have a significant positive impact on the general public by enhancing safety and quality of care in health care institutions. The stricter oversight and enforcement measures outlined in Article 1 aim to reduce serious health and safety violations, improving trust in the health care system. Clear enforcement mechanisms and robust penalties are designed to reassure the public that regulatory authorities are actively protecting patient welfare. Additionally, the new memory care service rules for assisted living facilities expand care options for directed care services, establishing clear standards and ensuring well-trained staff and contractors for memory care services. These regulations are intended to reduce risks such as elopement and neglect, contributing to safer communities. Overall, the Department anticipates that these changes will provide a substantial benefit to the general public by improving the reliability, safety, and quality of health care services, particularly for vulnerable populations requiring specialized care.

The Department anticipates that the proposed rule changes will have a varied impact on small businesses in the health care sector. While increased compliance requirements may initially incur moderate costs, particularly for those with repeated violations, businesses that maintain compliance are expected to face minimal expenses. The introduction of memory care services presents an opportunity for revenue growth for training providers and assisted living facilities. Although there may be minimal-to-moderate operational costs associated with implementing these new services, the Department estimates that the long-term benefits will outweigh these initial investments. These benefits include improved care quality, enhanced safety standards, better regulatory compliance, and potentially reduced liability risks. The new regulations are also expected to boost the reputation and trustworthiness of compliant facilities, particularly those offering specialized memory care services. While the impact may vary based on compliance levels and enforcement frequency, the Department anticipates that the long-term advantages of improved health care quality and regulatory adherence will ultimately provide a significant benefit to small health care businesses, outweighing any upfront costs.

In conclusion, the proposed rule changes to 9 A.A.C. 10, Articles 1 and 8 are designed to enhance the safety, quality, and regulatory oversight of health care institutions, particularly in memory care services within assisted living facilities. By establishing clear training, compliance, and enforcement standards, these amendments aim to improve resident and patient care while ensuring facilities meet rigorous health and safety requirements. Although some financial and operational impacts are expected, especially for facilities with repeated violations, the long-term benefits—including improved compliance, reduced enforcement actions, and enhanced public trust—outweigh potential costs. Strengthening monitoring, increasing civil money penalties, and formalizing memory care services training will ultimately lead to a more accountable and higher-quality health care system in Arizona, benefiting residents, families, and providers alike.

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

The Department is currently working on a separate rulemaking that amends some of the same Sections as in this rulemaking. The Department had planned to finalize that rulemaking before this rulemaking, in which case, the Department used those rules as "base rules" in the Notice of Proposed Rulemaking. Since this separate rulemaking has not been completed, the Department has amended the Notice of Final to reflect the current codified rules. Furthermore, the Department corrected the numbering in the subsection labels in R9-10-125(A) and (B) and R9-10-816(A)(1)(i) to follow the proper rulewriting format. The Department also changed the word "controls" to "monitors" in R9-10-815(F)(2)(a)(ii) and (b)(ii) and clarified that the facility is secured.

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

During the formal comment period, the Department received a total of 122 written comments.

There were 111 individuals who submitted similar comments as well as personal stories and expressed support of the proposed memory care service rules, highlighting their potential to significantly improve resident safety and quality of care for individuals receiving memory care services at an assisted living facility. The comments also thanked the Department for including person-centered care planning, timely incident reporting, specialized staff training, adequate staffing levels, supportive environmental features, meaningful activities, nutrition and hydration, safety measures, and evacuation emergency procedures. Furthermore, the comments thanked the Department for improving the state's enforcement matrix for infractions related to health care facilities and strongly urged the Department to finalize the rules as proposed. The Department responded to each individual who submitted comments and thanked them for their feedback and participation in the rulemaking.

The Department received a comment from Allan A. Anderson, MD, similar to the 111 comments received in support of the rulemaking. Anderson added further commentary and questions regarding how adequate staffing is assessed and how training programs will be evaluated. The Department clarified that adequate staffing is assessed according to the service plans of the residents as well as the staff's ability to meet their needs. For example, if multiple residents require more than one caregiver to assist, the facility will be required to increase staffing levels. If residents require the use of specific medical equipment, the staff on-site would need documented training on using the equipment. The training will be assessed during the application review. All memory care training applications will have an administrative review and substantive review. During the substantive review is when the Department will review the quality of the training program to ensure it meets the standards outlined in rule. The training program will be required to demonstrate that the program is evidenced- based before being approved by the Department.

Another similar comment was received from Jennifer Ladd Omo in support of the proposed memory care services rules, however, concerns were expressed about training being required twice a year and a registered nurse being part of the eligibility requirement to be a memory care services trainer. In response, the Department clarified that the required trainings are on an annual basis and the staff training and manager trainings are two different trainings pursuant to A.R.S. § 36-405.03. Furthermore, the Department explained that rules do not require memory care services trainers to be RNs—though that is one option. As specified in R9-10-125(A) and (B), there are multiple pathways for individuals to qualify as trainers. The Department's intent with the rule is to

maintain flexibility and allow individuals with appropriate experience and expertise, including those without RN credentials, to be a memory care services trainer.

The Department also received a similar comment from Adrienne Montgomery, an assisted living manager at Vi at Silverstone. The comment was in support of the rules but also included suggestions to allow for online training and for existing managers to be grandfathered in. The Department let Montgomery know that R9-10-122(B) clarifies that the memory care services training program must include in-person components and may incorporate online elements. The in-person component must include a demonstration of the individual's skills and knowledge necessary to provide memory care services. Furthermore, the manager training is required pursuant to A.R.S. § 36-405.03. Montgomery also asked the Department to consider allowing all licensed nurses to be memory care trainers, including LPNs. The Department thanked Montgomery for the comment and stated this would be discussed and considered in internal discussions.

The Department received a comment from Phyllis Denison, a former RN and 24/7 caregiver, who is in support of the rules. In the comment, they praised the evidence-based training requirements, the emphasis on person-centered care with regular assessments, and the inclusion of medical practitioner reviews for placement decisions. They also highlighted serious concerns about staffing shortages and the need for clear staffing guidelines, calling for broader efforts to educate and train caregivers. Overall, they urged the state to adopt the rules and continue developing regulations that prioritize patient well-being. The Department thanked Denison for the comment and participation in the rulemaking.

A comment was received from Becky Hill, managing owner of Hill Advocacy, LLC, long-time lobbyist, state licensing board member for long-term care, and daughter of an Alzheimer's patient, strongly supports the adoption of the draft memory care services rule as aligned with HB2764. She emphasizes the rule meets legislative intent without exceeding it. Hill urges GRRC to approve the rule, highlighting the urgent need for consistent, qualified care for individuals with dementia. The Department thanked Hill for the comment and participation in the rulemaking.

The Department received a comment from Jaime Roberts, CEO of Arizona LeadingAge expressed appreciation for the Department's stakeholder engagement and inclusion of several AzLA recommendations in the final Memory Care rules. However, AzLA raised concerns about vague and undefined staffing mandates in R9-10-816, which they believe could lead to inconsistent enforcement and operational challenges. They also raised concerns regarding enforcement interpretations related to Directed Care services and the requirement for secured environments, stating that residents who do not pose elopement risks should not be unnecessarily institutionalized. Furthermore, AzLA expressed concerns that the rules authorize memory care as a separate level of care and recommends deleting R9-10-816. Also stating that the Department is outside the statutory authority granted by the legislature. AzLA is disappointed by the rule language in R9-10-816(A)(4), "there is staffing to ensure adequate supervision and care for residents receiving memory care services." Stating this is subjective, vague, and unquantified standards. Other concerns were raised regarding language in R9-10-816(A)(6), which states "If applicable, staffing is increased to compensate for the evaluated care and service needs of residents at move-in or for the changing physical or cognitive needs of the residents." AzLA believes this rule introduces ambiguity into compliance monitoring and imposes potential financial and operational burdens without

guardrails and creates a liability for providers. AzLA also recommended that the Department amend the Enforcement Matrix (Table 1.2) to what they had suggested and provided to the Department during informal stakeholder meetings. Additional concerns included the need for a more detailed enforcement matrix and limitations on monitoring fees. AzLA urged ADHS to clarify and revise the rules. In response, the Department, thanked Roberts for the comments.

Diane Hyink submitted a comment to the Department in support of the rulemaking and shared a personal story of their family's experience navigating memory care services for their father, who had dementia. Despite choosing a facility that advertised specialized memory care, the family encountered serious issues, including inadequate behavior management, medication lapses, and a lack of support during a crisis following an elopement. These challenges resulted in multiple geriatric psychiatric hospitalizations and ultimately a 34-day stay due to the original facility's refusal to readmit him. They later found a dedicated memory care facility where their father received appropriate, compassionate care. Hyink supports the proposed rules and believes they are essential to ensure consistent standards, training, and safety measures for memory care services. The Department thanked Hyink for the comments, support, and for sharing their personal experiences with us.

Stephanie Smith submitted a comment to the Department in support of the rulemaking, emphasizing the critical need for specialized dementia training, person-centered care, and stronger oversight in facilities. Smith also shared a personal story regarding her father's experience and how dramatically dementia symptoms can vary. Smith supports the proposed rules and believes they are essential to ensure consistent standards, training, and safety measures for memory care services. The Department thanked Smith for the comments, support, and for sharing their personal experiences with us.

Steve Wagner submitted a comment in support of the memory care services rules. The comment highlighted the goals of HB2764 and expressed that the rules that allow effective enforcement and compliance in alignment with the bill.

The Arizona Health Care Cost Containment System (AHCCCS) AHCCCS appreciates the opportunity to comment on the proposed memory care regulations and emphasizes the importance of clarity and alignment with operational realities. Their comments included several suggestions to amend the rules. They suggested updating the definition of "opioid antagonist" to reflect over-the-counter availability, incorporating recruitment strategies into staff retention plans, and enhancing training with content on dementia-friendly environments. The Department let AHCCCS know that this amendment would be outside of the scope of this rulemaking. Other suggestions from AHCCCS included additional staff training topics for memory care services and include testing skills and knowledge from the training. The Department let AHCCCS know that A.A.C. R9-10-122(A)(1)(g)(ii) specifies that any additional relevant topics, which may include evidence-based information or facility-specific information. The topic list in A.A.C. R9-10-122(A)(1)(g)(ii)(15) are examples of training topics that would be appropriate. The intent of the rule was to be as flexible as possible and allow for a wide range of evidence-based topics. Furthermore, A.A.C. R9-10-122(A)(1)(e)(ii)(3) specifies that the testing method used to verify an individual has acquired the stated skills for each topic is required to be submitted to the Department in the application. AHCCCS also recommended amending the definition of 'elopement,' defining a clear explanation of controlled egress, defined as a safety measure in which

exit doors are designed to delay or restrict a resident's ability to leave a secured area, clearly state that accommodations and

progressive supports are intended to be individualized, and replace ‘service needs’ with ‘individualized service needs.’ The Department thanked AHCCCS for their comments and recommendations and let them know that the Department will discuss necessary amendments for the final rulemaking package.

Tory Roberg, representing the Alzheimer’s Association, submitted comments strongly supporting the proposed rules, emphasizing that the changes are urgently needed to improve care. The comment commended the Department’s stakeholder engagement efforts and urged final adoption of the rule package with several suggested non-substantive changes to improve clarity and alignment with evidence-based practices. The comment also highlighted the growing need for high-quality dementia care in Arizona due to the aging population and the prevalence of Alzheimer’s, and it supports all proposed sections related to memory care, with specific recommendations to strengthen training curriculum, environmental design, and service planning to better align with nationally recognized Dementia Care Practice Recommendations. The Department thanked Roberg for the comments and support, and also stated that the Department would take into consideration the non-substantive suggested changes before submitting the final rulemaking package.

Brendon Blake, Director of Advocacy for AARP Arizona, expressed strong support for the proposed rules, thanking the Department for its collaborative approach and responsiveness to stakeholder input. The comment emphasized the importance of clearly defining and regulating memory care services, strengthening enforcement mechanisms to deter noncompliance, and including provisions around elopement prevention. AARP believes the rules strike a fair compromise and are a critical step toward improving care and accountability in long-term care settings, particularly for individuals with neurodegenerative conditions. The Department thanked Blake for the comments and support throughout this rulemaking process.

At the Oral Proceeding on April 8, 2025, 17 stakeholders attended, and 10 individuals provided formal oral comments on the rulemaking.

Diane Hyink, a member of the community and with the Alzheimer’s Association, shared a personal story about her experience with her father in memory care and how important these rules are needed to ensure health and safety and proper memory care services. Hyink supports the proposed rules and mentioned that it is surprising that some of the new rules are not already current requirements.

Sean Mockbee, representing the Arizona Health Care Association, had questions related to implementation and the licensure title and also asked how does it look with adding memory care to the direct care license. The Department clarified that beds are specified to a specific level of care and everything would be considered for a directed care unit in comparison to supervisorial care. Furthermore, the Department explained that the way that the statute was written, memory care services are the same as directed care.

Dave Voepel with the Arizona Health Care Association asked the Department if the interpretation of memory care services being the same as directed care will be added to the rules. The Department clarified that directed care is defined in statute, and the

interpretation would not change unless there is a statute change.

Karen Barno with the Arizona Assisted Living Federation of America (AZALFA) brought up concerns with the implementation of the rules and becoming compliant as the rules transition. The Department clarified that per HB2764 the rules must be implemented by June 30, 2025 and the Department plans to provide technical assistance as needed.

Jaime Roberts with Arizona LeadingAge brought up that the stakeholder process discussion was that memory care would apply to all direct care and it appears that the rules have required a fourth level, then asked why is there a definition of memory care if there is no distinction. The Department referenced that the term "memory care" is defined in statute. The rules draft was amended to require that anyone with a direct care license would be required to be trained in memory care services. Roberts continued to ask questions about what if there is a resident who wants to age in place. The Department clarified that would be a personal level of care. Roberts had further questions regarding a locked facility and recommended that the rules be further amended to clarify that direct care be secured. Roberts also asked if the Department plans to go out to each direct care facility to ensure compliance with the new rules. The Department said yes, and that information can be provided as to where a resident can safely reside. Roberts stated that she believes there is a turn in how the Department is interpreting direct care. The Department thanked her for her comment and clarified that technical assistance with the rules and interpretation will be provided.

Sara Scolville-Weaver a member of the community and with the Alzheimer's Association, shared a personal story about her experience with memory care and finding services for her mother. Before choosing a facility, Sara Scolville-Weaver and her sister visited about 12 facilities before finding one they believed would be a good fit. The one they selected was in Chandler, their mother was placed in that facility for only three months while they experienced countless issues with the care received. There was not adequate staffing (1-15 staff ratio), lack of nutrition, lack of supervision, their mother walked so much that her feet bled every day from walking in a circular locked ward. Scolville-Weaver mentioned that she witnessed a woman in the hallway crawling for help on her hands and knees. When she would go to visit her mother, it was common to see her mother dirty, many times staff did not know where her mother was. When Scolville-Weaver would go to look for her mother she often found her mother in someone else's bed often with her pants soaked in urine. Another issue at the facility was that medication was not given regularly and many residents were not fed. When Scolville-Weaver took her mother out of the facility, her mother was left with a UTI and a blood clot. Scolville-Weaver expressed that she strongly supports the new memory care rules and believes they are necessary for health and safety.

Faye McNeeley, a member of the community and with the Alzheimer's Association, shared a personal story about her daughter who is 55 and has early on-site Alzheimer's and is unable to work due to her condition. McNeeley discussed the difficulties in searching for a day programs for Alzheimer patients and is concerned about her daughter's care. McNeeley mentioned that she does not believe that eight hours of initial training is enough. However, McNeeley stated she strongly supports the rules.

Marie Isaacson with Isaacson Law Firm representing Arizona LeadingAge asked for clarity on the statute regarding memory care and direct care. The Department clarified that any facility licensed up to direct care will receive memory care services training.

Isaacson asked for info on the Department encouraging facilities to be licensed to the highest care. The Department mentioned that we don't want to impose that burden on a facility if the facilities never plan to provide directed care services. Isaacson asked if this is a new interpretation. The Department said this is not a new interpretation, not as of 2018. Isaacson then asked the Department that if she is licensed as direct care but does not have direct care resident does she have to comply with the direct care rules. The Department let her know that yes she would be required to comply with the direct care rules. Isaacson further asked if there is an evaluation of the physical plant standards by the Department before licensure. The Department explained the physical plant standards and explained that newer facilities are able to hire an architect for licensure, and that the Department would also conduct an on-site inspection. Isaacson asked the Department if a facility was originally licensed and approved, but now receives a citation, is there a special dispensation for those facilities since there are new standards. The Department explained that this could be a case by case situation and the Department provides technical assistance when needed. Isaacson further stated that she believes R9-10-815 should not be a stand alone Section and should be deleted entirely and incorporated in the direct care rules. Isaacson also stated that there is a lot of duplication with training and with direct care and memory care. Furthermore, Isaacson is not happy with the term "sufficient staffing" and "adequate supervision," stating that this is subjective and creates a liability. Lastly, Isaacson stated that she does not believe that if a resident is a wonderer that they should not be in a locked area.

Kay Huff with the Arizona Health Care Association stated that at one point in time facilities were encouraged by the Department to be licensed for directed care at one time. At the time, those facilities were not required to follow the direct care rules if there were no direct care residents. Huff also suggested that the Department add several definitions to the rules, including physical harm and psychosocial harm. The Department acknowledges that prior to 2013, when the rules were under the office of assisted living licensure, the rules indicated that the controlled egress for directed care services was only required when the directed care services were being provided to a resident. However, the rules have been recodified since then and the rules are not written to have the same interpretation today.

Tory Roberg with the Alzheimer's Association stated comments expressing her appreciation and support for the rules and believes the rules as a whole are strong and will lead to good outcomes.

Brendon Blake with AARP Arizona thanked the Department for the rules and believes that the new rules will increase the quality of care. Blake also stated that he believes that the enforcement penalties are appropriate for the rules and is strong support of the rules being finalized as is.

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

There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.

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

The Department does not use a general permit. The Department believes that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

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

The rules are not related to federal laws.

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

Not applicable

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

Not applicable

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

Not applicable

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES –

HEALTH CARE INSTITUTIONS: LICENSING

ARTICLE 1. GENERAL

ARTICLE 8. ASSISTED LIVING FACILITIES

ARTICLE 1. GENERAL

R9-10-101. Definitions

In addition to the definitions in A.R.S. §§ 36-401(A) and 36-439, the following definitions apply in this Chapter unless otherwise specified:

1. "Abortion clinic" No change
2. "Abuse" No change
    a. No change
        i. No change
        ii. No change
    b. No change
    c. No change
    d. No change
3. "Accredited" No change
4. "Active malignancy" No change
    a. No change
        i. No change
        ii. No change
        iii. No change
    b. No change
    c. No change
5. "Activities of daily living" No change
6. "Acuity" No change
7. "Acuity plan" No change
8. "Adjacent" No change
    a. No change
    b. No change
9. "Administrative completeness review time-frame" No change
10. "Administrative office" No change
11. "Admission" or "admitted" No change
12. "Adult" No change
13. "Adult behavioral health therapeutic home" No change
14. "Adult residential care institution" No change
15. "Adverse reaction" No change
16. "Affiliated counseling facility" No change
17. "Affiliated outpatient treatment center" No change
18. "Alternate licensing fee due date" No change
19. "Ancillary services" No change
20. "Anesthesiologist" No change
    a. No change
    b. No change
    c. No change
    d. No change
21. "Applicant" No change

a. No change

b. No change

c. No change

d. No change

22. “Application packet” No change

a. No change

b. No change

c. No change

d. No change

23. “Assessment” No change

24. “Assistance in the self-administration of medication” No change

25. “Attending physician” No change

26. “Authenticate” No change

a. No change

b. No change

c. No change

d. No change

27. “Authorized service” No change

28. “Available” No change

a. No change

b. No change

c. No change

29. “Behavioral care” No change

a. No change

i. No change

(1) No change

(2) No change

ii. No change

b. No change

30. “Behavioral health facility” No change

31. “Behavioral health inpatient facility” No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

32. “Behavioral health issue” No change

33. “Behavioral health observation/stabilization services” No change

a. No change

b. No change

c. No change

34. “Behavioral health paraprofessional” No change

a. No change

b. No change

35. “Behavioral health professional” No change

a. No change

i. No change

ii. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

36. “Behavioral health residential facility” No change

a. No change

b. No change

37. “Behavioral health respite home” No change

38. “Behavioral health specialized transitional facility” No change

39. “Behavioral health technician” No change

a. No change

b. No change

40. “Benzodiazepine” No change

41. “Biohazardous medical waste” No change

42. “Calendar day” No change

43. “Case manager” No change

44. “Certification” No change

45. “Certified health physicist” No change

46. “Change in ownership” No change

47. “Chief administrative officer” or “administrator” No change

48. “Clinical laboratory services” No change

49. “Clinical oversight” No change

a. No change

b. No change

c. No change

d. No change

50. “Clinical privileges” No change

51. “Collaborating health care institution” No change

a. No change

b. No change

52. “Common area” No change

a. No change

b. No change

c. No change

53. “Communicable disease” No change

54. “Conspicuously posted” No change
    a. No change
    b. No change
55. “Consultation” No change
56. “Contracted services” No change
57. “Contractor” No change
58. “Controlled substance” No change
59. “Counseling” No change
60. “Counseling facility” No change
    a. No change
    b. No change
61. “Court-ordered evaluation” No change
62. “Court-ordered treatment” No change
63. “Crisis services” No change
64. “Current” No change
65. “Daily living skills” No change
66. “Danger to others” No change
67. “Danger to self” No change
68. “Detoxification services” No change
    a. No change
    b. No change
69. “Diagnostic procedure” No change
70. “Dialysis” No change
71. “Dialysis services” No change
72. “Dialysis station” No change
73. “Dialyzer” No change
74. “Disaster” No change
75. “Discharge” No change
76. “Discharge instructions” No change
77. “Discharge planning” No change
78. “Discharge summary” No change
79. “Disinfect” No change
80. “Documentation” or “documented” No change
81. “Drill” No change
82. “Drug” No change
83. “Electronic” No change
84. “Electronic signature” No change
85. “Emergency” No change
86. “Emergency medical services provider” No change
87. “Emergency services” No change
88. “End-of-life” No change
89. “Environmental services” No change
90. “Equipment” No change

91. “Exploitation” No change
92. “Factory-built building” No change
93. “Family” or “family member” No change
94. “Follow-up instructions” No change
95. “Food services” No change
96. “Full-time” No change
97. “Garbage” No change
98. “General consent” No change
99. “General hospital” No change
100. “Gravely disabled” No change
101. “Habilitation services” No change
102. “Hazard” or “hazardous” No change
103. “Health care directive” No change
104. “Hemodialysis” No change
105. “Home health agency” No change
106. “Home health aide” No change
107. “Home health aide services” No change
108. “Home health services” No change
109. “Hospice inpatient facility” No change
110. “Hospital” No change
111. “Immediate” No change
112. “Immediate jeopardy” means a situation in which a patient or resident has suffered or is likely to suffer serious injury, serious harm, serious impairment, or death as a result of a licensee's noncompliance with one or more health and safety requirements.
~~112.~~113. “Incident” means an unexpected occurrence that harms or has the potential to harm a patient, while the patient is:
    a. On the premises of a health care institution, or
    b. Not on the premises of a health care institution but directly receiving physical health services or behavioral health ser-vices from a personnel member who is providing the physical health services or behavioral health services on behalf of the health care institution.
~~113.~~114. “Infection control” means to identify, prevent, monitor, and minimize infections.
~~114.~~115. “Infectious tuberculosis” has the same meaning as “infectious active tuberculosis” in A.A.C. R9-6-101.
~~115.~~116. “Informed consent” means:
    a. Advising a patient of a proposed treatment, surgical procedure, psychotropic medication, opioid, or diagnostic proce-dure; alternatives to the treatment, surgical procedure, psychotropic medication, opioid, or diagnostic procedure; and associated risks and possible complications; and
    b. Obtaining documented authorization for the proposed treatment, surgical procedure, psychotropic medication, opioid, or diagnostic procedure from the patient or the patient’s representative.
~~116.~~117. “In-service education” means organized instruction or information that is related to physical health services or behavioral health services and that is provided to a medical staff member, personnel member, employee, or volunteer.
~~117.~~118. “Interdisciplinary team” means a group of individuals consisting of a resident’s attending physician, a registered nurse responsible for the resident, and other individuals as determined in the resident’s comprehensive assessment or, if applicable, placement evaluation.
~~118.~~119. “Intermediate care facility for individuals with intellectual disabilities” or “ICF/IID” has the same meaning as in A.R.S. § 36-551.

~~119.~~120. “Interval note” means documentation updating a patient’s:

a. Medical condition after a medical history and physical examination is performed, or

b. Behavioral health issue after an assessment is performed.

~~120.~~121. “Isolation” means the separation, during the communicable period, of infected individuals from others, to limit the transmission of infectious agents.

~~121.~~122. “Leased facility” means a facility occupied or used during a set time period in exchange for compensation.

~~122.~~123. “License” means:

a. Written approval issued by the Department to a person to operate a class or subclass of health care institution at a specific location; or

b. Written approval issued to an individual to practice a profession in this state.

~~123.~~124. “Licensed occupancy” means the total number of individuals for whom a health care institution is authorized by the Department to provide crisis services in a unit providing behavioral health observation/stabilization services.

~~124.~~125. “Licensee” means an owner approved by the Department to operate a health care institution.

~~125.~~126. “Manage” means to implement policies and procedures established by a governing authority, an administrator, or an individual providing direction to a personnel member.

~~126.~~127. “Medical condition” means the state of a patient’s physical or mental health, including the patient’s illness, injury, or disease.

~~127.~~128. “Medical director” means a physician who is responsible for the coordination of medical services provided to patients in a health care institution.

~~128.~~129. “Medical history” means an account of a patient’s health, including past and present illnesses, diseases, or medical conditions.

~~129.~~130. “Medical practitioner” means a physician, physician assistant, or registered nurse practitioner.

~~130.~~131. “Medical record” has the same meaning as “medical records” in A.R.S. § 12-2291.

~~131.~~132. “Medical staff” means physicians and other individuals licensed pursuant to A.R.S. Title 32 who have clinical privileges at a health care institution.

~~132.~~133. “Medical staff bylaws” means standards, approved by the medical staff and the governing authority, that provide the framework for the organization, responsibilities, and self-governance of the medical staff.

~~133~~134. “Medical staff member” means an individual who is part of the medical staff of a health care institution.

~~134.~~135. “Medication” means one of the following used to maintain health or to prevent or treat a medical condition or behavioral health issue:

a. Biologicals as defined in A.A.C. R18-13-1401,

b. Prescription medication as defined in A.R.S. § 32-1901, or

c. Nonprescription drug as defined in A.R.S. § 32-1901.

~~135.~~136. “Medication administration” means restricting a patient’s access to the patient’s medication and providing the medication to the patient or applying the medication to the patient’s body, as ordered by a medical practitioner.

~~136.~~137. “Medication error” means:

a. The failure to administer an ordered medication;

b. The administration of a medication not ordered; or

c. The administration of a medication:

i. In an incorrect dosage,

ii. More than 60 minutes before or after the ordered time of administration unless ordered to do so, or

iii. By an incorrect route of administration.

~~137.~~138. “Mental disorder” means the same as in A.R.S. § 36-501.

~~138.~~139. “Mobile clinic” means a movable structure that:

a. Is not physically attached to a health care institution’s facility;

b. Provides medical services, nursing services, behavioral health services, or health related service to an outpatient under the direction of the health care institution's personnel; and

c. Is not intended to remain in one location indefinitely.

~~139.~~140. "Monitor" or "monitoring" means to check systematically on a specific condition or situation.

~~140.~~141. "Neglect" has the same meaning:

a. For an individual less than 18 years of age, as in A.R.S. § 8-201; and

b. For an individual 18 years of age or older, as in A.R.S. § 46-451.

~~141.~~142. "Nephrologist" means a physician who is board eligible or board certified in nephrology by a professional credentialing board.

~~142.~~143. "Nurse" has the same meaning as "registered nurse" or "practical nurse" as defined in A.R.S. § 32-1601.

~~143.~~144. "Nursing care institution administrator" means an individual licensed according to A.R.S. Title 36, Chapter 4, Article 6.

~~144.~~145. "Nursing personnel" means individuals authorized according to A.R.S. Title 32, Chapter 15 to provide nursing services.

~~145.~~146. "Observation chair" means a physical piece of equipment that:

a. Is located in a designated area where behavioral health observation/stabilization services are provided,

b. Allows an individual to fully recline, and

c. Is used by the individual while receiving crisis services.

~~146.~~147. "Occupational therapist" has the same meaning as in A.R.S. § 32-3401.

~~147.~~148. "Occupational therapy assistant" has the same meaning as in A.R.S. § 32-3401.

~~148.~~149. "Ombudsman" means a resident advocate who performs the duties described in A.R.S. § 46-452.02.

~~149.~~150. "On-call" means a time during which an individual is available and required to come to a health care institution when requested by the health care institution.

~~150.~~151. "Opioid" means a controlled substance, as defined in A.R.S. § 36-2501, that meets the definition of "opiate" in A.R.S. § 36-2501.

~~151.~~152. "Opioid agonist treatment medication" means a prescription medication that is approved by the U.S. Food and Drug Administration under 21 U.S.C. § 355 for use in the treatment of ~~premises~~ opioid-related substance use disorder.

~~152.~~153. "Opioid antagonist" means a prescription medication, as defined in A.R.S. § 32-1901, that:

a. Is approved by the U.S. Department of Health and Human Services, Food and Drug Administration; and

b. When administered, reverses, in whole or in part, the pharmacological effects of an opioid in the body.

~~153.~~154. "Opioid treatment" means providing medical services, nursing services, behavioral health services, health-related services, and ancillary services to a patient receiving an opioid agonist treatment medication for opioid-related substance use disorder.

~~154.~~155. "Order" means instructions to provide:

a. Physical health services to a patient from a medical practitioner or as otherwise provided by law; or

b. Behavioral health services to a patient from a behavioral health professional.

~~155.~~156. "Orientation" means the initial instruction and information provided to an individual before the individual starts work or volunteer services in a health care institution.

~~156.~~157. "Outing" means a social or recreational activity that:

a. Occurs away from the premises,

b. Is not part of a behavioral health inpatient facility's or behavioral health residential facility's daily routine, and

c. Lasts longer than four hours.

~~157.~~158. "Outpatient surgical center" means a class of health care institution that has the facility, staffing, and equipment to provide surgery and anesthesia ser-vices to a patient whose recovery, in the opinions of the patient's surgeon and, if an anesthesiologist would be providing anesthesia services to the patient, the anesthesiologist, does not require inpatient care in a hospital.

~~158.~~159. “Outpatient treatment center” means a class of health care institution without inpatient beds that provides physical health services, or physical health services and behavioral health services, including medication services for the diagnosis and treatment of patients.

~~159.~~160. “Overall time-frame” means the same as in A.R.S. § 41-1072.

~~161.~~161. “Owner” means a person who appoints, elects, or designates a health care institution’s governing authority.

~~161.~~162. “Pain management clinic” has the same meaning as in A.R.S. § 36-448.01.

~~162.~~163. “Participant” means a patient receiving physical health services or behavioral health services from an adult day health care facility or a substance abuse transitional facility.

~~163.~~164. “Participant’s representative” means the same as “patient’s representative” for a participant.

~~164.~~165. “Patient” means an individual receiving physical health services or behavioral health services from a health care institution.

~~165.~~166. “Patient’s representative” means:

a. A patient’s legal guardian;

b. If a patient is less than 18 years of age and not an emancipated minor, the patient’s parent;

c. If a patient is 18 years of age or older or an emancipated minor, an individual acting on behalf of the patient with the written consent of the patient or patient’s legal guardian; or

d. A surrogate as defined in A.R.S. § 36-3201.

~~166.~~167. “Person” means the same as in A.R.S. § 1-215 and includes a governmental agency.

~~167.~~168. “Personnel member” means, except as defined in specific Articles in this Chapter and excluding a medical staff member, a student, or an intern, an individual providing physical health services or behavioral health services to a patient.

~~168.~~169. “Pest control program” means activities that minimize the presence of insects and vermin in a health care institution to ensure that a patient’s health and safety is not at risk.

~~169.~~170. “Pharmacist” has the same meaning as in A.R.S. § 32-1901.

~~170.~~171. “Physical examination” means to observe, test, or inspect an individual’s body to evaluate health or determine the cause of illness, injury, or disease.

~~171.~~172. “Physical health services” means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual’s medical condition.

~~172.~~173. “Physical therapist” has the same meaning as in A.R.S. § 32-2001.

~~173.~~174. “Physical therapist assistant” has the same meaning as in A.R.S. § 32-2001.

~~174.~~175. “Physician assistant” has the same meaning as in A.R.S. § 32-2501.

~~175.~~176. “Placement evaluation” means the same as in A.R.S. § 36-551.

~~176.~~177. “Pre-petition screening” has the same meaning as “prepetition screening” in A.R.S. § 36-501.

~~177.~~178. “Premises” means property that is designated by an applicant or licensee and licensed by the Department as part of a health care institution where physical health services or behavioral health services are provided to a resident or patient.

~~178.~~179. “Prescribe” means to issue written or electronic instructions to a pharmacist to deliver to the ultimate user, or another individual on the ultimate user’s behalf, a specific dose of a specific medication in a specific quantity and route of administration.

~~179.~~180. “Professional credentialing board” means a non-governmental organization that designates individuals who have met or exceeded established standards for experience and competency in a specific field.

~~180.~~181. “Progress note” means documentation by a medical staff member, nurse, or personnel member of:

a. An observed patient response to a physical health service or behavioral health service provided to the patient,

b. A patient’s significant change in condition, or

c. Observed behavior of a patient related to the patient’s medical condition or behavioral health issue.

~~181.~~182. “PRN” means pro re nata or given as needed.

~~182.~~183. “Project” means specific construction or modification of a facility stated on an architectural plans and specifications approval application.

~~183.~~184. “Provider” means an individual to whom the Department issues a license to operate an adult behavioral health therapeutic home or a behavioral health respite home in the individual’s place of residence.

~~184.~~185. “Provisional license” means the Department’s written approval to operate a health care institution issued to an applicant or licensee that is not in substantial compliance with the applicable laws and rules for the health care institution.

~~185.~~186. “Psychotropic medication” means a chemical substance that:

a. Crosses the blood-brain barrier and acts primarily on the central nervous system where it affects brain function, resulting in alterations in perception, mood, consciousness, cognition, and behavior; and

b. Is provided to a patient to address the patient’s behavioral health issue.

~~186.~~187. “Quality management program” means ongoing activities designed and implemented by a health care institution to improve the delivery of medical services, nursing services, health-related services, and ancillary services provided by the health care institution.

~~187.~~188. “Recovery care center” has the same meaning as in A.R.S. § 36-448.51.

~~188.~~189. “Referral” means providing an individual with a list of the class or subclass of health care institution or type of health care professional that may be able to provide the behavioral health services or physical health services that the individual may need and may include the name or names of specific health care institutions or health care professionals.

~~189.~~190. “Registered dietitian” means an individual approved to work as a dietitian by the American Dietetic Association’s Commission on Dietetic Registration.

~~190.~~191. “Registered nurse” has the same meaning as in A.R.S. § 32-1601.

~~191.~~192. “Registered nurse practitioner” has the same meaning as A.R.S. § 32-1601.

~~192.~~193. “Regular basis” means at recurring, fixed, or uniform intervals.

~~193.~~194. “Rehabilitation services” means medical services provided to a patient to restore or to optimize functional capability.

~~194.~~195. “Research” means the use of a human subject in the systematic study, observation, or evaluation of factors related to the prevention, assessment, treatment, or understanding of a medical condition or behavioral health issue.

~~195.~~196. “Resident” means an individual living in and receiving physical health services or behavioral health services, including rehabilitation services or habilitation services if applicable, from a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, a behavioral health residential facility, an assisted living facility, or an adult behavioral health therapeutic home.

~~196.~~197. “Resident’s representative” means the same as “patient’s representative” for a resident.

~~197.~~198. “Respiratory care services” has the same meaning as “practice of respiratory care” as defined in A.R.S. § 32-3501.

~~198.~~199. “Respiratory therapist” has the same meaning as in A.R.S. § 32-3501.

~~199.~~200. “Respite capacity” means the total number of children who do not stay overnight for whom an outpatient treatment center or a behavioral health residential facility is authorized by the Department to provide respite services on the premises of the outpatient treatment center or behavioral health residential facility.

~~200.~~201. “Respite services” means respite care services provided to an individual who is receiving behavioral health services.

~~201.~~202. “Restraint” means any physical or chemical method of restricting a patient’s freedom of movement, physical activity, or access to the patient’s own body.

~~202.~~203. “Risk” means potential for an adverse outcome.

~~203.~~204. “Room” means space contained by a floor, a ceiling, and walls extending from the floor to the ceiling that has at least one door.

~~204.~~205. “Rural general hospital” means a subclass of hospital:

a. Having 50 or fewer inpatient beds,

b. Located more than 20 surface miles from a general hospital or another rural general hospital, and

c. Requesting to be and being licensed as a rural general hospital rather than a general hospital.

~~205.~~206. "Satellite facility" has the same meaning as in A.R.S. § 36-422.

~~206.~~207. "Scope of services" means a list of the behavioral health services or physical health services the governing authority of a health care institution has designated as being available to a patient at the health care institution.

~~207.~~208. "Seclusion" means the involuntary solitary confinement of a patient in a room or an area where the patient is prevented from leaving.

~~208.~~209. "Sedative-hypnotic medication" means any one of several classes of drugs that have sleep-inducing, anti-anxiety, anti-convulsant, and muscle-relaxing properties.

~~209.~~210. "Self-administration of medication" means a patient having access to and control of the patient's medication and may include the patient receiving limited support while taking the medication.

~~210.~~211. "Sexual abuse" means the same as in A.R.S. § 13-1404(A).

~~211.~~212. "Sexual assault" means the same as in A.R.S. § 13-1406(A).

~~212.~~213. "Shift" means the beginning and ending time of a continuous work period established by a health care institution's policies and procedures.

~~213.~~214. "Short-acting opioid antagonist" means an opioid antagonist that, when administered, quickly but for a small period of time reverses, in whole or in part, the pharmacological effects of an opioid in the body.

~~214.~~215. "Signature" means:

a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or

b. An electronic signature.

~~215.~~216. "Significant change" means an observable deterioration or improvement in a patient's physical, cognitive, behavioral, or functional condition that may require an alteration to the physical health services or behavioral health services provided to the patient.

~~216.~~217. "Single group license" means a license that includes authorization to operate health care institutions according to A.R.S. § 36-422(F) or (G).

~~217.~~218. "Speech-language pathologist" means an individual licensed according to A.R.S. Title 36, Chapter 17, Article 4 to engage in the practice of speech-language pathology, as defined in A.R.S. § 36-1901.

~~218.~~219. "Special hospital" means a subclass of hospital that:

a. Is licensed to provide hospital services within a specific branch of medicine; or

b. Limits admission according to age, gender, type of disease, or medical condition.

~~219.~~220. "Student" means an individual attending an educational institution and working under supervision in a health care institution through an arrangement between the health care institution and the educational institution.

~~220.~~221. "Substance abuse" means an individual's misuse of alcohol or other drug or chemical that:

a. Alters the individual's behavior or mental functioning;

b. Has the potential to cause the individual to be psychologically or physiologically dependent on alcohol or other drug or chemical; and

c. Impairs, reduces, or destroys the individual's social or economic functioning.

~~221.~~222. "Substance abuse transitional facility" means a class of health care institution that provides behavioral health services to an individual over 18 years of age who is intoxicated or may have a substance abuse problem.

~~222.~~223. "Substance use disorder" means a condition in which the misuse or dependence on alcohol or a drug results in adverse physical, mental, or social effects on an individual.

~~223.~~224. "Substance use risk" means an individual's unique likelihood for addiction, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids.

~~224.~~225. “Substantial” when used in connection with a modification means:

a. An addition or removal of an authorized service;

b. The addition or removal of a colocator;

c. A change in a health care institution’s licensed capacity, licensed occupancy, respite capacity, or the number of dialysis stations;

d. A change in the physical plant, including facilities or equipment, that costs more than $300,000; or

e. A change in the building where a health care institution is located that affects compliance with:

i. Applicable physical plant codes and standards incorporated by reference in R9-10-104.01, or

ii. Physical plant requirements in the specific Article in this Chapter applicable to the health care institution.

~~225.~~226. “Substantive review time-frame” means the same as in A.R.S. § 41-1072.

~~226.~~227. “Supportive services” has the same meaning as in A.R.S. § 36-151.

~~227.~~228. “Surgical procedure” means the excision of or incision in a patient’s body for the:

a. Correction of a deformity or defect;

b. Repair of an injury; or

c. Diagnosis, amelioration, or cure of disease.

~~228.~~229. “Swimming pool” has the same meaning as “semipublic swimming pool” in A.A.C. R18-5-201.

~~229.~~230. “System” means interrelated, interacting, or interdependent elements that form a whole.

~~230.~~231. “Tapering” means the gradual reduction in the dosage of a medication administered to a patient, often with the intent of eventually discontinuing the use of the medication for the patient.

~~231.~~232. “Tax ID number” means a numeric identifier that a person uses to report financial information to the United States Internal Revenue Service.

~~232.~~233. “Telemedicine” has the same meaning as in A.R.S. § 36-3601.

~~233.~~234. “Therapeutic diet” means foods or the manner in which food is to be prepared that are ordered for a patient.

~~234.~~235. “Therapist” means an occupational therapist, a physical therapist, a respiratory therapist, or a speech-language pathologist.

~~235.~~236. “Time-out” means providing a patient a voluntary opportunity to regain self-control in a designated area from which the patient is not physically prevented from leaving.

~~236.~~237. “Transfer” means a health care institution discharging a patient and sending the patient to another licensed health care institution as an inpatient or resident without intending that the patient be returned to the sending health care institution.

~~237.~~238. “Transport” means a licensed health care institution:

a. Sending a patient to a receiving licensed health care institution for outpatient services with the intent of the patient returning to the sending licensed health care institution, or

b. Discharging a patient to return to a sending licensed health care institution after the patient received outpatient services from the receiving licensed health care institution.

~~238.~~239. “Treatment” means a procedure or method to cure, improve, or palliate an individual’s medical condition or behavioral health issue.

~~239.~~240. “Treatment plan” means a description of the specific physical health services or behavioral health services that a health care institution anticipates providing to a patient.

~~240.~~241. “Unclassified health care institution” means a health care institution not classified or subclassified in statute or in rule.

~~241.~~242. “Vascular access” means the point on a patient’s body where blood lines are connected for hemodialysis.

~~242.~~243. “Volunteer” means an individual authorized by a health care institution to work for the health care institution on a regular basis without compensation from the health care institution and does not include a medical staff member who has clinical privileges at the health care institution.

~~243.~~244. “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state and federal holiday or a statewide

furlough day.

R9-10-102. Health Care Institution Classes and Subclasses; Requirements

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. No change
26. No change

B. No change

C. No change

D. No change

1. No change
2. No change

E. The Department may conduct on-site monitoring inspections of health care institutions that are found to not be in substantial compliance with the applicable licensure requirements specified in this Chapter, as outlined in Table 1.2.

R9-10-106. Fees

A. No change

1. No change
2. No change
3. No change

B. No change

C. No change

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
2. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
3. No change
4. No change
   a. No change
   b. No change
   c. No change
   d. No change
5. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
6. No change
7. No change
   a. No change
   b. No change

D. No change

E. No change

F. No change

G. No change

H. The Department may charge up to $1,000 per visit for an on-site monitoring inspection fee, as determined by a provider agreement or notice, according to A.R.S. § 36-405(D).

I. If the Department provides in-service training to a health care institution that requests in-service training relating to regulatory compliance outside of the survey process, the Department may charge up to $500 an hour for the in-service training, according to A.R.S. § 36-405(E).

R9-10-111. Enforcement Actions

A. If the Department determines that an applicant or licensee is violating applicable statutes ~~and~~ or rules, the Department may take action according to A.R.S. Title 36, Chapter 4, R9-10-112 or, Table 1.2.~~:~~

~~1. Issue a provisional license to the applicant or licensee under A.R.S. § 36-425,~~

~~2. Assess a civil penalty under A.R.S. § 36-431.01,~~

~~3. Impose an intermediate sanction under A.R.S. § 36-427,~~

~~4. Remove a licensee and appoint another person to continue operation of the health care institution pending further action under A.R.S. § 36-429,~~

~~5. Suspend or revoke a license under A.R.S. § 36-427 and R9-10-112,~~

~~6. Deny a license under A.R.S. § 36-425 and R9-10-112, or~~

~~7. Issue an injunction under A.R.S. § 36-430.~~

~~**B.** In determining which action in subsection (A) is appropriate, the Department shall consider the direct risk to the life, health, or safety of a patient in the health care institution based on:~~

~~1. Repeated violations of statutes or rules,~~

~~2. Pattern of violations,~~

~~3. Types of violation,~~

~~4. Severity of violation, and~~

~~5. Number of violations.~~

B. The Department may impose civil money penalties on a licensed health care institution that violates Title 36 or this Chapter, with penalties assessed per resident or patient impacted by the violation as determined by the Department based on the following factors:

1. The civil penalty may be up to $1,000 per violation, pursuant to A.R.S. § 36-431.01, if one or more of the following aggravating factors apply:
   a. The violation is repeated;
   b. Actual harm occurred;
   c. The violation poses a potential threat for actual harm or to health and safety, including to patients, staff, or residents;
   d. Immediate jeopardy exists due to the type and severity of the violation;
   e. The licensee fails to correct the violation in a reasonable timely manner, which may be a threat to health and safety;
   f. The length of time the violation occurred;
   g. Patterns of noncompliance; or
   h. The total number of violations; and
2. In determining the final penalty, the Department shall consider and reduce the penalty if one or more of the following mitigating factors apply:
   a. The violation was isolated,
   b. No actual harm occurred,
   c. No immediate jeopardy was present,
   d. The facility reported the violation to the Department,
   e. The facility promptly corrected the violation,
   f. The number of persons affected by the violation,
   g. The size of the facility and the financial impact of the penalty, or
   h. The length of time the violation occurred.

R9-10-121. Disease Prevention and Control

A. No change

1. No change
2. No change

B. No change

1. No change
2. No change
3. No change

C. No change

1. No change
2. No change
3. No change
4. No change

D. An administrator or manager, as applicable, shall ensure that:

1. Except as provided in subsection (E), before entering the facility, each individual, including a personnel member, employee, or visitor, is screened for fever or respiratory symptoms indicative of a communicable disease;
2. If an individual refuses to be screened, the individual is excluded from entry to the facility;
3. If an individual is determined to have a fever or respiratory symptoms, the individual is excluded from entry to the facility until symptoms have resolved or the individual has been evaluated and cleared by a medical practitioner;
4. If an individual, other than a resident, develops a fever or respiratory symptoms while in the facility, the individual is required to leave the facility and not return until symptoms have resolved or the individual has been evaluated and cleared by a medical practitioner; and
5. If insufficient personnel members are available to meet the needs of all residents in the facility, the administrator or manager, as applicable, implements the disaster plan required in R9-10-424, R9-10-523, or ~~R9-10-818~~ R9-10-819, as applicable, which may include moving a resident to a different facility.

E. No change

F. No change

1. No change
2. No change
    a. No change
    b. No change
        i. No change
        ii. No change
    c. No change
        i. No change
        ii. No change
    d. No change
        i. No change
        ii. No change
    e. No change

G. No change

1. No change
2. No change
3. No change

R9-10-122. Memory Care Services Training Program Application and Renewal

A. An applicant shall apply for approval to operate a memory care services training program by submitting:

1. An application in a Department-provided format that contains:
    a. The name of the entity;

b. The name, telephone number, and e-mail address of the individual in charge of the proposed memory care services training program;

c. The address where the memory care services training program records are maintained;

d. The address and telephone number of each facility from which training services will be provided;

e. A description of the minimum eight hours of initial memory care services training for staff and contractors, that includes:

i. One of the following:

(1) Dementia care training curriculum from a nationally recognized organization; or

(2) The evidence-based information presented for each of the following required topics, along with any additional relevant topics:

aa. Understanding cognitive impairments and the impact on residents, including the progression of the neurodegenerative disease;

bb. Communication techniques with cognitively impaired residents;

cc. Managing challenging behaviors such as aggression, wandering, and agitation;

dd. Techniques for promoting dignity, comfort, and emotional well-being of residents;

ee. Implementation of individualized service planning for residents receiving memory care services;

ff. Emergency and safety protocols specific to memory care;

gg. Recognizing, preventing, and reporting abuse, neglect, or exploitation;

hh. Activities of daily living specific to residents receiving memory care services;

ii. Palliative care and end-of-life training; and

jj. Medication management and administration; and

ii. In addition to R9-10-122(A)(1)(e)(i):

(1) The amount of time allotted to each topic,

(2) The skills an individual is expected to acquire for each topic, and

(3) The testing method used to verify an individual has acquired the stated skills for each topic;

f. A description of the minimum four hours of annual memory care services training for staff and contractors, including:

i. The evidence-based information presented for each of the following required topics, along with any additional relevant topics:

(1) Managing challenging behaviors such as aggression, wandering, and agitation;

(2) Techniques for promoting dignity, comfort, and emotional well-being of residents;

(3) Recognizing, preventing, reporting abuse, neglect, or exploitation; and

(4) Implementation of individualized service planning for residents receiving memory care services;

ii. The amount of time allotted to each topic;

iii. The skills an individual is expected to acquire for each topic; and

iv. The testing method used to verify an individual has acquired the stated skills for each topic;

g. A description of the minimum four hours of memory care services training for a manager, including:

i. The evidence-based information presented for each of the following required topics:

(1) Development and implementation of individualized service planning for residents receiving memory care services, and

(2) Staffing levels and resource allocation;

ii. Any additional relevant topics, which may include evidence-based information or facility-specific information, such as:

(1) Supervisory skills for leading interdisciplinary teams;

(2) Effective delegation and team-building strategies;

(3) Conflict resolution and managing workplace dynamics;

(4) In-depth understanding of state regulations specific to memory care services;

(5) Monitoring care outcomes and resident satisfaction;

(6) Engaging with families during crises or challenging situations;

(7) Leading meetings and facilitating collaboration among staff;

(8) Advocacy for residents and families;

(9) Coaching and mentoring staff for professional growth;

(10) Staying updated on advancements in dementia care;

(11) Developing emergency protocols;

(12) Cultural competency to ensure inclusivity and sensitivity in care;

(13) Strategies to improve staff retention and job satisfaction;

(14) Supporting mental health and wellness among team members;

(15) Room assignments, operations, and environmental standards; or

(16) Identification and implementation of control measures for infectious diseases;

iii. The amount of time allotted to each topic;

iv. The skills an individual is expected to acquire for each topic; and

v. The testing method used to verify an individual has acquired the stated skills for each topic;

h. Whether the applicant agrees to allow the Department to submit supplemental requests for information as specified in subsection (H)(2); and

i. The signature of the individual in charge of the proposed memory care services training program and the date signed; and

2. A copy of the materials used for providing the memory care services training program.

B. The memory care services training program shall include in-person components and may incorporate online components. The in-person component shall include a demonstration of the individual's skills and knowledge necessary to provide memory care services.

C. The memory care services training program shall review the topics and materials provided in the memory care services training at least once every 12 months to ensure the information is current and evidence-based, and if necessary, update the materials based on the most up-to-date source(s) for evidence-based practice(s).

D. For annual renewal, at least 60 days before the expiration of approval, a memory care services training program shall submit to the Department, in a Department-provided format:

1. The memory care services training program's approval number; and

2. The information in subsection (A).

E. For an application for an approval of a memory care services training program, the administrative review time-frame is 30 calendar days, the substantive review time-frame is 30 calendar days, and the overall time-frame is 60 calendar days.

F. Within 30 calendar days after the receipt of an application in subsection (A), the Department shall:

1. Issue an approval of the applicant's memory care services training program;
2. Provide a notice of administrative completeness to the applicant that submitted the application; or
3. Provide a notice of deficiencies to the applicant that submitted the application, including a list of the information or documents needed to complete the application.

G. If the Department provides a notice of deficiencies to an applicant:
1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant;
2. If the applicant does not submit the missing information or documents to the Department within 30 calendar days, the Department shall consider the application withdrawn; and
3. If the applicant submits the missing information or documents to the Department within 30 calendar days, the substantive review time-frame begins on the date the Department receives the missing information or documents.

H. Within the substantive review time-frame, the Department:
1. Shall issue or deny an approval of a memory care services training program; and
2. May make one written comprehensive request for more information, unless the Department and the applicant agree in writing to allow the Department to submit supplemental requests for information.

I. If the Department issues a written comprehensive request or a supplemental request for information:
1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives the information requested, and
2. The applicant shall submit to the Department the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

J. The Department shall issue:
1. An approval for an applicant to operate a memory care services training program if the Department determines that the applicant and the application comply with A.R.S. § 36-405.03 and this Section, or
2. A denial for an applicant that includes the reason for the denial and the process for appeal of the Department's decision if:
    a. The Department determines that the applicant does not comply with A.R.S. § 36-405.03 and this Section, or
    b. The applicant does not submit information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

K. The Department may deny, revoke, or suspend an approval to operate a memory care services training program if a memory care services training program provider or an applicant applying to operate a memory care services training program:
1. Provides false or misleading information to the Department,
2. Does not comply with the applicable statutes and rules,
3. Issues a training certificate of completion to an individual who did not,
    a. Complete the memory care services training program, or
    b. Demonstrate the skills the individual was expected to acquire, or
4. Does not implement the memory care services training program as described in or use the materials submitted with the application.

L. In determining which action in subsection (K) is appropriate, the Department shall consider the following:
1. Repeated violations of statutes or rules,

2. Pattern of non-compliance,

3. Types of violations,

4. Severity of violations, and

5. Number of violations.

R9-10-123. Notification of Change

A. A memory care services training program provider shall notify the Department in writing at least 30 days before the effective date of:

1. Termination of the provision of the memory care services training program, or

2. A change in the:

a. Name under which the memory care services training program provider does business,

b. Address or telephone number of a facility where memory care services trainings are provided,

c. Administrator, or

d. Memory care services training program topics provided, and

B. The Department shall review the notification of change for subsection (A) and:

1. If the information complies with the requirements in this Article, the Department shall approve the change, or

2. If the information does not comply with the requirements in this Article, the Department shall send notification to the memory care services training program provider with reasons for the determination of non-compliance.

C. The Department may conduct an on-site inspection as part of the notification of change process.

D. The memory care services training program provider retains the existing expiration date of the application approval.

R9-10-124. Administration, Monitoring

A. A memory care services training program provider shall designate an administrator who meets the qualifications established by the memory care services training program provider.

B. An applicant or memory care services training program provider shall provide the Department access to records and all areas of a facility according to A.R.S. § 41-1009 within two hours after the Department's request.

R9-10-125. Memory Care Services Trainer Eligibility

A. An individual is eligible to be a memory care services trainer if the individual:

1. Is a registered nurse with:

a. A Certified Dementia Practitioner (CDP) or an equivalent certification, demonstrating knowledge in dementia care best practices and behavioral management;

b. An Alzheimer's Disease and Dementia Care Training (ADCT) certification or an equivalent program recognized by a national or state accrediting body;

c. A Gerontological Nurse Certification (RN-BC) issued by the American Nurses Credentialing Center or an equivalent certification specializing in the care of older adults;

d. An End-of-Life and Palliative Care Certification from a recognized body, emphasizing care for late-stage dementia and end-of-life situations; or

e. Two years of experience providing memory care services; or

2. Has a current memory care services certificate of completion.

B. An individual, who is not a registered nurse, is eligible to become a memory care services trainer,

1. If the individual has a:

a. Bachelor's degree or higher in a relevant field, including but not limited to:

i. Gerontology,

ii. Psychology,

iii. Social Work,

iv. Education, or

v. Nursing-related disciplines; or

b. Minimum of three years of direct experience in memory care, dementia care, or a related field, such as:

i. Providing care for individuals with Alzheimer's disease or other forms of dementia, or

ii. Developing and implementing memory care programs; and

2. Holds one or more of the following certifications:

a. Certified Dementia Practitioner (CDP),

b. Certified Alzheimer's Disease and Dementia Care Trainer (CADDCT),

c. Certified Activity Director (ADC) with a specialization in memory care, or

d. Any equivalent certification recognized by a national accrediting body;

3. Demonstrates experience in adult education or staff training, including:

a. Conducting workshops, seminars, or training sessions in a health care or memory care setting; or

b. Developing training materials specific to memory care;

4. Has completed cultural competency training to ensure inclusivity and sensitivity in care and training approaches;

5. Possesses strong communication skills and the ability to tailor training to diverse audiences, including care staff and family members; or

6. Has a valid certificate of completion issued according to R9-10-126.

C. An individual is ineligible to become a memory care services trainer if the individual has:

1. A history of substantiated allegation(s) of abuse, neglect, or exploitation of vulnerable individual(s); or

2. A record of disciplinary action(s) related to professional misconduct.

R9-10-126. Memory Care Services Certificate of Completion

A. Memory care services training programs, approved by the Department according to R9-10-122, shall provide staff and contractors who complete the training, a certificate of completion that may be used to work at an assisted living facility that is licensed to provide directed care services with the following information:

1. The title of the certificate is clearly stated as, "Certificate of Completion";

2. The name, address, e-mail address, and telephone number of the individual completing the memory care services training;

3. Title of the training program;

4. Name of the training organization or provider;

5. Contact information for the training organization;

6. The date the individual successfully completed the memory care services training;

7. The address where the memory care services training and assessment was held;

8. The name of the memory care services trainer;

9. The number of hours completed;

10. The training topics covered;

11. A statement confirming the trainee's successful completion of the training;

12. Signature of the trainer; and

13. Date of issuance.

B. A memory care services trainer shall ensure that each individual seeking a memory care services certificate of completion has completed comprehensive training, demonstrated understanding of the topics covered in R9-10-122(A), and achieved a passing score of at least 70% on an examination covering the applicable topics.

C. The memory care services training program and an assisted living facility providing memory care services shall maintain a record of the certificate of completion that is kept on file and available with the information specific in subsection (A).

D. A memory care services trainer shall comply with:

1. A.R.S. § 36-405.03, and
2. Applicable requirements in this Article.

E. A Department-approved training program shall issue the certificate of completion to the individual who has successfully completed the training program within 10 calendar days of completion.

F. An assisted living facility may accept a certificate of completion issued under this section if:

1. The certificate is issued by a Department-approved training program; and
2. The certificate holder does not have a lapse of working at an assisted living facility that is licensed to provide directed care services for a period of 12 or more consecutive months, pursuant to A.R.S. § 36-405.03.

G. Before the date of issuance of a memory care services certificate of completion, an individual seeking the certificate shall complete the minimum eight hours of initial memory care services training and complete the minimum four hours of annual continuing education training within the preceding 12 consecutive months and achieve a passing score of at least 70% on an examination covering the memory care services training topics specified in R9-10-122(A).

Table 1.2. Violation Severity and Remedy Matrix

Severity Level	Criteria	Action
Level 1	If the violation is isolated and has no actual physical or psychosocial harm with no potential of physical or psychosocial harm.	Technical Assistance, or Written plan of correction.
Level 2	If the violation is isolated and has no actual physical or psychosocial harm, with potential for minimal physical or psychosocial harm.	Written plan of correction, Provider agreement, or Civil money penalties up to $500.
Level 3	If the violation is isolated and has no actual physical or psychosocial harm, with potential for more than minimal physical or psychosocial harm.	Written plan of correction, Directed plan of correction, Provider agreement, On-site monitoring inspection fee up to $500, or Civil money penalties up to $1,000.
Level 4	The violation resulted in actual physical or psychosocial harm that is not immediate jeopardy; The licensee provided false or misleading information; The licensee fails to correct the violation in a reasonable timely manner, which may be a threat to health and safety; or If the violation is repeated, or if there is a pattern with no actual physical or psychosocial harm, with potential for minimal or more than minimal physical or psychosocial harm.	Written plan of correction, On-site plan of correction, or Provider agreement. On-site monitoring inspection fee up to $750, Civil money penalties, Suspension, Intermediate sanctions, or Revocation.
Level 5	Immediate jeopardy to health and safety.	Directed plan of correction; Provider agreement; On-site monitoring inspection fee up to $1,000; Civil money penalties; Suspension; Intermediate sanctions;

		Revocation; or Other remedies, as applicable, in Title 41, Chapter 6.

ARTICLE 8. ASSISTED LIVING FACILITIES

R9-10-801. Definitions

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

1. "Accept" or "acceptance" No change
   a. No change
   b. No change
2. "Assistant caregiver" No change
3. "Assisted living services" means supervisory care services, personal care services, directed care services, behavioral care, memory care services, or ancillary services provided to a resident by or on behalf of an assisted living facility.
4. "Caregiver" No change
5. "Elopement" means when a resident who is cognitively, physically, mentally, emotionally, or chemically impaired wanders away, walks away, runs away, or otherwise leaves the premises of an assisted living facility authorized to provide directed care services unsupervised or unnoticed, without the knowledge of the licensee's personnel.

~~5.~~6. "Manager" means an individual designated by a governing authority to act on behalf of the governing authority in the ~~onsite~~ on-site management of the assisted living facility.

~~6.~~7. "Medication organizer" means a container that is designed to hold doses of medication and is divided according to date or time increments.

8. "Memory care services" means the same as defined in A.R.S. § 36-405.03(D).

~~7.~~9. "Primary care provider" means a physician, a physician's assistant, or registered nurse practitioner who directs a resident's medical services.

~~8.~~10. "Residency agreement" means a document signed by a resident or the resident's representative and a manager, detailing the terms of residency.

~~9.~~11. "Service plan" means a written description of a resident's need for supervisory care services, personal care services, directed care services, ancillary services, or behavioral health services and the specific assisted living services to be provided to the resident.

~~10.~~12. "Termination of residency" or "terminate residency" means a resident is no longer living in and receiving assisted living services from an assisted living facility.

R9-10-803. Administration

A. A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and administration of an assisted living facility;
2. Establish, in writing, an assisted living facility's scope of services;
3. Designate, in writing, a manager who:
   a. Is 21 years of age or older; and
   b. Except for the manager of an adult foster care home, has either a:
      i. Certificate as an assisted living facility manager issued under A.R.S. § 36-446.04(C), or
      ii. A temporary certificate as an assisted living facility manager issued under A.R.S. § 36-446.06;
4. Adopt a quality management program that complies with R9-10-804;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting manager who has the qualifications established in subsection (A)(3), if the manager is:
   a. Expected not to be present on the assisted living facility's premises for more than 30 calendar days, or

b. Not present on the assisted living facility's premises for more than 30 calendar days;

7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the manager and identify the name and qualifications of the new manager;

8. Ensure that a manager or caregiver who is able to read, write, understand, and communicate in English is on an assisted living facility's premises; ~~and~~

9. Ensure compliance with A.R.S. § 36-411.~~and~~

10. Ensure the health, safety, or welfare of a resident is not placed at risk of harm.

B. No change

1. No change
2. No change
3. No change
   a. No change
   b. No change

C. No change

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
   f. No change
   g. No change
   h. No change
   i. No change
   j. No change
      i. No change
      ii. No change
   k. No change
      i. No change
      ii. No change
      iii. No change
   l. No change
   m. No change
   n. No change
   o. No change
   p. No change
      i. No change
      ii. No change
   q. No change

r. No change

s. No change

t. No change

u. No change

v. No change

w. No change

x. No change

2. No change

3. No change

D. No change

1. No change

2. No change

3. No change

a. No change

b. No change

c. No change

d. No change

4. No change

E. No change

1. No change

2. No change

F. No change

1. No change

2. No change

3. No change

G. No change

1. No change

2. No change

a. No change

b. No change

c. No change

d. No change

3. No change

4. No change

H. A manager shall permit the Department to interview an employee, a volunteer, ~~or~~ a resident, or a resident's representative as part of a compliance survey or a complaint investigation.

I. No change

J. No change

1. No change

2. No change

3. No change

a. No change

b. No change

c. No change

4. No change

5. No change

a. No change

b. No change

c. No change

d. No change

6. No change

K. A manager shall provide written notification to the Department of a resident's:

1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; ~~and~~

2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency services provider~~.~~; and

3. Elopement, within 24 hours of the elopement being discovered.

L. No change

1. No change

a. No change

b. No change

c. No change

2. No change

a. No change

b. No change

c. No change

M. No change

1. No change

2. No change

3. No change

R9-10-806. Personnel

A. No change

1. No change

a. No change

b. No change

i. No change

ii. No change

iii. No change

iv. No change

(1) No change

(2) No change

(3) No change

(4) No change

2. No change

a. No change

b. No change

3. No change
    a. No change
        i. No change
        ii. No change
    b. No change
        i. No change
        ii. No change
        iii. No change
4. No change
    a. No change
    b. No change
5. No change
    a. No change
    b. No change
    c. No change
6. No change
7. No change
8. No change
    a. No change
    b. No change
9. No change
10. No change

B. No change

1. No change
    a. No change
        i. No change
        ii. No change
    b. No change
2. No change
3. No change
4. No change
    a. No change
    b. No change
        i. No change
        ii. No change

C. A manager shall ensure that a personnel record for each employee or volunteer:

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

iii. The individual's completed orientation and in-service education required by policies and procedures;

iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or in policies and procedures;

v. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;

vi. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (A)(8);

vii. Cardiopulmonary resuscitation training, if required for the individual in this Article or policies and procedures;

viii First aid training, if required for the individual in this Article or policies and procedures; ~~and~~

ix. Compliance with the requirements in A.R.S. § 36-411(A) and (C); and

x. The certificate of completion, according to R9-10-126;

2. Is maintained:

a. Throughout the individual's period of providing services in or for the assisted living facility, and

b. For at least 24 months after the last date the individual provided services in or for the assisted living facility; and

3. For a manager, a caregiver, or an assistant caregiver who has not provided physical health services or behavioral health services at or for the assisted living facility during the previous 12 months, is provided to the Department within 72 hours after the Department's request.

R9-10-808. Service Plans

A. Except as required in subsection (B), a manager shall ensure that a resident has a ~~written~~ service plan that is established, documented, and implemented that:

1. Is completed no later than 14 calendar days after the resident's date of acceptance;

2. Is developed with assistance and review from:

a. The resident or resident's representative,

b. The manager, and

c. Any individual requested by the resident or the resident's representative;

3. Includes the following:

a. A description of the resident's medical or health problems, including physical, behavioral, cognitive, or functional conditions or impairments;

b. The level of service the resident is expected to receive;

c. The amount, type, and frequency of assisted living services and ancillary services being provided to the resident, including medication administration or assistance in the self-administration of medication;

d. For a resident who requires intermittent nursing services or medication administration, review by a nurse or medical practitioner;

e. For a resident who requires behavioral care:

i. Any of the following that is necessary to provide assistance with the resident's psychosocial interactions to manage the resident's behavior:

(1) The psychosocial interactions or behaviors for which the resident requires assistance,

(2) Psychotropic medications ordered for the resident,

(3) Planned strategies and actions for changing the resident's psychosocial interactions or behaviors, and

(4) Goals for changes in the resident's psychosocial interactions or behaviors; and

ii. Review by a medical practitioner or behavioral health professional; and

f. For a resident who will be storing medication in the resident's bedroom or residential unit, how the medication will be stored and controlled;

4. Is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f):

a. No later than 14 calendar days after a significant change in the resident's physical, cognitive, or functional condition; and

b. As follows:

i. At least once every 12 months for a resident receiving supervisory care services,

ii. At least once every six months for a resident receiving personal care services, and

iii. At least once every three months for a resident receiving directed care services; and

5. When initially developed and when updated, is signed and dated by:

a. The resident or resident's representative;

b. The manager;

c. If a review is required in subsection (A)(3)(d), the nurse or medical practitioner who reviewed the service plan; and

d. If a review is required in subsection (A)(3)(e)(ii), the medical practitioner or behavioral health professional who reviewed the service plan.

B. For a resident receiving respite care services, a manager shall ensure that:

1. No change

a. No change

i. No change

ii. No change

b. No change

2. No change

C. No change

1. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

2. No change

a. No change

i. No change

ii. No change

iii. No change

b. No change

c. No change

d. No change

D. No change

E. No change

1. No change
2. No change
    a. No change
    b. No change
    c. No change
    d. No change
3. No change
4. No change

F. No change

1. No change
2. No change
    a. No change
    b. No change
    c. No change

R9-10-811. Medical Records

A. No change

1. No change
2. No change
    a. No change
    b. No change
    c. No change
3. No change
4. No change
    a. No change
    b. No change
    c. No change
5. No change

B. No change

1. No change
2. No change

C. A manager shall ensure that a resident's medical record contains:

1. Resident information that includes:
    a. The resident's name, and
    b. The resident's date of birth;
2. The names, addresses, and telephone numbers of:
    a. The resident's primary care provider;
    b. Other persons, such as a home health agency or hospice service agency, involved in the care of the resident; and
    c. An individual to be contacted in the event of an emergency, significant change in the resident's condition, or termination of residency;
3. If applicable, the name and contact information of the resident's representative and:
    a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or

b. If the resident's representative:

i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or

ii. Is a legal guardian, a copy of the court order establishing guardianship;

4. The date of acceptance and, if applicable, the date of termination of residency;
5. Documentation of the resident's needs required in R9-10-807(B);
6. Documentation of general consent and informed consent, if applicable;
7. Except as allowed in R9-10-808(B)(2), documentation of freedom from infectious tuberculosis as required in R9-10-807(A);
8. A copy of the resident's health care directive, if applicable;
9. The resident's signed residency agreement and any amendments;
10. Resident's service plan and updates;
11. Documentation of assisted living services provided to the resident;
12. A medication order from a medical practitioner for each medication that is administered to the resident or for which the resident receives assistance in the self-administration of the medication;
13. Documentation of medication administered to the resident or for which the resident received assistance in the self-administration of medication that includes:
    a. The date and time of administration or assistance;
    b. The name, strength, dosage, and route of administration;
    c. The name and signature of the individual administering or providing assistance in the self-administration of medication; and
    d. An unexpected reaction the resident has to the medication;
14. Documentation of the resident's refusal of a medication, if applicable;
15. If applicable, documentation of any actions taken to control the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
16. If applicable, documentation of a determination by a medical practitioner that evacuation from the assisted living facility during an evacuation drill would cause harm to the resident;
17. Documentation of notification of the resident of the availability of vaccination for influenza and pneumonia, according to A.R.S. § 36-406(1)(d);
18. Documentation of the resident's orientation to exits from the assisted living facility required in ~~R9-10-818(B)~~ R9-10-819(B);
19. If a resident is receiving behavioral health services other than behavioral care, documentation of the determination in R9-10-813(3);
20. If a resident is receiving behavioral care, documentation of the determination in R9-10-812(3);
21. If applicable, for a resident who is unable to direct self-care, the information required in R9-10-815(F);
22. Documentation of any significant change in a resident's behavior, physical, cognitive, or functional condition and the action taken by a manager or caregiver to address the resident's changing needs;
23. Documentation of the notification required in R9-10-803(G) if the resident is incapable of handling financial affairs; and
24. If the resident no longer resides and receives assisted living services from the assisted living facility:
    a. A written notice of termination of residency; or
    b. If the resident terminated residency, the date the resident terminated residency.

R9-10-815. Directed Care Services

A. No change

B. No change

1. No change
2. No change

C. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving directed care services includes:

1. The requirements in R9-10-814(F)(1) through (3);
2. If applicable, the determination in R9-10-814(B)(2)(b)(iii);
3. Cognitive stimulation and activities to maximize functioning;
4. Strategies to ensure a resident's personal safety;
5. Encouragement to eat meals and snacks;
6. Documentation:
   a. Of the resident's weight, or
   b. From a medical practitioner stating that weighing the resident is contraindicated; ~~and~~
7. Coordination of communications with the resident's representative, family members, and, if applicable, other individuals identified in the resident's service plan~~.~~; and
8. If the resident is receiving memory care services:
   a. Identification of specialized environmental features to support memory care services, such as secure areas to prevent wandering and spaces designed for cognitive stimulation and engagement;
   b. Strategies for providing person-centered care that aligns with the principles of dementia-friendly environments, including familiar surroundings, optimized sensory stimulation, and meaningful activities; and
   c. Strategies for administering medications as ordered.

D. No change

E. No change

1. No change
2. No change

F. A manager of an assisted living facility authorized to provide directed care services shall ensure that:

1. Policies and procedures are established, documented, and implemented that ensure the safety of a resident who may wander;
2. There is a means of exiting the facility for a resident who does not have a key, special knowledge for egress, or the ability to expend increased physical effort that meets one of the following:
   a. Provides access to an outside area that:
      i. Allows the resident to be at least 30 feet away from the facility that is secure, and
      ii. ~~Controls~~ Monitors or alerts employees of the egress of a resident from the facility;
   b. Provides access to an outside area:
      i. From which a resident may exit to a location at least 30 feet away from the facility that is secure, and
      ii. ~~Controls~~ Monitors or alerts employees of the egress of a resident from the facility; or
   c. Uses a mechanism that meets the Special Egress-Control Devices provisions in the International Building Code incorporated by reference in R9-10-104.01; and

3. A caregiver or an assistant caregiver complies with the requirements for incidents in R9-10-804 when a resident who is unable to direct self-care wanders into an area not designated by the governing authority for use by the resident.

~~R9-10-816.~~ **~~Medication Services~~ Repealed**

~~A.~~ ~~A manager shall ensure that:~~

~~1. Policies and procedures for medication services include:~~

~~a. Procedures for preventing, responding to, and reporting a medication error;~~

~~b. Procedures for responding to and reporting an unexpected reaction to a medication;~~

~~c. Procedures to ensure that a resident's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the resident's needs;~~

~~d. Procedures for:~~

~~i. Documenting, as applicable, medication administration and assistance in the self-administration of medication; and~~

~~ii. Monitoring a resident who self-administers medication;~~

~~e. Procedures for assisting a resident in procuring medication; and~~

~~f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and~~

~~2. If a verbal order for a resident's medication is received from a medical practitioner by the assisted living facility:~~

~~a. The manager or a caregiver takes the verbal order from the medical practitioner,~~

~~b. The verbal order is documented in the resident's medical record, and~~

~~c. A written order verifying the verbal order is obtained from the medical practitioner within 14 calendar days after receiving the verbal order.~~

~~B.~~ ~~If an assisted living facility provides medication administration, a manager shall ensure that:~~

~~1. Medication is stored by the assisted living facility;~~

~~2. Policies and procedures for medication administration:~~

~~a. Are reviewed and approved by a medical practitioner, registered nurse, or pharmacist;~~

~~b. Include a process for documenting an individual, authorized, according to the definition of "administer" in A.R.S. § 32-1901, by a medical practitioner to administer medication under the direction of the medical practitioner;~~

~~c. Ensure that medication is administered to a resident only as prescribed; and~~

~~d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record; and~~

~~3. A medication administered to a resident:~~

~~a. Is administered by an individual under direction of a medical practitioner,~~

~~b. Is administered in compliance with a medication order, and~~

~~c. Is documented in the resident's medical record.~~

~~C.~~ ~~If an assisted living facility provides assistance in the self-administration of medication, a manager shall ensure that:~~

~~1. A resident's medication is stored by the assisted living facility;~~

~~2. The following assistance is provided to a resident:~~

~~a. A reminder when it is time to take the medication;~~

~~b. Opening the medication container or medication organizer for the resident;~~

~~c. Observing the resident while the resident removes the medication from the container or medication organizer;~~

~~d. Except when a resident uses a medication organizer, verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:~~

~~i. The resident taking the medication is the individual stated on the medication container label,~~

~~ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and~~

~~iii. The resident is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label;~~

~~e. For a resident using a medication organizer, verifying that the resident is taking the medication in the medication organizer according to the schedule specified on the medical practitioner's order; or~~

~~f. Observing the resident while the resident takes the medication;~~

~~3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or nurse; and~~

~~4. Assistance in the self-administration of medication provided to a resident:~~

~~a. Is in compliance with an order, and~~

~~b. Is documented in the resident's medical record.~~

~~**D.** A manager shall ensure that:~~

~~1. A current drug reference guide is available for use by personnel members, and~~

~~2. A current toxicology reference guide is available for use by personnel members.~~

~~**E.** A manager shall ensure that a resident's medication organizer is only filled by:~~

~~1. The resident;~~

~~2. The resident's representative;~~

~~3. A family member of the resident;~~

~~4. A personnel member of a home health agency or hospice service agency; or~~

~~5. The manager or a caregiver who has been designated and is under the direction of a medical practitioner, according to subsection (B)(2)(b).~~

~~**F.** When medication is stored by an assisted living facility, a manager shall ensure that:~~

~~1. Medication is stored in a separate locked room, closet, cabinet, or self-contained unit used only for medication storage;~~

~~2. Medication is stored according to the instructions on the medication container; and~~

~~3. Policies and procedures are established, documented, and implemented for:~~

~~a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;~~

~~b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;~~

~~c. A medication recall and notification of residents who received recalled medication; and~~

~~d. Storing, inventorying, and dispensing controlled substances.~~

~~**G.** A manager shall ensure that a caregiver immediately reports a medication error or a resident's unexpected reaction to a medication to the medical practitioner who ordered the medication or, if the medical practitioner who ordered the medication is not available, another medical practitioner.~~

~~**H.** If medication is stored by a resident in the resident's bedroom or residential unit, a manager shall ensure that:~~

~~1. The medication is stored according to the resident's service plan; or~~

~~2. If the medication is not being stored according to the resident's service plan, the resident's service plan is updated to include how the medication is being stored by the resident.~~

R9-10-816. Memory Care Services

A. If an assisted living facility is authorized to provide directed care services, a manager shall ensure that:

1. Policies and procedures for memory care services are established, documented, and implemented to cover the following:
    a. Skills and knowledge necessary for the personnel member to provide the expected memory care services;
    b. Interventions used for behavior management;
    c. Systems to accommodate visitors, staff, and residents who do not need controlled egress;
    d. The requirements in R9-10-815(C)(8) regarding the prevention of unsafe wandering or exit seeking, which may include the use of tracking systems;
    e. Promotion of nutrition and hydration care;
    f. Evacuation and emergency procedures specific to residents receiving memory care services, that include the requirements in R9-10-819(A)(5);
    g. Prevention techniques of elopement and responding to elopement incidents promptly and effectively;
    h. Monitoring residents receiving memory care services in outdoor areas on the premises;
    i. Specialized environmental features to support memory care that include:
        i. Secure areas to prevent wandering and spaces designed for cognitive stimulation and engagement; and
        ii. Strategies for providing person-centered care that aligns with the principles of dementia-friendly environments, including familiar surroundings, optimized sensory stimulation, and meaningful activities; and
    j. Specialized accommodations and progressive support for activities of daily living tailored to persons living with dementia following evidence-based best practices;
2. Activities that match the resident's cognitive ability, memory, attention span, language, reasoning ability, and physical function;
3. For a resident who requests or receives memory care services from the assisted living facility, a medical practitioner:
    a. Evaluates the resident within 30 calendar days before acceptance of the resident and at least once every six months throughout the duration of the resident's need for memory care services;
    b. Reviews the assisted living facility's scope of services; and
    c. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility;
4. There is staffing to ensure adequate supervision and care for residents receiving memory care services;
5. In an assisted living facility where residents are housed in two or more detached buildings, or if a building has distinct and segregated areas, a designated caregiver must be awake and available in each building and each segregated area at all times; and
6. If applicable, staffing is increased to compensate for the evaluated care and service needs of residents at move-in or for the changing physical or cognitive needs of the residents.

B. A manager shall ensure that staff obtain a certificate of completion, as specified in R9-10-126, including the minimum eight hours of initial memory care services training within the first 30 days of hire or provide a copy of a certificate of completion, as specified in R9-10-126, obtained within the preceding 12 months from the date of hire. If a staff member or contractor has not worked at an assisted living facility that is licensed to provide directed care services for a period of 12 months, the staff member or contractor must complete the minimum eight hours of initial memory care services training within 30 days after the date of hire, rehire, or returning to work.

C. In addition to the minimum eight hours of initial memory care services training, a manager shall complete a minimum of four hours of memory care services training specific to assisted living facility managers.

D. Each resident receiving memory care services must have a service plan that meets the requirements specified in R9-10-815(C).

E. Service planning for residents receiving memory care services shall be person-centered involving comprehensive assessments that consider the resident's medical history, preference, and social context, and should actively include input from the resident and the resident's representative. Service planning for residents receiving memory care services shall be individualized, regularly reviewed according to R9-10-808, and adjusted to meet the changing needs of residents as their condition progresses.

F. The assisted living facility shall only admit or retain residents whose cognitive and physical care needs can be safely managed within the area or areas in an assisted living facility where memory care services are provided.

G. An assisted living facility authorized to provide directed care services and is providing memory care services shall incorporate evidence-based specialized environmental features that:

1. Use clear, easy-to-understand signage and visual cues to help residents navigate their surroundings;
2. Reduce environmental factors that may cause confusion or distress, such as loud noises or overly bright lighting;
3. Prevent residents from accessing materials, furnishings, equipment, activities, or treatments that may pose a health or safety risk;
4. Support resident movement and engagement;
5. Promote independence and overall well-being;
6. Ensure easy access and intuitive wayfinding; and
7. Facilitate engagement and encourage participation in meaningful daily tasks and activities.

R9-10-817. Medication Services

A. A manager shall ensure that:

1. Policies and procedures for medication services include:
    a. Procedures for preventing, responding to, and reporting a medication error;
    b. Procedures for responding to and reporting an unexpected reaction to a medication;
    c. Procedures to ensure that a resident's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the resident's needs;
    d. Procedures for:
        i. Documenting, as applicable, medication administration and assistance in the self-administration of medication; and
        ii. Monitoring a resident who self-administers medication;
    e. Procedures for assisting a resident in procuring medication;
    f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
    g. Procedures for administering medication to residents receiving memory care services; and
2. If a verbal order for a resident's medication is received from a medical practitioner by the assisted living facility:
    a. The manager or a caregiver takes the verbal order from the medical practitioner,
    b. The verbal order is documented in the resident's medical record, and
    c. A written order verifying the verbal order is obtained from the medical practitioner within 14 calendar days after receiving the verbal order.

B. If an assisted living facility provides medication administration, a manager shall ensure that:

1. Medication is stored by the assisted living facility;
2. Policies and procedures for medication administration:
    a. Are reviewed and approved by a medical practitioner, registered nurse, or pharmacist;

b. Include a process for documenting an individual authorized, according to the definition of "administer" in A.R.S. § 32-1901, by a medical practitioner to administer medication under the direction of the medical practitioner;

c. Ensure that medication is administered to a resident only as prescribed; and

d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record; and

3. A medication administered to a resident:

a. Is administered by an individual under the direction of a medical practitioner,

b. Is administered in compliance with a medication order, and

c. Is documented in the resident's medical record.

C. If an assisted living facility provides assistance in the self-administration of medication, a manager shall ensure that:

1. A resident's medication is stored by the assisted living facility;

2. The following assistance is provided to a resident:

a. A reminder when it is time to take the medication;

b. Opening the medication container or medication organizer for the resident;

c. Observing the resident while the resident removes the medication from the container or medication organizer;

d. Except when a resident uses a medication organizer, verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:

i. The resident taking the medication is the individual stated on the medication container label,

ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and

iii. The resident is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label;

e. For a resident using a medication organizer, verifying that the resident is taking the medication in the medication organizer according to the schedule specified on the medical practitioner's order; or

f. Observing the resident while the resident takes the medication;

3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or nurse; and

4. Assistance in the self-administration of medication provided to a resident:

a. Is in compliance with an order, and

b. Is documented in the resident's medical record.

D. A manager shall ensure that:

1. A current drug reference guide is available for use by personnel members, and

2. A current toxicology reference guide is available for use by personnel members.

E. A manager shall ensure that a resident's medication organizer is only filled by:

1. The resident;

2. The resident's representative;

3. A family member of the resident;

4. A personnel member of a home health agency or hospice service agency; or

5. The manager or a caregiver who has been designated and is under the direction of a medical practitioner, according to subsection (B)(2)(b).

F. When medication is stored by an assisted living facility, a manager shall ensure that:

1. Medication is stored in a separate locked room, closet, cabinet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented for:
   a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
   b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
   c. A medication recall and notification of residents who received recalled medication; and
   d. Storing, inventorying, and dispensing controlled substances.

G. A manager shall ensure that a caregiver immediately reports a medication error or a resident's unexpected reaction to a medication to the medical practitioner who ordered the medication or, if the medical practitioner who ordered the medication is not available, another medical practitioner.

H. If medication is stored by a resident in the resident's bedroom or residential unit, a manager shall ensure that:

1. The medication is stored according to the resident's service plan; or
2. If the medication is not being stored according to the resident's service plan, the resident's service plan is updated to include how the medication is being stored by the resident.

~~R9-10-817.~~ R9-10-818. Food Services

A. No change

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change

B. No change

1. No change
2. No change

C. No change

1. No change
2. No change
3. No change
   a. No change
   b. No change
4. No change
   a. No change

b. No change

i. No change

ii. No change

iii. No change

iv. No change

v. No change

vi. No change

5. No change

6. No change

7. No change

D. No change

1. No change

2. No change

~~R9-10-818.~~ R9-10-819. Emergency and Safety Standards

A. A manager shall ensure that:

1. A disaster plan is developed, documented, maintained in a location accessible to caregivers and assistant caregivers, and, if necessary, implemented that includes:
   a. When, how, and where residents will be relocated;
   b. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
   c. A plan to ensure each resident's medication will be available to administer to the resident during a disaster; and
   d. A plan for obtaining food and water for individuals present in the assisted living facility or the assisted living facility's relocation site during a disaster;
2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
3. Documentation of the disaster plan review required in subsection (A)(2) includes:
   a. The date and time of the disaster plan review;
   b. The name of each employee or volunteer participating in the disaster plan review;
   c. A critique of the disaster plan review; and
   d. If applicable, recommendations for improvement;
4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
5. An evacuation drill for employees and residents:
   a. Is conducted at least once every six months; and
   b. Includes all individuals on the premises except for:
      i. A resident whose medical record contains documentation that evacuation from the assisted living facility would cause harm to the resident, and
      ii. Sufficient caregivers to ensure the health and safety of residents not evacuated according to subsection (A)(5)(b)(i);
6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
   a. The date and time of the evacuation drill;
   b. The amount of time taken for employees and residents to evacuate the assisted living facility;
   c. If applicable:

i. An identification of residents needing assistance for evacuation, and

ii. An identification of residents who were not evacuated;

d. Any problems encountered in conducting the evacuation drill; and

e. Recommendations for improvement, if applicable; and

7. If the assisted living facility is authorized to provide directed care services, an elopement drill for employees:

a. Conduct an elopement drill every six months on each shift and document the date, time, and description of each drill; and

b. Immediately investigate any elopement and notify the designated family member(s), legal guardian, or other responsible person within 24 hours.

~~7.~~8. An evacuation path is conspicuously posted in each hallway of each floor of the assisted living facility.

B. No change

1. No change

2. No change

C. No change

D. No change

1. No change

2. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

E. No change

1. No change

a. No change

b. No change

2. No change

a. No change

b. No change

3. No change

4. No change

5. No change

F. No change

1. No change

2. No change

3. No change

a. No change

b. No change

4. No change

a. No change

i. No change

ii. No change

iii. No change

iv. No change

b. No change

5. No change

6. No change

G. No change

1. No change

2. No change

~~R9-10-819.~~ R9-10-820. Environmental Standards

A. No change

1. No change

a. No change

b. No change

2. No change

3. No change

a. No change

b. No change

4. No change

5. No change

a. No change

b. No change

6. No change

7. No change

8. No change

9. No change

10. No change

11. No change

12. No change

13. No change

a. No change

b. No change

c. No change

14. No change

a. No change

b. No change

c. No change

15. No change

a. No change

b. No change

c. No change

16. No change

B. No change

1. No change

a. No change

i. No change

ii. No change

iii. No change

b. No change

2. No change

3. No change

~~R9-10-820.~~ R9-10-821. Physical Plant Standards

A. No change

1. No change

2. No change

B. No change

1. No change

a. No change

b. No change

2. No change

3. No change

4. No change

a. No change

b. No change

c. No change

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ii. No change

iii. No change

iv. No change

v. No change

vi. No change

vii. No change

5. No change

a. No change

b. No change

c. No change

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7. No change

C. No change

1. No change

2. No change

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a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

g. No change

D. No change

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    b. No change
    c. No change
3. No change
4. No change
    a. No change
    b. No change
        i. No change
        ii. No change
    c. No change
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    e. No change
    f. No change
5. No change
    a. No change
    b. No change
    c. No change
6. No change
    a. No change
    b. No change
    c. No change
        i. No change
        ii. No change
        iii. No change
        iv. No change
        v. No change
        vi. No change
        vii. No change
        viii. No change
    d. No change
    e. No change
        i. No change
        ii. No change
        iii. No change
        iv. No change
    f. No change
        i. No change
        ii. No change

7. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change

E. No change

1. No change
2. No change
3. No change

F. No change

1. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
        i. No change
        ii. No change
        iii. No change
2. No change
3. No change

G. No change

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES -
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 1. GENERAL and
ARTICLE 8. ASSISTED LIVING FACILITIES

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

March 2025

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES -
HEALTH CARE INSTITUTIONS: LICENSING
ARTICLE 1. GENERAL,
ARTICLE 8. ASSISTED LIVING FACILITIES

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) and (17) requires the Arizona Department of Health Services (Department) to protect the health of the people in Arizona, and license and regulate health care institutions. In order to ensure public health, safety, and welfare, A.R.S. §§ 36-405 and 36-406 requires the Department to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions. The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. The Department plans to amend the rules in 9 A.A.C. 10, Articles 1 and 8, to comply with new statutory changes imposed by Laws 2024, Chapter 100, which requires the new rules to take effect by June 30, 2025. These rules will establish memory care services standards in assisted living facilities, requiring eight hours of initial training and four hours of annual continuing education for staff and contractors, as well as specific training for managers. Rehired staff and contractors after a 12-month gap from working at an assisted living facility licensed to provide directed care services must complete the initial training within 30 days after the date of hire, rehire or returning to work. On-site monitoring inspections, in-service training requests, and associated fees will be formalized. Additionally, civil penalties will increase up to $1,000 per resident or patient impacted, per day, and take other considerations into account (i.e. repeats, etc.). The Department may pursue court, administrative, or enforcement action against a licensee, even if the health care institution is in the process of being sold or transferred or has closed. Health care institutions failing to pay penalties may have their licenses voided, and applications may be denied if resident or patient safety is at risk. After receiving rulemaking approval pursuant to A.R.S. § 41-1039, the Department plans to conduct a rulemaking to adhere to the statutory changes identified above. The Department anticipates that the rules may increase the regulatory burden or cost on some affected persons. However, the Department believes that the benefits of the rules will far outweigh any potential cost due to increasing the health and safety for residents or patients. Any proposed changes will conform to the rulemaking format and style requirements of the Governor's Regulatory Review Council (GRRC) and the Office of the Secretary of State.

2. Cost/Benefit Analysis

This analysis covers the costs and benefits associated with the rule changes related to implementing Laws 2024, Chapter 100. The annual cost and revenue changes are designated as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

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

a. The Department
b. Assisted living facilities
c. Training providers
d. Health care institutions
e. Patients, residents, and their families
f. The general public

A. The Department

The proposed rule changes in Arizona Administrative Code Title 9. Chapter 10. Health Care Institutions: Licensing, in compliance with Laws 2024, Chapter 100 aims to strengthen oversight, enhance compliance, and improve enforcement mechanisms within health care institutions. The new legislation gives the Department authority to conduct on-site monitoring inspections for health care institutions with repeated violations and impose associated fees. Additionally, the rules clarify conditions under which a health care institution's license may be voided for unpaid penalties or fees. Enhanced enforcement actions focus on assessing risks to patient and resident safety, imposing civil moneypenalties based on the severity and impact of violations. These measures seek to ensure higher standards of care and accountability across all health care institutions. Enforcement efforts will focus on assessing risks to patient and resident safety and applying civil penalties based on the severity and impact of violations. In this rulemaking, the Department is amending 12 Sections, adding seven new Sections and one Table, repealing one section, and renumbering four Sections. The Department expects that the new rules providing clarity on enforcement actions may reduce the need for frequent enforcement actions and improve compliance across the industry.

Financially, the introduction of fees for on-site monitoring inspections and in-service training creates a revenue stream to offset regulatory costs. Health care institutions may be charged up to $1,000 per monitoring inspection, allowing flexibility based on facility size and needs, and up to $500 per hour for training, encouraging voluntary compliance efforts. Based on estimates, if 1% of health care institutions with complaints in FY23–24 required for each on-site monitoring inspection, this would generate approximately $22,500 for the Division of Public Health Licensing Services and $2,500 for the state general fund. A more substantial fiscal

impact comes from Laws 2024, Chapter 100, which raises the cap on civil penalties from $500 to $1,000, with all fines deposited into the state general fund. In FY24, the Department collected approximately $1.7 million in civil penalties; with a projected 75% increase, the total amount collected could exceed $3 million annually.

The proposed rules are expected to expand the Department's monitoring and enforcement responsibilities. While the Department already employs existing enforcement measures, explicitly outlining these requirements in the rules is anticipated to enhance compliance among health care institutions. This may, in turn, reduce the need for frequent on-site monitoring inspections and enforcement actions. As a result, the Department expects to concentrate on-site monitoring inspections on facilities with significant or repeated violations, those under corrective action plans, or those posing direct risks to patient and resident health and safety.

By strengthening regulatory clarity, the new rules are likely to improve patient and resident safety and care quality, ultimately reducing the occurrence of serious health and safety violations. Over time, this could lead to fewer severe enforcement actions, such as license revocations or facility closures. However, during the initial implementation phase, enforcement actions may temporarily increase as facilities adjust to the new standards. Overall, the Department anticipates a moderate to substantial impact on its administrative and operational workload.

The introduction of fees for on-site monitoring inspections and in-service training provides the Department with a new revenue stream. Charging up to $1,000 for on-site monitoring inspections, according to A.R.S. § 36-405(D), and up to $500 an hour for the in-service training, according to A.R.S. § 36-405(E), which is expected to offset costs associated with increased regulatory activities. The maximum of $1,000 for on-site monitoring inspections will allow discretion in team size needed for different facility sizes and types. This financial model not only supports enforcement efforts but also incentivizes compliance and voluntary training requests from health care institutions. The expected financial impact on the Department from this revenue generation ranges from minimal to moderate, depending on the number of health care institutions subject to these fees and program implementation.

Laws 2024, Chapter 100 increases the cap on civil penalties assessed for violations of health care institution statutes from $500 to $1000, with all civil penalties deposited into the state general fund. With the cap on civil penalties, an increase in the amount of fines going back to the state general fund is expected. In FY 2024, the Licensing Division collected approximately $1.7M in civil penalties, which all went back to the state general fund. With an estimated increase of 75% in the amount of civil penalties collected, that would push the total amount collected to over $3M per year for the state general fund.

Additionally, Laws 2024, Chapter 100 requires the Department to establish rules for a memory care services training program to oversee the approval of training providers and ensure compliance with standards outlined in

R9-10-122 through R9-10-126. This oversight may result in some fiscal impact on the state general fund, as 10% of licensing fees are distributed to it. However, establishing clear training standards is expected to improve the quality of memory care services across the state. The new rules for memory care services may also increase the Department's administrative responsibilities, requiring more detailed application reviews, thorough inspections, and enhanced compliance monitoring. The Department will need to verify staff and contractor training records, review elopement drill documentation, and assess safety measures, which may require additional resources, such as time and specialized training for compliance inspectors.

The addition of new memory care services rules for assisted living facilities authorized to provide directed care services may have several effects on the Department. For example, the new memory care services rules may increase the number of inspections needed to verify compliance with the rules and statutes. This includes reviewing staff and contractor training records, monitoring elopement drill documentation, and assessing the implementation of safety measures. As a result, the Department may need to allocate additional resources, such as staff time and expertise, to manage the increased workload. While the operational cost impact is expected to be minimal, more frequent inspections and specialized training for compliance officers may be necessary. Additionally, the Department will need to establish and maintain systems for tracking compliance, including overseeing approved training programs and monitoring the implementation of new memory care services.

The proposed changes and new rules aim to enhance compliance and improve patient and resident safety by holding health care institutions accountable for violations. Stricter monitoring and penalties for high-risk facilities align with the Department's mission to protect health and safety. However, while these changes are expected to have a significant impact on the Department's ability to improve health outcomes, they may also introduce operational challenges. To adapt effectively, the Department may need additional resources for staff and contractor training, updating procedures, creating guidance documents, and potentially acquiring new technology or system software. This will also include managing an increased volume of training program applications.

Overall, while the financial impact on the Department is anticipated to be minimal to moderate, the benefits of clearly defined enforcement measures, the establishment of memory care service standards, and improved public health outcomes are expected to be significant.

B. Assisted Living Facilities

The rules in 9 A.A.C. 10, Article 8, were promulgated to comply with Laws 2011, Chapter 96 that required the Department to adopt rules for health care institutions to reduce monetary or regulatory costs on a person or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." A.R.S. § 36-401(8) defines an "assisted living facility" as a residential care institution,

including an adult foster care home, that provides or contracts to provide supervisory care services, personal care services, or directed care services continuously. A.R.S. § 36-405.03 establishes memory care services standards for assisted living facilities that are licensed to provide directed care services. The statute further defines memory care services as services that support individuals with dementia and other progressive and neurodegenerative brain disorders, including specialized environmental features, care planning, directed care services, medication administration services, specialized accommodations, activity programming or other services required by rule.

As of January 2025, the Department reported 2,046 licensed assisted living facilities operating in the state. In the 2024 calendar year, 345 assisted living facilities elected to close, 348 initial applications were approved, 14 initial applications were denied, and 99 licenses were amended. The Department completed 1,870 compliance surveys and 933 complaint investigation surveys. The Department also completed 651 enforcement actions, and as a result of the enforcement actions, the Department assessed $720,115 for civil penalties and revoked seven licenses.

The proposed rule for memory care services in assisted living facilities is expected to have a moderate economic impact on assisted living facilities licensed to provide directed care services. By establishing clear requirements for staffing, training, service planning, and environmental adaptations, the rules outlined in R9-10-816 aim to enhance the quality of care for residents receiving memory care services, while improving compliance and reducing enforcement actions. Staff and contractors must complete eight hours of specialized memory care training within 30 days of hire and at least four hours of annual continuing education. An assisted living facility authorized to provide directed care services and providing memory care services is required to incorporate evidence-based specialized environmental features that enhance navigation through clear signage and visual cues, minimize distressing environmental factors, prevent access to hazardous materials, support movement and engagement, promote independence and well-being, ensure intuitive wayfinding, and encourage participation in meaningful daily activities. Additionally, each resident must have a service plan tailored to their cognitive and physical needs, with regular evaluations by medical practitioners. These changes aim to ensure that residents receive safe, personalized care in a secure and supportive environment. Assisted living facilities wanting to provide memory care services may incur minimal costs related to additional training, staffing adjustments, and environmental modifications necessary to meet the new standards. However, these requirements are expected to improve operational efficiency, reduce liability risks, and enhance resident safety, potentially lowering long-term costs associated with non-compliance and enforcement actions. Furthermore, expanding the rules to allow assisted living facilities licensed to provide directed care services to also provide memory care services may provide a significant benefit to assisted living facilities for expanding their scope of care.

In this rulemaking, the Department is also requiring regular elopement drills in R9-10-819. The proposed rule may have a minimal economic impact on assisted living facilities authorized to provide directed care services by requiring them to conduct elopement drills every six months on each shift, document each drill, and investigate any elopement incidents. While these requirements may result in additional administrative tasks and staff and contractor time, the associated costs are expected to be minimal and offset by the benefits of improved resident safety and emergency preparedness. Prompt investigation and notification of elopements ensure timely responses, potentially reducing liability risks and enhancing the quality of care provided to residents.

The introduction of new memory care service rules for assisted living facilities approved to provide directed care services in Article 8, may have significant effects on health care providers who work at an assisted living facility. Economically, providers may incur minimal costs associated with compliance, including expenses for staff and contractor training, infrastructure upgrades, and ongoing regulatory adherence. The mandatory minimum of eight hours of initial training and minimum of four hours of annual training for direct care staff and contractors, and annual continuing education will require investments in both time and resources. Additionally, facilities will need to implement systems such as tracking technologies and environmental modifications, which may involve substantial upfront and maintenance costs.

From an operational perspective, assisted living facilities will need to develop or update policies and procedures tailored to memory care services, including protocols for behavior management, elopement prevention, and emergency response. These changes will require time and effort to implement effectively, potentially diverting resources from other areas of operation. Assisted living facilities may also need to hire additional staff or reallocate existing personnel to meet the new staffing and supervision requirements. Despite these challenges, the new rules are expected to enhance the quality of care and safety for residents with cognitive impairments. By standardizing training and care practices, providers will be better equipped to manage the complex needs of memory care service residents, reducing risks such as unsafe wandering, elopement, and neglect. Improved care standards could enhance the reputation of facilities, making them more attractive to families seeking high-quality care.

While the new rules aim to improve health outcomes and resident safety, the new rules are expected to impose moderate to substantial financial and operational burdens on assisted living facilities, depending on the facility size and resources. The overall economic impact of the rulemaking on assisted living facilities is expected to be minimal-to-moderate. The new memory care services requirements aim to improve public health and safety while enhancing regulatory efficiency with limited financial burden. The Department anticipates that these rules will strengthen resident safety and care quality, ultimately benefiting assisted living facilities that offer memory care services.

C. Training Providers

In Article 1, the Department is adding five new Sections related to the new memory care services training program. Any entity may provide the newly established training program for memory care services. R9-10-122 outlines the requirements for memory care services training providers seeking to provide memory care services training as required by A.R.S. § 36-405.03. These programs must apply with the Department for approval by submitting a detailed application that includes the name and contact information of the agency, the addresses where training services and records are maintained, and a description of the training course. The course must cover mandatory topics such as understanding cognitive impairments, communication techniques, managing challenging behaviors, emergency protocols, and palliative care. Each topic must include information on the skills to be acquired, time allocation, and testing methods. The memory care services training program provider must also agree to comply with Department requests for additional information and submit all training materials with the application. To maintain approval, the memory care services training program provider must renew annually by submitting updated information at least 60 days before the current approval expires. The Department has specified timelines for processing applications, including a 30-day administrative review, a 30-day substantive review, and a total processing time of 60 days. If deficiencies are identified during the review process, the memory care services training program provider must resolve them within 30 days, or the application will be considered withdrawn. The Department can deny, revoke, or suspend approval for non-compliance, submission of false information, or failure to implement the program as described. Factors such as repeated violations, patterns of non-compliance, and the severity of infractions are considered when determining enforcement actions.

Depending on the memory care services training program provider's costs for training, there may be an increase in revenue for providing an increased number of trainings. Compliance with the new rules may require additional resources, but it also creates opportunities for agencies to expand the training they offer and establish credibility in the growing field of memory care services. R9-10-123 and R9-10-124 establish requirements for memory care services training program providers to ensure transparency and compliance. Memory care services training program provider must notify the Department of significant changes—such as termination of services, changes in business name, contact information, administrator, or training topics—at least 30 days prior to the effective date. Notifications involving new training topics are subject to Department review for compliance, and onsite inspections may occur as part of the process. Additionally, providers must designate a qualified administrator and grant the Department timely access to facilities, records, and clients upon request. These rules

may impose minimal administrative costs on providers to comply with notification and access requirements, but they also enhance operational integrity and oversight, ensuring high standards in memory care services training.

R9-10-125 defines the eligibility criteria for individuals seeking to become a memory care services trainer, emphasizing qualifications, experience, and integrity. An individual who is not a registered nurse may become a memory care services trainer if they meet specific education, experience, and certification requirements. Eligibility includes holding a bachelor's degree or higher in a relevant field such as gerontology, psychology, social work, education, or nursing-related disciplines, or having at least three years of direct experience in memory or dementia care. They must also hold a recognized certification, such as Certified Dementia Practitioner (CDP) or Certified Alzheimer's Disease and Dementia Care Trainer (CADDCT). Additionally, candidates should have experience in adult education or staff and contractor training, complete cultural competency training, and demonstrate strong communication skills to effectively train care staff and contractors. Alternatively, eligibility can be met by possessing a valid certificate of completion issued under R9-10-126.

R9-10-126 establishes requirements for issuing and maintaining memory care services certificates of completion for individuals who complete Department-approved training programs under R9-10-122. These certificates, required for work in assisted living facilities licensed to provide directed care services, must include detailed information such as the trainee's name, program details, training topics, hours completed, and confirmation of successful training with a minimum passing score of 70%. Certificates must be issued within 10 days of training completion and are subject to annual renewal, requiring four hours of continuing education and a passing score on an exam. Providers and facilities must maintain records of certificates, ensuring compliance with training standards. These regulations impose administrative responsibilities on training providers and facilities but enhance workforce quality and consistency in memory care services, potentially increasing costs for compliance while ensuring higher standards of care.

Overall, the economic impact of these regulatory changes is expected to be minimal to moderate, with both costs and benefits for memory care services training providers (agencies). While agencies providing memory care services training may face administrative costs related to compliance, reporting, and maintaining approval, they also have the potential to generate additional revenue by offering training programs in a growing field. Assisted living facilities may incur costs associated with staff and contractor training and compliance with certification requirements, but these expenses are offset by improved care quality, reduced enforcement risks, and enhanced operational efficiency. The Department expects that the new rules will provide a significant benefit by establishing clear standards for training providers and trainers. Furthermore, the new rules are expected to provide consistency, transparency, and accountability, ultimately strengthening the workforce and raising the standard of memory care services. Although there are some initial costs for implementation, the long-term

benefits of improved resident care, increased regulatory oversight, and enhanced credibility in the industry are expected to outweigh the financial burdens, contributing to a more sustainable and effective memory care service system in Arizona.

D. Health Care Institutions

The proposed rule changes are expected to have a minimal-to-moderate impact on health care institutions, particularly those with a history of noncompliance. However, the Department currently has the authority to take enforcement action on health care institutions not in compliance with the rules and statutes (i.e. A.R.S. Title 36, Chapter 4). Laws 2024, Chapter 100 mandates that these standards be outlined in the A.A.C. Title 9, Chapter 10 rules. Health care institutions cited for significant deficiencies or repeated violations may be subject to on-site monitoring by the Department. This not only increases the regulatory burden but also adds financial costs, as facilities may be charged up to $1,000 for monitoring inspections. For health care institutions with limited resources, these additional costs could strain budgets, especially if recurring violations necessitate multiple inspections. However, if health care institutions operate in compliance with the rules, the impact of the new rules related to enforcement would be none-to-minimal.

In R9-10-102(E), the Department may conduct on-site monitoring inspections of health care institutions that are found to not be in substantial compliance with the applicable licensure requirements specified in this Chapter, as outlined in Table 1.2. R9-10-106(H) creates requirements for on-site monitoring inspection fees, as authorized by A.R.S. § 36-405(D). The new rules clarify the Department's authority to charge up to $1,000 per visit for on-site monitoring inspections. The fee structure is based on a provider agreement or notice, which allows for flexibility to adjust the fee based on the size and type of the facility, which impacts the resources needed for the inspection. While this creates a financial burden on health care institutions, the Department expects that the new rules providing clarity on enforcement actions may reduce the need for frequent enforcement actions and improve compliance across the industry. The Department estimates that these changes may cost health care institutions moderate costs if they operate out of compliance with the rules, however having clearer rules that support the health and safety of patients and residents is expected to provide significant benefits.

R9-10-111(B) outlines the enforcement rules, giving the Department authority to impose civil penalties on licensed health care institutions that violate A.R.S. Title 36 or this Chapter. The penalties are assessed per patient or resident impacted by the violation and can be up to $1,000 per violation. The Department determines the amount of the penalty based on aggravating factors, such as repeated violations or if actual harm occurred, and mitigating factors, such as if the violation was isolated or if no harm occurred. For health care institutions out of compliance with the rules and statutes, there may be minimal-to-substantial costs incurred. The purpose

of the civil penalties is to enforce compliance with A.R.S. Title 36 and this Chapter, and therefore, protect the health and safety of patients and residents in licensed health care institutions.

The new changes in R9-10-106(I) incorporate the requirements in A.R.S. § 36-405(E), allowing the Department to charge up to $500 per hour for in-service training, if requested by the health care institution, on regulatory compliance provided to health care institutions. The purpose of this training is to help health care institutions comply with the rules and regulations, and protect the health and safety of patients and residents. and eliminate future enforcement. For health care institutions wanting in-service training, this may create minimal costs, however, the investment in regulatory compliance training could lead to long-term cost savings by reducing the risk of non-compliance penalties and improving operational efficiency. Additionally, the high hourly rate could incentivize health care institutions to be more selective and strategic in their training requests, potentially leading to more focused and effective regulatory compliance efforts across the industry.

In Table 1.2. Violation Severity and Remedy Matrix, the table clarifies and outlines enforcement actions based on the severity of the violation. Level 1 violations, which are isolated with no actual or potential harm, result in technical assistance or a written plan of correction. Level 2 violations, which are isolated with no actual harm but potential for minimal harm, may result in a written plan of correction, provider agreement, or civil penalties up to $500. A Level 3 violation is an isolated incident with no actual harm but has the potential for more than minimal physical or psychosocial harm, requiring corrective action such as a written or directed plan of correction, provider agreement, on-site monitoring fee of up to $500, or civil penalties of up to $1,000. Level 4 violations, may include a violation resulting in actual physical or psychosocial harm that is not immediate jeopardy; the licensee provided false information; the licensee is unresponsive; or repeated violations, may result in a written plan of correction, an on-site plan of correction, provider agreement, on-site monitoring inspection fee of up to $750, civil penalties, suspension, intermediate sanctions, or revocation. A Level 5 violation poses immediate jeopardy to health and safety, requiring serious enforcement actions such as a directed plan of correction, provider agreement, on-site monitoring inspection fee up to $1,000, civil penalties, suspension, intermediate sanctions, revocation, or other remedies under Title 41, Chapter 6. The Department expects that health care institutions will receive a significant benefit for having a model in the rule that clearly describes the enforcement actions that may be taken depending on the violation.

Overall, the financial impact on health care institutions will vary depending on their size, compliance, and capacity to address regulatory requirements. While these changes aim to improve patient and resident safety and care standards, the new rules may impose minimal costs for health institutions with full compliance, moderate costs for those needing occasional corrections, and substantial costs for facilities with persistent or severe

violations. However, the potential for significant financial strain is expected to be minimal since health care institutions should comply with the rules in A.A.C. Title 9, Chapter 10, and applicable statutes.

E. Patients, Residents, and their Families

For patients, residents, and their families, the new rules in Article 1, which outline enforcement standards and offer on-site monitoring and in-service training are estimated to provide a significant benefit by clarifying the enforcement standards which are intended to help health care institutions comply with the rules in A.A.C.Title 9, Chapter 10 and applicable statutes. Stricter monitoring and enforcement are expected to help ensure that health care institutions minimize deficiencies, reducing risks to patient and resident health and safety. By targeting institutions with significant or repeated violations, the changes aim to create a safer environment for vulnerable populations including the elderly, disabled, or chronically ill. Patients, residents, and their families can also benefit from increased transparency and accountability. The potential for higher fines and penalties incentivizes institutions to maintain compliance and address issues proactively. This could lead to fewer incidents of neglect, abuse, or other serious violations that compromise patient well-being. Knowing that regulatory oversight has been strengthened may provide families with greater peace of mind when selecting a care facility for their loved ones. However, there could be some unintended consequences for patients, residents, and families, particularly if the financial burden on health care institutions results in higher costs for services. Facilities facing substantial fines or additional compliance-related expenses might pass these costs on to patients, residents, and families through increased fees or reduced services. This could create affordability challenges, especially for patients, residents and families with limited financial resources. Facilities that prioritize compliance and invest in improvements will likely create a safer and more supportive environment. The proposed rules are expected to have a positive impact on residents, patients, and their families by improving the overall safety and quality of care in health care institutions.

The implementation of new rules for memory care services for assisted living facilities licensed to provide directed care services under A.A.C. Title 9, Chapter 10, Article 8, is expected to have a significant benefit for residents and their families. These regulations are designed to expand the options for health care, and to enhance the quality and safety of care for individuals with cognitive impairments. Residents may benefit from more personalized and comprehensive care, as facilities will be required to develop individualized service plans, implement behavior management strategies, and ensure regular medical evaluations for residents receiving memory care services. The introduction of initial and annual memory care services training for staff and contractors will also improve their ability to address residents' unique needs, fostering a safer and more supportive environment. For families, these changes provide greater assurance that their loved ones are receiving high-quality care in a secure setting. The emphasis on preventing elopement, managing challenging behaviors, and creating a calming environment can alleviate some of the anxiety families often experience when

placing a loved one in memory care services. Clearer communication, consistent care practices, and improved safety measures may increase families' trust in the facility and reduce concerns about their loved one's well-being.

Overall, the Department expects the economic impact of the new rules on patients, residents, and their families are expected to be none-to-minimal and are expected to receive a significant benefit from having clearer enforcement rules for health care institutions and having new memory care service rules. The benefits of the rulemaking are expected to outweigh any possible incurred costs due to increased health and safety.

F. The General Public

The proposed rule changes are expected to have a positive impact on the general public by enhancing the safety and quality of care provided in health care institutions. Stricter oversight and enforcement measures outlined in Article 1 are expected to reduce the occurrence of serious health and safety violations and improve trust in the health care system. The general public benefits when health care institutions are held accountable for maintaining high standards of care, as this ensures safer environments not only for current residents and patients but also for potential future patients and residents of these facilities. With more robust penalties and clear enforcement mechanisms in place, the public may feel reassured that regulatory authorities are actively working to protect patient and resident welfare and address issues in a timely manner. This could enhance the overall perception of health care institutions as being more reliable and committed to compliance.

The new rules for memory care services are expected to provide a significant impact to the general public by expanding the option of care for directed care services to offer memory care services and have clear rules and standards for offering those services with well trained staff and contractors who are qualified to work in that capacity. These regulations aim to reduce risks such as elopement and neglect, thereby fostering safer communities. The Department expects that the general public will receive a significant benefit from the new rules.

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

The Department anticipates that small businesses may incur up to moderate costs due to increased compliance requirements. Small businesses that are health care institutions are required to comply with the requirements in this Chapter, if there are substantial and repeated violations, that small business may incur moderate costs for the violations. However, if the small business complies with the rules, none-to-minimal costs are expected to be incurred. The potential for on-site monitoring and in-service training could impose minimal costs and financial burdens on small businesses.

Furthermore, small businesses that are training program providers may receive additional revenues by providing trainings for memory care services. Small businesses that are assisted living facilities and are licensed to provide directed care services may also receive an increase in revenue by adding memory care services to their operations. To comply with the new rules, there may be minimal-to-moderate operational costs associated with providing the additional memory care services and training, however, the Department estimates that the associated costs will outweigh the benefits of the rules due to the increased health and safety and possible additional revenue these small businesses may receive. It's worth noting that the initial investment in training and service expansion may lead to long-term cost efficiencies through improved care practices and potentially reduced liability risks. Additionally, by raising the standard of care across the industry, these rules may contribute to an overall improvement in the reputation and trustworthiness of assisted living facilities, particularly those offering specialized memory care services.

The regulatory changes are expected to have a moderate to substantial impact on small health care businesses, varying based on their compliance levels and enforcement frequency. While initial implementation may incur costs, the Department anticipates significant long-term benefits. These include enhanced care quality, improved safety, and better regulatory compliance, which can lead to operational efficiencies and reduced liability risks. Although there may be up-front challenges, the long-term advantages of improved health care and regulatory adherence are expected to outweigh the costs, providing a significant benefit to small health care businesses.

a. Identification of the small businesses subject to the rules

Small businesses subject to the rules may include assisted living facilities and other small health care institutions that are privately owned.

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

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

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

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

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

A summary of the effects of the rulemaking on private persons and consumers is given in the cost and benefit analysis in Section 2.

5. A statement of the probable effect on state revenues

The rulemaking is expected to have an effect on state revenues. Enhanced enforcement measures, including increased on-site monitoring inspection fees and higher caps on civil penalties, are expected to generate additional revenue for both the Department and the state general fund. Licensing fees and monitoring charges could provide up to $22,500 annually for the Licensing Division and $2,500 for the state general fund while doubling the civil penalties cap could increase general fund contributions by approximately $1.3M per year. These changes offset some costs associated with expanded monitoring and enforcement but require significant resource allocation and operational scaling to maintain compliance and protect public health effectively.

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

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

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

Not applicable.

From: **Susan Feldman** <Susan.Feldman.959173514@yourconstituent.com>
Date: Mon, Mar 10, 2025 at 8:03 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
5) Supportive evidence-based environmental features to support memory care;
6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

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From: **Mark Garrity** <Mark.Garrity.844085784@advocacymessages.com>
Date: Mon, Mar 10, 2025 at 8:07 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
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Mr. Mark Garrity
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From: **Jolene DiBrango** <Jolene.DiBrango.846710980@advocatesmessage.com>
Date: Mon, Mar 10, 2025 at 8:09 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Ms. Jolene DiBrango
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From: **Julie Bjerk** <Julie.Bjerk.820006653@advocatefor.me>
Date: Mon, Mar 10, 2025 at 7:51 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Mrs. Julie L Bjerk
3562 E Bloomfield Pkwy, Gilbert, AZ, USA
16022919254
jbjerk2@cox.net

From: **Robert Grady** <Robert.Grady.820007482@advocatesmessage.com>
Date: Mon, Mar 10, 2025 at 7:42 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

My 72-year old wife Connie developed symptoms of dementia seven years ago. She was subsequently diagnosed with Alzheimer's disease and is currently in treatment. The Alzheimer's Association has provided important guidance to us as we try to navigate the medical and personal challenges of her condition. Our daily lives are filled with more questions than answers as to what is and will be happening to her, and she is still at home with me. The thought of her in a memory care unit alarms me. We need all of the help we can get to ensure she receives the best possible care.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
5) Supportive evidence-based environmental features to support memory care;
6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
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Robert Grady
13260 E Librada Leon Way
Tucson, AZ 85747
520-989-1810
regradyjr@aol.com

From: **Michael Marinaccio** <Michael.Marinaccio.819977291@advocatesmessage.com>
Date: Mon, Mar 10, 2025 at 7:14 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Mr. Michael Marinaccio
30412 North 52nd Place, Cave Creek, AZ, USA
12032313268
itanewtown@gmail.com

From: **Dominika Gaines** <Dominika.Gaines.844060433@grassrootsmessages.com>
Date: Mon, Mar 10, 2025 at 7:08 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

As someone who has two family members in Memory Care, I am happy to see these rules which will greatly improve care. In particular, my husband is in an ALTCS facility with Early Onset Alzheimer's. While he does have dementia, he was a trained engineer and computer scientist: parts of his brain still function at this educated level and need to be engaged. As well, he is relatively young and needs both more physical activity.

Thank you for including:
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2) Reporting of critical incidents like elopements to ADHS within 24 hours;
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4) Adequate staffing to meet residents needs;
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8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Dominika Borovansky Gaines
4327 N 28th ST Unit 112
602-300-6046
dominika@cox.net

From: **Sue Penfil** <Sue.Penfil.957900177@advocacymessages.com>
Date: Mon, Mar 10, 2025 at 7:04 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Sue Penfil
6589 Grandview Trail, Marana, AZ, USA
12155192193
dipperpenfil@verizon.net

From: **Christine Escobar** <Christine.Escobar.975333292@grassrootsmessages.com>
Date: Mon, Mar 10, 2025 at 8:13 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

Alzheimer's Disease has impacted several of my family members and friends.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions to improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
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6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Thank you for improving the state's enforcement matrix for infractions related to healthcare facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed regulations will ensure the safety of residents and improve the quality of care for people living with dementia.

Christine Escobar
22933 North Las Positas Drive
Sun City West, AZ 85375
808.778.1141
davisescobar5@gmail.com

From: **Sara Katz-Imadali** <Sara.KatzImadali.975335579@p2a.co>
Date: Mon, Mar 10, 2025 at 8:35 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

I am a retired Occupational Therapist and retired Certified Case Manager. I have professional and personal experience with dementia, brain injury, various neurological and orthopedic diagnoses and multiple levels of care including Assisted Living. My mother had Alzheimer's Disease and was eventually placed in a memory care unit at an ALF in Chandler, AZ. I had many distressing experiences and quickly learned how limited the supervision, activity planning/implementation, medication management and staff education was. Even the physical design of the Memory Care unit and "apartments" was not conducive to safety and supervision of patients.

After six months there I moved my mother to an assisted living Group Home where she was one of only two patients, much more appropriate for her needs at that time. The move was prompted by finding out that the "nurse" had not given my mother her meds for at least a week. There's more to that story but suffice it to say, her lack of awareness of my mother's situation and medication needs and facility lack of oversight and checks and balances over this nurse and the medication program was shocking. I believe there needs to be a section of regulations addressing these issues and management of nurse and med management staff.

I would be interested in working with you to further this endeavor!

Thank you for your time and attention to these serious matters.

Sara Katz-Imadali
4829 West Carla Vista Ct
Chandler, AZ 85226
Skirehabaz@gmail.com
602-999-6693 ear ADHS:

From: **Debra Pallack** <Debra.Pallack.975335498@sendgrassroots.com>
Date: Mon, Mar 10, 2025 at 8:32 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Debra Pallack
1000 S 8th Ave, Yuma, AZ 85364
your phone number
dpallack@aol.com

From: **d'Anne MacNeil** <dAnne.MacNeil.843517659@p2a.co>
Date: Mon, Mar 10, 2025 at 8:36 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Ms. d'Anne ' MacNeil
1718 South Longmore unit 4, Mesa, AZ, USA
14807044425
goofyme@cox.net

From: **Kathy Upchurch** <Kathy.Upchurch.975340177@grsdelivery.com>
Date: Mon, Mar 10, 2025 at 9:14 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

{Kathy Upchurch
6358 W Blackhawk Dr
Glendale Az 85308
ksupchur@mac.com}

From: **Susan Stephens** <Susan.Stephens.820003810@forgrassroots.com>
Date: Mon, Mar 10, 2025 at 8:46 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

As someone who cared for a parent with Alzheimer's and also someone carrying the genetic marker making me likely to have the same fate, I sincerely hope these rules become a reality.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Ms. Susan Stephens
14002 South 36th Place, Phoenix, AZ
16025498218
sstep14002@gmail.com

From: **Karen Merdinger** <Karen.Merdinger.819952704@advocatefor.me>
Date: Mon, Mar 10, 2025 at 8:56 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear

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Ms. Karen Merdinger
3152 East Azalea Drive, Chandler, AZ, USA
16199942244
kmerdinger@hotmail.com,

From: **martha burruel** <martha.burruel.843644152@p2a.co>
Date: Mon, Mar 10, 2025 at 9:45 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

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Ms. martha B burruel
6314 West Avalon Drive, Phoenix, AZ, USA
16025280545
mburruel@alz.org

From: **Kathy Norris Wilhelm** <Kathy.NorrisWilhelm.819921012@grsdelivery.com>
Date: Mon, Mar 10, 2025 at 9:40 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

As a long time caregiver for my wife who was diagnosed in 2016 with early onset, I urge you to support this measure! We need ways to improve care and safety for residents receiving Memory Care service.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Mrs. Kathy Dianne Norris Norris Wilhelm
2466 West Onza Avenue, Mesa, AZ, USA
14808617160
knorriswilhelm@gmail.com

From: **Cynthia Rucker** <Cynthia.Rucker.820014221@advocacymessages.com>
Date: Mon, Mar 10, 2025 at 11:20 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Mrs. Cynthia Brown Rucker
13620 West Greenview Drive, Sun City West, AZ, USA
16028109849
cindy.rucker.az@gmail.com

From: **Maria Anderson** <Maria.Anderson.975351821@yourconstituent.com>
Date: Mon, Mar 10, 2025 at 11:10 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

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Maria Anderson
25295 W Wier Ave, Buckeye, AZ, USA
your phone number
maria.anderson@thehartford.com

From: **Laura Contreras** <Laura.Contreras.843179752@grassrootsmessages.com>
Date: Mon, Mar 10, 2025 at 11:24 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

My mother had Early Onset Dementia at age 54, and we cared for her ourselves for 9 long years. It was tough on our family, but she was too scared to go into a memory care facility due to unregulated rules. She didn't believe she would get the care she needed. The Rulemaking proposed below would go a long way to accomplishing a care plan for these individuals.

Mrs. Laura Contreras
1581 East Carla Vista Drive, Chandler, AZ, USA
14802030297

From: **Patricia Garrity** <Patricia.Garrity.938139130@sendgrassroots.com>
Date: Mon, Mar 10, 2025 at 1:20 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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2) Reporting of critical incidents like elopements to ADHS within 24 hours;
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6) Specialized environments including meaningful activities for residents;
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9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Patricia Garrity
1101 W Davis Rd, Phoenix, AZ 85023, USA
16029427520
Patricia.Garrity@russlyon.com

From: **Dorothy Bodeker** <Dorothy.Bodeker.935987994@yourconstituent.com>
Date: Mon, Mar 10, 2025 at 1:10 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

This year has been a difficult one for me as I have advocated for my mother and her advancing Alzheimer's. I worry about the thousands of elderly who do not have an advocate. Please consider this important legislation.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Dorothy Bodeker
16241 S 1st ST - Phoenix, AZ 85048
16512800752
DOROTHY.BODEKER@FEDEX.COM

From: **Nancy Ward** <Nancy.Ward.975366418@p2a.co>
Date: Mon, Mar 10, 2025 at 1:42 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Nancy Ward
2178 N. Pantano #228, Tucson, AZ
your phone number
wardn@earthlink.net

From: **Richard Bettes** <Richard.Bettes.964107170@forgrassroots.com>
Date: Mon, Mar 10, 2025 at 1:43 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Richard Bettes
1616 N Mariposa Rd, Flagstaff, AZ 86004, USA
19288531344
r_bettes@yahoo.com

From: **Patricia Garrity** <Patricia.Garrity.845759065@grassrootsmessages.com>
Date: Mon, Mar 10, 2025 at 2:26 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Ms. Patricia Garrity
1101 W Davis Rd, Phoenix, AZ 85023, USA
16029427520

From: **Tammi Lehnertz** <Tammi.Lehnertz.844492162@grsdelivery.com>
Date: Mon, Mar 10, 2025 at 3:09 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

Having a father who is living with Alzheimer's Disease and who may potentially need to go into memory care at some point, I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Ms. Tammi Lehnertz
3909 East Constitution Drive, Gilbert, AZ, USA
14802749966
Tammi.lehnertz@gmail.com

From: **Russell Hagberg** <Russell.Hagberg.916686148@forgrassroots.com>
Date: Mon, Mar 10, 2025 at 3:33 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Mr. Russell Hagberg
9856 E Quarry Trail, Scottsdale, AZ 85262, USA
18475082065
Rehagb2000@gmail.com

From: **E Hourican** <E.Hourican.916725032@grsdelivery.com>
Date: Mon, Mar 10, 2025 at 4:24 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Ms. E Hourican
1821 West Citrus Way, Phoenix, AZ, USA
14800000000
E.icanhour22@gmail.com

From: **Susan Jones** <Susan.Jones.819975972@sendgrassroots.com>
Date: Mon, Mar 10, 2025 at 7:58 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Dr. Susan J Jones
1146 South Chelsea Lane, Bethesda, MD, USA
19286510134
susan.jones.hamm@gmail.com

From: **Michelle Jackson** <Michelle.Jackson.916388944@grsdelivery.com>
Date: Tue, Mar 11, 2025 at 7:46 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Ms. Michelle Jackson
2485 N Great Western Dr, Prescott Valley, AZ 86314, USA
19288993274
Mjackson@abriocare.com

From: **Wendy Bader** <Wendy.Bader.843517911@advocacymessages.com>
Date: Tue, Mar 11, 2025 at 1:01 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Ms. Wendy and Steve Bader
349 S Jared Dr, Gilbert, AZ 85296, USA
16020000000
Wltb@hotmail.com

From: **Cheryl Eames** <Cheryl.Eames.819974653@p2a.co>
Date: Mon, Mar 10, 2025 at 11:45 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Ms. Cheryl Eames
18815 N Concho Cir
16234669816
ceeames@yahoo.com

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Based on my personal experience, I feel strongly that these proposed rules are very important. My family experienced a crisis situation when my father no longer recognized my mother in the evenings and wanted this stranger removed from his house; he would have no recollection of this in the morning and felt like we were playing a cruel joke on him when we would tell the story of the evening before. This is the ugly reality of dementia - it's a cruel disease impacting everyone in the family.

During this crisis mode, we began looking for a memory care facility for the safety of all involved. The first place we found for my father was a facility that provided independent living, assisted living, and full memory care. It seemed like a really nice place that would accommodate his situation. While we paid monthly fees to this facility for approximately 4 months, more than 50% of his time was spent offsite in geriatric psych hospitals (3 separate visits). The third episode where he was referred to a geriatric psych facility was due to an elopement. To this day we don't know exactly what happened - did he go over the 8-10' cinder block wall that they say he went over (just how?)? did he climb the tree near it to go over? if he went over the wall wouldn't he have injuries from going down the other side? did someone leave one of the "secured" gates open and he went through it? Video they had doesn't show us what happened but they were adamant he did not go through a gate. We only know they found him outside in the parking lot. While his disease played a role in this, it felt like there was negligence in his care for this to have even happened. And now they were telling us he couldn't come back. As we began looking for a new place we had to get his records from the prior place and we discovered gaps in medication that left us even more uneasy.

Fast forward to the new place we found which was 100% focused on memory care - my dad lived out his remaining almost two years of life in this facility with no incidents or rather any incidents were considered part of the disease and the team working there was well trained on how to handle the realities of those living with dementia. He never visited a geriatric psych facility again. He was well cared for and well loved by the team working there.

In my opinion, it's critical that all centers providing memory care services (whether they are standalone or also have other services such as assisted living) be held to the same standard of care. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Diane Hyink
3782 E Lantana Drive
Chandler, AZ 85286
602-615-0585
dhyink01@aol.com

From: **Julie Berryman** <Julie.Berryman.843757774@advocacymessages.com>
Date: Tue, Mar 11, 2025 at 12:14 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Ms. Julie Berryman
6443 West Monte Cristo Avenue, Glendale, AZ, USA
16236947555
buggy7brain@outlook.com

From: **Brittany Hunt** <Brittany.Hunt.945042082@advocatefor.me>
Date: Tue, Mar 11, 2025 at 12:13 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Brittany Hunt
P.O. Box 281 Kayenta AZ 86033
your phone number
brittanyhunt2013@yahoo.com

From: **Judi Snyder** <Judi.Snyder.916800001@grassrootsmessages.com>
Date: Tue, Mar 11, 2025 at 12:56 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Mrs. Judi Snyder
1420 Terrace View Drive, Prescott, AZ, USA
19282395579
judelar1@gmail.com

From: **Craig Sharer** <Craig.Sharer.819980081@grassrootsmessages.com>
Date: Tue, Mar 11, 2025 at 1:09 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
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9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Mr. Craig L Sharer
11260 N 92nd St Unit 1071 Scottsdale, AZ 85260
16028037300
craigsharer@yahoo.com

From: **Cynthia Yarbrough** <Cynthia.Yarbrough.820003503@grassrootsmessages.com>
Date: Tue, Mar 11, 2025 at 4:55 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
5) Supportive evidence-based environmental features to support memory care;
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8) Safety measures to prevent and quickly respond to critical incidents; and
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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Ms. Cynthia Yarbrough
2615 Mountain Ridge Dr, Sierra Vista, AZ 85650, USA
15202499026
cindyy54@gmail.com

From: **Carol Consalvo** <Carol.Consalvo.977704661@advocatesmessage.com>
Date: Tue, Mar 11, 2025 at 3:34 PM
Subject: Memory Care Services
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Anything the ADHS can do to help elderly people with Dementia would be a good thing. As a caregiver of my 86th husband, I know about the daily lives for both the patient and the caregiver. Two words says it all, "It's HARD".

From: **Jen Schrader** <Jen.Schrader.819949036@advocacymessages.com>
Date: Tue, Mar 11, 2025 at 7:33 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Ms. Jen Schrader
1816 E Ranch Rd, Tempe, AZ, 85284, 33.33303, -111.91020, US
16022924240
jschrader217@gmail.com

From: **Kobie Chapman** <Kobie.Chapman.979478832@advocatefor.me>
Date: Wed, Mar 12, 2025 at 1:27 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I am so encouraged by the legislature's consideration of these rules for our vulnerable dementia community.

I am a medical social worker and am currently employed as a Dementia Educator with Hospice of the Valley's Supportive Care for Dementia program.

However, I am also a family dementia caregiver. My maternal grandmother and paternal grandfather have also had dementia.

In both my personal and professional experiences, I have seen subpar care environments and lack of training negatively impact the quality of life of those living with dementia. Rules to standardize care and to, most importantly, protect our vulnerable dementia population is vital and urgently needed.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
1) Person-centered care planning;

When you've met one person with dementia, that's it, one person. These diseases progress uniquely to each person. Dementia is also impacted by other coexisting medical and mental health conditions. Memory care cannot be a one-size-fits-all situation.

2) Reporting of critical incidents like elopements to ADHS within 24 hours;

Families and legal guardians deserve critical updates about a person's care. They are often the best resources for care staff in learning how to deescalate the person's behaviors and prevent future problems.

3) Ongoing evidence-based dementia-specific training for all staff;

Dementia is ultimately a disease of communication and requires caregivers to use specific approaches, communication strategies, and techniques to ensure the comfort and well-being of the person living with dementia.

4) Adequate staffing to meet residents needs;

Staffing remains a significant issue in assisted living and memory care. Caregivers deserve compensation respective to their knowledge base and effort of the work. Increasing staff to resident ratios and ensuring a living wage are critical to the current and future stability of the memory care industry.

5) Supportive evidence-based environmental features to support memory care;

All humans wish to be engaged in meaningful activity. This need is often what drives "behaviors" such as wandering in those living with dementia. Having safe and accessible outdoor spaces are important in quality of life.

6) Specialized environments including meaningful activities for residents;

Changes in the brain can make self -starting, motivation, and initiation of tasks difficult or impossible when living with dementia. This may incorrectly lead people to believe that those living with dementia cannot or do not wish to do anything other than watch TV.

People living with dementia are so capable of experiencing joy! They can have meaningful engagement and activity participation with the right supports, assistance, adaptations.

7) Promotion of nutrition and hydration care;

At the residents comfort.

Dementia can make eating more challenging. A person may lose the ability to use utensils and require prompts or cues.

8) Safety measures to prevent and quickly respond to critical incidents; and

9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Kobie Chapman
7311 E Southern Ave
Apt 2020
Mesa, AZ 85209
480-648-6387
kobiechapman@gmail.com

From: **Pamela Adler** <Pamela.Adler.819977406@sendgrassroots.com>
Date: Wed, Mar 12, 2025 at 2:30 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

My mother spent three years in Tucson's assisted/
Memory care facilities. Some owned by large corporations, some local. The horrible truth is that even in the smallest, most-restrictive, 10-person memory care home, the owner/manager/and care staff were grossly if not completely unknowledgeable about her disease and how to care for her to make her days more meaningful, less anxious and scary. They were all completely understaffed. She was given paste& cut care plans that were at best followed loosely, managers and staff not trained at all in dementia care training; medical, emotional, social, physical engagement . A manager who did not know the basic symptoms of dementia with Lewy Bodies yet she was in charge of my mom's care? Her personal safety and safety of staff members were compromised yet i had to fight through months and months (almost a year) up a chain of command only to be told "they passed inspection- your case has been dropped. My "CASE" was that there were dead bolts on the inside of the 'patient' rooms. My mom locked herself in- fell and the attendants could not get in. One of the caregivers put himself at risk and beat the door down ! I have a dozen more stories in just the short amount of time she had to live out the worst days of her life with such lack of stimulation and understanding of her unique needs.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Mrs. Pamela Adler
5940 E Territory Ave, Tucson, AZ 85750, USA
15208505654
Pma1218@comcast.net

From: **Nellie High** <Nellie.High.965794313@advocatefor.me>
Date: Thu, Mar 13, 2025 at 1:48 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Best,
Nellie

From: **Lola Chiantaretto** <Lola.Chiantaretto.979643182@sendgrassroots.com>
Date: Fri, Mar 14, 2025 at 5:24 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

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Lola Chiantaretto
8275 W Flint Dr, Kirkland, AZ 86332
19283080076
lchianta1@fmi.com

From: Mark Hall <Mark.Hall.819952500@forgrassroots.com>
Date: March 24, 2025 at 5:20:39 PM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Mark Hall <mthall023@gmail.com>

Dear ADHS:

(click on the PENCIL icon and write your personal story/experience here)

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Mr. Mark T Hall
9882 E. Rocky Vista Dr.
17606967372
mthall023@gmail.com

From: **Kathleen Montano** <Kathleen.Montano.819972365@grsdelivery.com>
Date: Thu, Apr 3, 2025 at 9:01 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Ms. Kathleen Montano
18871 S Mayford Ave, Green Valley, AZ 85614, USA
15205488679
katmon1@msn.com

From: **Barbara Warren** <Barbara.Warren.819977360@advocatefor.me>
Date: Thu, Apr 3, 2025 at 9:01 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Thank you,
Dr. Barbara Warren
N Prince Village Pl, Tucson, AZ 85719
15202501075
bwarre01@gmail.com

From: **Mavis Aileen Weir** <MavisAileen.Weir.1003420551@sendgrassroots.com>
Date: Thu, Apr 3, 2025 at 9:13 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Thank you,
Mavis Aileen Weir
11058 W Cimarron Dr, Sun City, AZ 85373
602-826-2636
Tennisnut40love@gmail.com

From: **Mark Hayduke Grenard** <MarkHayduke.Grenard.843700402@sendgrassroots.com>
Date: Thu, Apr 3, 2025 at 9:08 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Mr. Mark Hayduke Hayduke Grenard
4222 E Windrose Dr #2009, Phoenix, AZ, USA
16027059226
grenardmarkhayduke@yahoo.com

From: **Lonnie Miller** <Lonnie.Miller.1003418659@yourconstituent.com>
Date: Thu, Apr 3, 2025 at 9:08 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Thank you,
Lonnie Miller
17620 N 17th Pl unit 23, Phoenix, AZ, USA
your phone number
tinnerchoate008@gmail.com

From: **Keith Stocks** <Keith.Stocks.1003418557@sendgrassroots.com>
Date: Thu, Apr 3, 2025 at 9:07 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

My mother just passed after 5 years in memory care. I have a passion to support the care of that mission.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Keith Stocks
msgtstocks@gmail.com
MSGT (E-7, Retired), USAF

From: **Cristina Contreras** <Cristina.Contreras.1003418352@grsdelivery.com>
Date: Thu, Apr 3, 2025 at 9:04 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

As a person with an older parents and working in healthcare these rules should be enforced and followed
I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Cristina Contreras
450 East Kelso Street, Tucson, AZ, USA
your phone number
cristinacontretas@icloud.com

From: **Alyce Tordsen** <Alyce.Tordsen.1003420937@grassrootsmessages.com>
Date: Thu, Apr 3, 2025 at 9:18 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

My husband has Alzheimer's. I want to know that he will receive thoughtful and quality care when he will need Memory Care.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Alyce TORDSEN
1613 N Catalina Ave
Tucson , Az
5202660921
Aetordsen@gmail.com

---------- Forwarded message ---------
From: **Idell LeGendre** <Idell.LeGendre.1003422165@grassrootsmessages.com>
Date: Thu, Apr 3, 2025 at 9:43 AM
Subject: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I recently had to move my mother with Alzheimer's to Tucson and the confusing amount of information and options for her care are daunting. She is living with me at the moment and I am very concerned about the coming time when we are no longer able to care for her in our home. At that time she will have to be placed in a group home or facility and I want the best for her remaining years, but have no way to be absolutely certain she is receiving that care when I am not on site. I support these rules in the hope that we can do a better job serving our elders in need.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
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6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Bruce LeGendre
10115 E Achi St
Tucson, AZ. 85748
520.230.3939
bdlegendaz@outlook.com

From: **Raul Bueno** <Raul.Bueno.819934961@advocacymessages.com>
Date: Thu, Apr 3, 2025 at 9:22 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Mr. Raul Bueno
6462 W Darrah Pl, Tucson, AZ 85743, USA
15202301788
rbueno@alz.org

From: **Ashley Dabibi** <Ashley.Dabibi.819986759@grsdelivery.com>
Date: Thu, Apr 3, 2025 at 9:23 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Ms. Ashley Dabibi
5328 East Yale Street, Phoenix, AZ, USA
14805298669
Ashleydabibi@gmail.com

From: **Kristen Bennett** <Kristen.Bennett.844608354@sendgrassroots.com>
Date: Thu, Apr 3, 2025 at 9:29 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Ms. Kristen Moore Bennett
8820 E Wrightstown Rd, Tucson, AZ 85715, USA
15208201000
kmbennett@alz.org

From: **Susie James** <Susie.James.842071374@yourconstituent.com>
Date: Thu, Apr 3, 2025 at 9:30 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Mrs. Susie James
3111 Clearwater Drive, Prescott, AZ, USA
19287719257
sjames@alz.org

From: **Graciela Mera** <Graciela.Mera.843644595@advocatesmessage.com>
Date: Thu, Apr 3, 2025 at 10:12 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Ms. Graciela Mera
1944 East Avenida Del Oro, Phoenix, AZ, USA
16023497425
gmera@alz.org

From: **Tina Rodrigues** <Tina.Rodrigues.843159235@forgrassroots.com>
Date: Thu, Apr 3, 2025 at 10:05 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Ms. Tina M Rodrigues
11322 South Indian Wells Drive, Goodyear, AZ, USA
16236801146
rodrigueskt@yahoo.com

From: **Zylania Parkins** <Zylania.Parkins.1003428310@forgrassroots.com>
Date: Thu, Apr 3, 2025 at 10:52 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Zylania Parkins
10008 West Highland Avenue, Phoenix, AZ, USA
your phone number
zylania.parkins@aplaceathome.com

From: **Joyce Stoffers** <Joyce.Stoffers.819916128@advocatefor.me>
Date: Thu, Apr 3, 2025 at 12:05 PM
Subject: Comments re:Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:
Living in Sun City, which has numerous Memory Care facilities, it is good to know that ADHS will be regulating their Memory Care Services since consistency and professionalism is paramount. People need to have assurance that standards are being created and upheld.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Ms. Joyce Stoffers
14202 N. Baywood Ct
16238756960
jfforests@gmail.com

New Message

From: **Philip Meyer** <Philip.Meyer.1003434648@forgrassroots.com>
Date: Thu, Apr 3, 2025 at 12:08 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:
[This area of elderly care is growing rapidly. it is time for these sound requirements to be implemented to protect our elderly citizens and provide a level playing field to all vendors supplying these services
I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Philip j. Meyer
100 W. Queen Creek Rd Apt 240
Chandler, AZ 85248

515 401 2461
pmeyer7795@gmail.com

From: **Theodore Beloin** <Theodore.Beloin.976060809@foradvocacy.com>
Date: Thu, Apr 3, 2025 at 12:09 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Thank you,
Theodore Beloin
4033 East Burns Street, Tucson, AZ, USA
your phone number
Tbeloin@gmail.com

From: **Anita Burnett** <Anita.Burnett.819987317@advocatesmessage.com>
Date: Thu, Apr 3, 2025 at 12:23 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Thank you,
Mrs. Anita Burnett
Creedance Blvd, Phoenix, AZ 85310, USA
16236947469
anitalburnett@gmail.com

From: **Richard Hunt** <Richard.Hunt.819971397@grsdelivery.com>
Date: Thu, Apr 3, 2025 at 1:04 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Thank you,
Mr. Richard L Hunt
10546 E Boise St, Apache Junction, AZ, USA
14802381667
rico-bear@hotmail.com

From: **Adriana Micciulla** <Adriana.Micciulla.819915651@advocatesmessage.com>
Date: Thu, Apr 3, 2025 at 2:52 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Thank you,
Ms. Adriana Micciulla
11124 E Gamble Ln, Scottsdale, AZ, USA
14805852538
iblea@msn.com

From: **Karen Gresham** <Karen.Gresham.819979545@grsdelivery.com>
Date: Thu, Apr 3, 2025 at 3:02 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia. Women are disproportionately impacted by Alzheimer's, and my aunt was able to be cared for at home for the duration of her illness. This isn't possible for everyone, but all patients deserve high quality care.

Thank you,
Mrs. Karen Gresham
2355 East Orangewood Avenue, Phoenix, AZ, USA
16028212809
karenagresham@gmail.com

From: **Dianne Maki-Sethi** <Dianne.MakiSethi.820015518@advocatesmessage.com>
Date: Thu, Apr 3, 2025 at 4:29 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Thank you,
Ms. Dianne Maki-Sethi
1451 East Calle Mariposa, Tucson, AZ, USA
19082559099
dianne@makisethi.com

From: **Sandi Dahl** <Sandi.Dahl.890151599@advocatefor.me>
Date: Thu, Apr 3, 2025 at 5:48 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

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Thank you,
Ms. Sandi Dahl
6931 East Paradise Lane, Scottsdale, AZ, USA
16563802
cnsdahl@hotmail.com

From: **Dominika Gaines** <Dominika.Gaines.843253708@grsdelivery.com>
Date: Thu, Apr 3, 2025 at 5:48 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear Legislator,

As the long time caregiver for my husband who has early onset dementia, I am so grateful for this pending legislation. Last year I moved my husband to a Memory Care unit where, unfortunately, he has not received the kind of care I'd hoped. Specifically that he is not spoken to as an educated person and the staff does not interact with the residents enough in a stimulating way.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
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2) Reporting of critical incidents like elopements to ADHS within 24 hours;
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6) Specialized environments including meaningful activities for residents;
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8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Ms. Dominika Gaines
4327 N 28th St unit 112, Phoenix, AZ, USA
16023006046
dbgaines@kinesphere-studio.com

From: **Mary Schneider** <Mary.Schneider.845940771@advocatefor.me>
Date: Fri, Apr 4, 2025 at 6:55 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Mrs. Mary T Schneider
9434 East Harrison Park Drive, Tucson, AZ, USA
15204904406
accats@msn.com

From: **Linda Rsy** <Linda.Rsy.1003501913@advocatefor.me>
Date: Thu, Apr 3, 2025 at 9:51 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Thank you,
Linda Ray
The Forum
2500 N Rosemont Blvd.
Tucson, AZ 85712
520-327-7544
Lindaray64@gmail.com

From: Brian Johnston <Brian.Johnston.1003548985@advocatefor.me>
Date: April 4, 2025 at 10:03:18 AM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Brian Johnston <brnj68@juno.com>

Dear ADHS:

I am someone whose mother in law is going through severe memory loss and I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Brian Johnston
5429 East Fairmount Place, Tucson, AZ, USA
your phone number
brnj68@juno.com

From: **Anne Ward** <Anne.Ward.1003786085@advocatefor.me>
Date: Fri, Apr 4, 2025 at 4:00 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I am a long time Arizona resident and live in Tucsonwith my husband who has Alzheimers. I have been looking at Memory Care Facilities and I religiously check the Department of Health Care Check to see what deficiencies are noted at the facilities I am considering. I have toured at least 8 facilities in my attempt to find a good place for my husband when I am not able to meet his care needs. I'm still looking. While I know no place is perfect, I think the proposed rules would greatly enhance the facilities in Tucson.

I want to express my thanks for the attention that has been paid to the need for additional rules for Memory Care and the drafting efforts that have gone on.

I wish to note my support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia. Training, appropriate staffing levels, specific activities tailored for residents, as well as the reporting requirements and the safety measures are all essential.

Thank you,
Anne Ward
6125 N Camino Miraval, Tucson AZ 85718
520-576-3984
anne.f.ward@gmail.com

From: **Larry Calkins** <Larry.Calkins.819972434@advocacymessages.com>
Date: Fri, Apr 4, 2025 at 4:20 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS,

If my father had been cared for by a memory care facility who operated under these proposed rules, he may not have needed to leave it and saved himself from further cognitive decline. He was moved twice and only stabilized in his third facility. Each time he was moved, he stepped down in further mental decline. It was obvious to each family member that he could not do certain tasks every time he was transferred to a different facility until he couldn't go to the bathroom by himself, didn't feed himself, didn't sing, didn't hum, didn't talk, didn't walk and didn't breathe without help. The decline was painful to watch.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Mr. Charles Lawrence Calkins
4581 East Westchester Drive, Chandler, AZ, USA
15419227380
larrycalkins@gmail.com

From: **Jeff Baisch** <Jeff.Baisch.1005232649@advocatesmessage.com>
Date: Mon, Apr 7, 2025 at 9:18 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

Nine months ago, I found out my 53 year old wife has Alzheimer's. I am currently taking care of her myself at home, but at some point in the future I may need the services of a facility to take care of her. Having rules in place to be sure she is cared for in the best way possible is VERY important to me.

I ask that you approve and implement these rules to be sure our loved ones are cared for.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Jeff Baisch
2231 N Ensenada Ln
Casa Grande, AZ 85122
602-803-9033
baischje@hotmail.com

From: **Nancy Smith** <Nancy.Smith.1005224444@foradvocacy.com>
Date: Mon, Apr 7, 2025 at 9:13 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

My two brother in laws have passed away due to Alzheimers so this is very personal.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Nancy Smith
14139 N. Golden Barrel Pass, Marana, AZ 85658
520-425-0957
smithn5678@gmail.com

From: **Carolyn Donohue** <Carolyn.Donohue.1005231728@yourconstituent.com>
Date: Mon, Apr 7, 2025 at 9:17 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

As someone who has felt the strain of having to care for family members with Memory Care problems, the following proposals would be life changing for patients and their caregivers.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Carolyn Donohue
carolyn.e.donohue@gmail.com
3131 E Lester St
Tucson, AZ, 85716
520-954-9510

From: **Deanie Wlodek** <Deanie.Wlodek.819922206@p2a.co>
Date: Mon, Apr 7, 2025 at 9:18 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I have had too many people in my life who have struggled living with and dying with ALZ and those caring for people with ALZ. I have been raising money for the Phoenix Walk team; Our Village for the past 7 years. My passion for finding a cure for ALZ has become my purpose in my retirement. PLEASE, I implore you to consider the following as it relates to caring for those with Alzheimer's...

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Mrs. Deanie Wlodek
5432 W Wagoner Rd, Glendale, AZ, 85308USA
16239109541
deanieoneforlove@gmail.com

From: **Antonio dos Santos** <Antonio.dosSantos.1005252757@forgrassroots.com>
Date: Mon, Apr 7, 2025 at 9:41 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Thank you,
Antonio dos Santos
17610 North 17th Place unit 12, New River, AZ, USA
your phone number
apt224glendaleaz@gmail.com

From: **Carly McLain** <Carly.McLain.820012207@advocatesmessage.com>
Date: Mon, Apr 7, 2025 at 9:41 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Thank you,
Ms. Carly McLain
45 E Lexington Ave, Phoenix, AZ 85012, USA
17208626329
mclain@duetaz.org

From: **Leslie Halloran** <Leslie.Halloran.1005253428@forgrassroots.com>
Date: Mon, Apr 7, 2025 at 9:51 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I have cared for multiple individuals with Dementia/ Alzheimer's and Dementia/Parkinsons.
I have seen substandard care provided, where caregivers do not understand Dementia and do not know to provide both compassion and care to people.

It is critical to have rules and training in place to support these individuals in residential communities!!!

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you
Leslie Halloran
Lhalloran2023@outlook.com
510-717-2525

From: **Jacob Nolan** <Jacob.Nolan.819930649@advocacymessages.com>
Date: Mon, Apr 7, 2025 at 9:54 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Thank you,
Mr. Jacob Nolan
3902 Fort Grant Rd, Willcox, AZ, USA
15205074819
jacobnolan68@gmail.com

From: **Amy Stagg** <Amy.Stagg.1005253805@advocatefor.me>
Date: Mon, Apr 7, 2025 at 9:57 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

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Thank you,
Amy Stagg

From: **Phillip Tabbita** <Phillip.Tabbita.957153275@advocacymessages.com>
Date: Mon, Apr 7, 2025 at 10:05 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

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Thank you for improving the state's enforcement matrix for infractions related to healthcare facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed regulations will ensure the safety of residents and improve the quality of care for people living with dementia.

Thank you,
Phillip Tabbita
613 W KINGS AVE
PHOENIX AZ
202 256-9642
PTabbita@apwu.org

From: **Jared Leuer** <Jared.Leuer.842821393@advocacymessages.com>
Date: Mon, Apr 7, 2025 at 10:09 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

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7) Promotion of nutrition and hydration care;
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9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Mr. Jared Leuer
13437 N 84th Dr, Peoria, AZ, USA
16026794114
jleuer@rahphx.com

From: **Tara Octaviano** <Tara.Octaviano.844404677@yourconstituent.com>
Date: Mon, Apr 7, 2025 at 10:18 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Ms. Tara Octaviano
9431 W Ironwood Dr, Peoria, AZ 85345, USA
15209550033
tara.octaviano@gmail.com

From: **Charles Hall** <Charles.Hall.1005256465@advocacymessages.com>
Date: Mon, Apr 7, 2025 at 10:22 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

My wife has been diagnosed with Alzheimer's and I have actively been looking into Memory Care Facilities. The proposed rule changes address many of the questions I have had during my search and I believe will be a very valuable improvement to Memory Care Service in Arizona.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Charles Hall
8072 N Painted Feather Dr
Tucson, 85743
(520) 481-3208
charlie.hall@comcast.net

From: **Debra Lougee** <Debra.Lougee.1005256524@grsdelivery.com>
Date: Mon, Apr 7, 2025 at 10:23 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

As a retired Occupational therapist and having taken care of my own mother with dementia I understand first hand how important the proposed rules are to the safety and well being of those who suffer from dementia and their families.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Debra Lougee
3729 East Phelps Street, Gilbert, Arizona 85295
480-646-2662
wdlougee@msn.com

From: **Eleni Beaty** <Eleni.Beaty.820011386@foradvocacy.com>
Date: Mon, Apr 7, 2025 at 10:27 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

As the daughter of someone who suffered from Alzheimer's and eventually passed away in a memory care facility. I 100% support the service rules being proposed as this disease is so nuanced and care can vary to the individual who is suffering. Caregivers and staff need ongoing training and support in these very difficult roles!

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Eleni Beaty
29312 N. Lone Pine Lane
Rio Verde, AZ 85263
970-488-0599

From: **Jennifer Bond** <Jennifer.Bond.1005264067@yourconstituent.com>
Date: Mon, Apr 7, 2025 at 11:57 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[I have friends with Alzheimers.
I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Jennifer Sue Bond
3143 Rast Lester
520 426-1746
Jbond8@cox.net

From: **Julie Ann Giedt** <JulieAnn.Giedt.1005265433@sendgrassroots.com>
Date: Mon, Apr 7, 2025 at 12:20 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

To Whom It May Concern,

I am writing today to express my strong support for the proposed rules for Memory Care Services developed in partnership with the Arizona Department of Health Services and the Alzheimer's Association. These thoughtful and comprehensive guidelines represent a critical step toward ensuring dignity, safety, and quality of life for individuals living with Alzheimer's and other forms of dementia.

This cause is deeply personal to me. My mother is currently living with dementia in a memory care setting, and I witness firsthand the challenges—and heartbreak—that can come when care falls short of what is truly needed. There are moments when a lack of staff available or appropriate activities leads to confusion and distress, both for my loved one and for our family (particularly my father who spends a great deal of his day with her). But there are also moments of light—when compassionate, trained caregivers made all the difference, when a calm environment helped ease anxiety, and when someone took the time to simply meet my mother where she's at.

That is why I am so encouraged by the direction of these proposed rules. Requiring evidence-based, dementia-specific training for staff and managers will help ensure that those providing care truly understand the unique needs of individuals with cognitive decline. Requiring the reporting of elopements and implementing environmental features tailored for memory care shows a much-needed commitment to safety.

I am especially moved by the focus on person-centered care planning and activities tailored to each resident's cognitive and physical abilities (not everyone wants to play bingo). These are not just policies—they are pathways to preserving dignity, fostering joy, and honoring the individual. The inclusion of ongoing service plan reviews, appropriate staffing, and medical oversight of placement further reflect a comprehensive and compassionate approach.

I applaud the Alzheimer's Association, ADHS, and all the stakeholders who worked to shape these guidelines. I urge you to move forward with their adoption and implementation. The seniors of Arizona—and their families—deserve no less.

Thank you for your consideration, and for your dedication to improving the quality of life for those living with dementia.

With gratitude,
Julie Ann Giedt
23233 N. 20th St.
Phoenix, AZ 85024
480-528-4074

From: **Lucas Lerose** <Lucas.Lerose.1005270167@advocatefor.me>
Date: Mon, Apr 7, 2025 at 1:30 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Lucas Lerose
19281 E Abbott St, Black Canyon City, AZ, USA
your phone number
cosanostra7455@gmail.com

From: **Gale Foster Streauss** <Gale.FosterStreauss.845009294@grassrootsmessages.com>
Date: Mon, Apr 7, 2025 at 12:36 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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aleGaleank you,
Dr. Gale Foster Foster Streauss
8196 W Velvet Ant Pl, Tucson, AZ, USA
15208203244
budgale80@gmail.com

From: **Jennifer Awinda** <Jennifer.Awinda.1005274515@sendgrassroots.com>
Date: Mon, Apr 7, 2025 at 2:21 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

Regarding Memory Care Training Instructor Qualifications:
Credentials for Instructors should include hands-on experience working with dementia residents in Memory Care Communities. It should not require a nursing license.

Many of Arizona's licensed nurses have experience in acute settings such as skilled nursing facilities, and hospitals. Medical Facilities function much differently than Memory Care Facilities. And many skilled nurses don't have dementia specific training to be a dementia instructor. Becoming a dementia practitioner may be a good start, but it's not all inclusive having already taken the NCCDP course.

Nothing beats hands on experience and knowing what it's really like to work with dementia residents 8 hours per day, year after year, providing hands-on care, doing the spoon feedings, doing the elopement drills, noticing and reporting the changes of condition and updating service plans.

For decades I have worked in Arizona's Directed Care / Memory Care Communities under many certifications including:
Assisted Living Facility Manager, Dementia Practitioner,
CPR instructor, and
Death Doula.
Although I am not a licensed nurse, for over 10 years have I conducted dementia training for all titles of staff including Caregivers, Med Techs, Nurses, and Wellness Directors.

It is imperative that Instructors for employees in memory care communities know what it's like to work in a non-medical memory care facility. Instructors should have dementia related experience, be able to redirect dementia related behaviors, and know how to work with the employees providing ADLs, outside service providers including Hospice, and overwhelmed families.

Hands on experience working with dementia residents in memory care communities should be a main qualification for memory care training instructors, instead of being a licensed nurse.

I support the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

My main point today:
Hands on experience working with dementia residents in memory care communities should be a main qualification for memory care training instructors. As a facility manager and dementia practitioner I am looking forward to training my employees.

Thank you,
Jennifer Awinda, ALFM, CDP
10031 n 56th dr. Glendale, AZ 85302
623-206-8271
Jawinda@hotmail.com

From: **Matthew Guthrie** <Matthew.Guthrie.1005284551@p2a.co>
Date: Mon, Apr 7, 2025 at 4:48 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

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Thank you,
Matthew Guthrie

From: Cynthia Wilkins <Cynthia.Wilkins.1005373504@advocatesmessage.com>
Date: April 8, 2025 at 7:27:40 AM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Cynthia Wilkins <cecefreelancer@gmail.com>

Dear ADHS:

Sending this in memory of my grandmother, Doris Marie Wilkins. I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Cynthia Wilkins
2954 E Marco Polo Road Phoenix AZ 85050
949-237-8715
cecefreelancer@gmail.com

From: Arielle DeLisle <Arielle.DeLisle.1005296349@sendgrassroots.com>
Date: April 7, 2025 at 11:23:00 PM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Arielle DeLisle <arielle322@gmail.com>

Dear ADHS:

The care of so many of our community elders needs to be appropriately specialized for the unique challenges and individual needs associated with dementia. My dear friend's mom would have benefited from the protections, guidelines, additional training and other legislative-enforced supports for her dementia healthcare and regarding her time in the various memory care facilities she lived in. This is an industry that needs oversight because the people it serves are often unable to advocate for themselves.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia. Without accountability for enforcement, people will be at risk of receiving inadequate care or may be suffering in unsafe conditions.

Thank you,
Arielle DeLisle
317 E Orchid Ln, Phoenix, AZ, USA
your phone number
arielle322@gmail.com

From: Lea Grubbs <Lea.Grubbs.1003498097@grassrootsmessages.com>
Date: April 8, 2025 at 6:06:17 AM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Lea Grubbs <ltg422@gmail.com>

Dear ADHS:

When I moved to Arizona from Wyoming I moved my 96 year old mother to a memory care facility here in Oro Valley. It was one that had staff specifically trained in providing care to people with cognitive decline. It also used an evidence based program for engaging individuals in activities to enhance their socialization and self worth. The setting was designed specifically for memory care vs assisted living. Each of these factors contributed to her, and thus my, quality of life during the time she lived. I was also able to engage hospice care within the facility to that she did not have to move at this critical point in her care journey. She was cared for by those who had come to know and love her by providing care to her.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you,
Lea Grubbs
14510 North Crown Point Drive, Oro Valley, AZ, USA
your phone number
ltg422@gmail.com

From: Kenneth Roberg <Kenneth.Roberg.845927024@forgrassroots.com>
Date: April 8, 2025 at 7:22:10 AM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Kenneth Roberg <Robergcpa@gmail.com>

Dear ADHS:

I am the husband to my now deceased wife who died 2 years ago from dementia. In her last 2 months of life, she was in 2 different assisted living homes, 1 big & 1 small. Folks need more time by trained employees.

These additional rules are needed for the homes to provide more quality care & better protect the elderly with dementia.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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Thank you.

Kenneth Roberg
16845 E Ave of the Fountains, Unit 306
Fountain Hills, AZ 85268-4224
Phone: 928-208-5912
Email: robergcpa@gmail.com

From: Nicole McCready <Nicole.McCready.1005373310@advocatefor.me>
Date: April 8, 2025 at 7:22:53 AM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Nicole McCready <birdvet@gmail.com>

Dear ADHS:

When my Uncle Tom was placed in a Memory Care center for his Fronto-Temporal Dementia, it was the hardest thing my aunt ever had to do. Knowing he was in a facility that valued him as a person and gave him the one on one care that he needed, meant everything to her. Despite his dementia, he was still her best friend and soulmate. People in these facilities are much loved members of families, and they need and deserve a high level of care.

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Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Nicole McCready
13213 W. Rovey Ave.
Litchfield Park, AZ 85340
623-606-5762
Birdvet@gmail.com

From: Blaine Touchette <Blaine.Touchette.1005520294@advocacymessages.com>
Date: April 8, 2025 at 9:16:50 AM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Blaine Touchette <ba2shay@gmail.com>

Dear ADHS:

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
5) Supportive evidence-based environmental features to support memory care;
6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Blaine Touchette
525 N May, Apt 25, Mesa, AZ 85201
480-544-7040
ba2shay@gmail.com

From: Cory Krueger <Cory.Krueger.820011569@yourconstituent.com>
Date: April 8, 2025 at 8:57:04 AM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Cory Krueger <CSKMD@msn.com>

Dear ADHS:

I am a Geriatrician with also 40 years of experience practicing in Cottonwood, AZ. I started my career in a suburb of PA. One of the biggest differences between caring for patients here and in PA is the marked difference in quality and oversight comparing memory care facilities in PA to facilities in Northern AZ. The proposed changes for our state are sorely needed and could be a huge step to ensuring that vulnerable elderly patients receive the care that they deserve. I hope that there is sufficient oversight to make sure that rules and regulations are followed as intended, I have seen several instances where this wasn't the case.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Dr. Cory S Krueger
10205 E Creekside Dr, Cornville, AZ 86325, USA
19282027074
CSKMD@MSN.com

From: Aurora Zepeda <Aurora.Zepeda.1005517437@grsdelivery.com>
Date: April 8, 2025 at 9:08:21 AM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Aurora Zepeda <humoyflor@gmail.com>

Dear ADHS:

It seems everyone has a family member or friend whose life has been touched by Alzheimer's or dementia. My family is no exception. My father hid his symptoms for years and when my mother realized he was slipping into full-blown dementia, she hid these symptoms as well. Fear of what might await my father in a memory care facility—the type that was available to those with middle or working class means—delayed them from seeking services.

My father died in 2006 after a 10 to 15 year struggle with Alzheimer's. It is only now that my mother, at the age of 89, can talk about the shame and fear they both felt as my father progressively declined from his failing memory and growing limitations. My father's diagnosis was treated solely as a medical condition. And while this was clearly a necessary course of action, it was not the only way to ensure a quality of life for my father or my mother as his caretaker.

In the final 24-36 months of my father's life, he rotated through various hospitals and care facilities that offered little beyond medication and physical safety. Finally, we managed to secure a spot for my father at a facility (in California) that offered much of what the proposed Memory Care Services rules aim to improve for Arizona's memory care facilities, staff, and care management. The six months of my father's life were lived with dignity and far fewer 'bad days' than ever before.

Specifically, I am writing in support of the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Countless Arizonans requiring memory care and their families will benefit from the proposed provisions including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
5) Supportive evidence-based environmental features to support memory care;
6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, by improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities you will assure that the dignity as well as the rights of Arizonans who require memory care are upheld. More importantly, violators will face consequences for their harmful actions (or even inactions) thereby assuring an accountable and robust system of care. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people just like my father, living with dementia.

Respectfully,
Aurora Zepeda
15415 E Rough Rider Ridge
Mayer, AZ 86333
(928)710-5972
humoyflor@gmail.com

From: **Kevin Roberg** <Kevin.Roberg.844636882@forgrassroots.com>
Date: Tue, Apr 8, 2025 at 9:53 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I applaud the efforts of health care workers who strive to provide adequate services to dementia impacted persons because it is an unlimited and exhausting challenge. In terms of a personal story, the situation for my mother was that the elderly spouse was not physically able to care for a disabled person who had not only memory issues, but severe food allergies and mobility barriers. The solution was to use a prominent facility who interviewed and accepted her on a short notice. They tried hard to accommodate the dietary restrictions and offer services for interacting with other dementia residents, however, in theory, the amount of time necessary to monitor a high needs resident was not adequate. Mom was not being checked in often enough. She couldn't leave the room on her own power and constantly had the door closed. She wasn't being helped with her cpap equipment and wasn't eating the food provided. One day, we walked in to find her turning blue with a very weak pulse and she had to be hospitalized. The care givers had 2 people on staff for over 40 residents. If the residents were healthy and active, this may have been adequate, however, there were so many other residents who also have unique needs and only the sickest if them received monitoring. It is a huge task to ask 2 to 5 people to life guard, feed, clothe, and integrate very needy humans. We decided to forego the 2nd months lease of nearly $6k and moved her out immediately. We found a local provider who had 4 residents to watch over who had similar mobility challenges and offered better nutritional options. The owners seemed to be very caring and promised optimal attention. Unfortunately, one of the owners was hell bent on visitation rules due to covid 19 concerns and made visiting an unwelcoming experience for certain family members. Mom ended up in the hospital again due to not eating. The straw that broke the camels back was when he demanded the hospital give her a feed tube or he wouldn't take her back. This went against her standing legal documents. We pulled her from there after less than a month again. It was very stressful on her and the family with all the changes of locations. The family agreed to move her home and use Hospice to prepare for end of life. It very much seemed premature had the 1st facility had better practices in place.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
5) Supportive evidence-based environmental features to support memory care;
6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Mr. Kevin Roberg
2244 N 63rd Pl, Mesa, AZ 85215, USA
16026970920
Kevin.james.roberg@gmail.com

From: **John Roberg** <John.Roberg.1005524130@advocacymessages.com>
Date: Tue, Apr 8, 2025 at 10:00 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

These rules definitely would have helped with better care for my mother. When her dementia reached the point of requiring assisted care in 2022, she had to leave her home, and we trusted that she would receive high quality care at a "Memory Care" facility in the Phoenix area. Living out-of-town, I had to rely on the facility's Memory Care Services capability claims. Families need that peace of mind with our loved ones.

We learned through sad experience, however, that the facility's dementia training and staffing were inadequate, threatening my mother's life. Instead of the facility intervening when my mother did not get out of bed, they left her in her room unattended. During an evening visit, my local siblings recognized that she was turning blue with her oxygen level dropping, and she needed to go to the hospital immediately. This very stressful event could have been prevented with adequate training and staffing, as it was precipitated by well-known dementia-specific challenges. Thank goodness my siblings could visit and could do something!

I believe facilities want to provide good care for our loved ones. We need them to understand what Memory Care requires, and for their staff to have the training, ability and systems to deliver quality Memory Care. That way families and residents can have higher comfort and assurancwhen they seek Memory Care services for their loved ones.

Thank you for including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
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9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
John Roberg
PO Box 35, Douglas, MI 49406
980-365-0086
jayroberg627@gmail.com

From: **Leah Shapiro** <Leah.Shapiro.1005526508@forgrassroots.com>
Date: Tue, Apr 8, 2025 at 10:19 AM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
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9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Leah Shapiro
1521 W Lawrence Rd Phoenix AZ 85015
602 518 2320
Leahshapirodnp@gmail.com

From: **Margaret Frierson** <Margaret.Frierson.1005558938@sendgrassroots.com>
Date: Tue, Apr 8, 2025 at 3:01 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

[write your own personal story here]

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

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9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Margaret Frierson
12430 N 65th Pl, Scottsdale, AZ, USA
your phone number
mghigo1@cox.net

From: **Kate Sieger** <Kate.Sieger.1005553922@advocatesmessage.com>
Date: Tue, Apr 8, 2025 at 1:55 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. Unfortunately, my family and I learned firsthand about how important these rules would have been had they been in place when we had to place my mother in a "memory care" facility when we were no longer able to care for her at home. We were naive in our understanding of what "memory care" facility meant based upon our experience with a memory care facility that has many facilities across the country. We assumed that our mother would be well cared for, however, we quickly realized that the facility was short-staffed, the people working in the facility were not adequately trained for dealing with Alzheimer's and dementia patients, and the facility didn't really provide person-centered care. The facility had a "memory care" section that housed 24 residents, but only had 2 people working in that section most of the time. In my mother's case, she needed assistance with going to the restroom because of her physical limitations. Many times, she did not receive the assistance she needed in a timely manner and would attempt to do things herself, causing more issues. We interviewed the facility regarding their ability to provide adequate meals for my mother who was required to eat vegan and gluten free foods because she was allergic to gluten, dairy, meats, and fish. The facility told us they had a chef that could prepare gourmet meals for my mother. After we placed my mother there, we found out that the "chef" had no experience making gourmet meals that were consistent with a vegan, gluten-free diet and he was asking us for recipes and suggestions. Because he didn't know how to adapt his menus for my mother's allergies, she was served the exact same basic foods for lunch and dinner most every day that she was there. My mother was in the facility for about 3 weeks before we had to make other arrangements for her due to the sub-par care my mother was receiving. On the last day that my mother lived at the facility, we came for a visit at 1:00 in the afternoon to find that my mother was still in bed and the staff was forcing her daily pills down her throat, even though she was mostly unconscious and her skin appeared to be grayish/blue. We were told by the staff that my mother was being "lazy" about getting out of bed that day. It was clear to all of my family that my mother was clearly having a life-threatening medical issue that the staff failed to recognize. We asked them to take her vital signs and were told that they had to wait for the supervisor. Long story, short, her blood oxygen level was in the low 80s and she was transported to a nearby hospital by ambulance because of our insistence. If we hadn't visited my mother that day, at that time, I don't know that she would have survived the day because of the inadequacies of the staff and the facility. We found another facility that was better suited to my mother's needs when she was released from the hospital.

The following proposed rules will help level the playing field for all "memory care" facilities and protect other families who have to make the hard decision to place a loved one in the care of others:

1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
5) Supportive evidence-based environmental features to support memory care;
6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Kate Sieger
11446 E. Dover Street
Mesa, AZ 85207
email: kate_sieger@hotmail.com

Thank you for your Comment - Memory Care Services Rulemaking

Summarize this email

Lucinda Sallaway <Lucinda.Sallaway@azdhs.gov> 9:13 AM (1 hour ago)
to bcc: Nellie.High.965794313, bcc: Pma1218, bcc: kobiechapman, bcc: jschrader217, bcc: cindyy54, bcc: craigsharer, bcc: judelar1, bcc: brittanyhunt2013, bcc: buggy7brain, bcc: dhyink01, bcc: c

Thank you for your thoughtful comments and support of the proposed Memory Care Services rules. The Department appreciates your feedback and recognition of the key provisions aimed at enhancing the quality of care and safety for residents receiving memory care services. Additionally, we appreciate your acknowledgment of the updates to the enforcement matrix, which will help ensure compliance and accountability across health care facilities. The Department values your advocacy for these essential measures, and your input helps reinforce the importance of maintaining these standards as proposed.

You are also welcome to attend the Oral Proceeding on this rulemaking to provide any additional formal comments on April 8, 2025, at 1 p.m. in person at the Arizona Department of Health Services, located at 150 North 18th Avenue, 4th Floor Training Room, Phoenix, Arizona 85007. If you plan to attend, please RSVP to this email by April 7.

Thank you again for your collaboration and participation in this rulemaking.

Best regards,

--

Lucinda Sallaway
Senior Rules Analyst
Arizona Department of Health Services

150 N. 18th Ave, Suite 200
Phoenix, AZ 85007

480.978.9920
https://www.azdhs.gov/

From: **Allan Anderson** <Allan.Anderson.1005264717@forgrassroots.com>
Date: Mon, Apr 7, 2025 at 12:07 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I am a board-certified geriatric psychiatrist and work specifically in the field of dementia care. I have been the Director of Banner Alzheimer's Institute in Tucson and perform evaluations and treatment of patients seen at our site. Additionally, in the past I have served as a medical director at memory care assisted living programs.

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
5) Supportive evidence-based environmental features to support memory care;
6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

I believe in person-centered care planning and often see patients from facilities where this is not a focus. I am very much in favor of on-going evidence-based dementia specific training for all staff. In the past I worked at a very comprehensive memory assisted living program in Maryland and with on-going training staff utilized non-pharmacological interventions that alleviated suffering and reduced agitation and behavioral problems. This led to less use of unnecessary psychiatric medications and prevented ED visits and inpatient psychiatric care. If I have a concern it is related to how on-going training would occur and how this would be reviewed by state authorities who assess programs for these provisions. On-going training of staff needs to occur regularly, for example weekly and facilities should document how this on-going training takes place. This is vital to provide the most appropriate management of patients. To date, unfortunately, training has often been once per year and without the on-going training and support for staff the outcome is clearly suboptimal.

The other provision that I question is "Adequate staffing to meet residents needs." I also support this but question how this will be measured and enforced. I have seen many patients in my Tucson outpatient practice who come from memory care residential programs that have very poor staffing and residents are often neglected and not engaged in activities.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed, other than including some specifics as I mentioned above. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Allan A. Anderson, MD
4075 N. Black Rock Dr., Tucson AZ 85750
410-253-9697
geropsych@comcast.net

Lucinda Sallaway 8:03 AM (1 minute ago)

to geropsych

Good Morning,

Thank you for your comments and support.

Adequate staffing is assessed according to the service plans of the residents as well as the staff's ability to meet their needs. For example, if multiple residents require more than one caregiver to assist, the facility will be required to increase their staffing levels. If residents require the use of specific medical equipment, the staff on-site would need documented training on using the equipment.

The training will be assessed during the application review. All memory care training applications will have an administrative review and substantive review. During the substantive review is when the Department will review the quality of the training program to ensure it meets the standards outlined in rule. The training program will be required to demonstrate that the program is evidenced- based before being approved by the Department.

From: **Jennifer Ladd Omo** <Jennifer.LaddOmo.945056897@advocatefor.me>
Date: Sun, Apr 6, 2025 at 4:24 PM
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>

Dear ADHS:

I'm writing to share my requests for changes in the training requireme and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

I work in administration at a facility that provides Continuum of Care starting from Independent living with AL, post hospital rehab, long-term skilled nursing, and skilled nursing memory care.

While I agree that evidence - based training is a good plan, I have two concerns with the way that the rules are written:

1. Training twice per year puts an undue burden on AL managers and facility owners. The training is extensive enough that one time per year per employee will allow the employees to do a better job of taking care of their residents.

2. Mandating that the courses be taught by an RN also places an undue burden on AL managers and facility owners. I was relieved to see that someone with a bachelor's degree and experience can teach the classes, but an LPN who has worked in the field should be able to teach the classes as well.

Thank you for including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
5) Supportive evidence-based environmental features to support memory care;
6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Please consider the changes that I've requested.

Thank you,
Jennifer Ladd Omo
8851 N Riviera
Tucson, AZ 85704
jjladdomo@gmail.com

Lucinda Sallaway 8:33 AM (0 minutes ago)

to jjladdomo

Good morning Jennifer,

Thank you for your comments.

To clarify, the rule requires staff training on an annual basis. Additionally, the staff training and manager training are separate requirements, as outlined in A.R.S. § 36-405.03. Managers receive 8 hours of initial training + 4 hours of manager training. Managers do not need to take separate manager training every year. However, they do the same annual training as all other staff.

The rules do not require memory care services trainers to be RNs—though that is one option. As specified in R9-10-125(A) and (B), there are multiple pathways for individuals to qualify as trainers. The Department's intent is to maintain flexibility and allow individuals with appropriate experience and expertise, including those without RN credentials, to be a memory care services trainer.

Please don't hesitate to reach out with any further questions or suggestions.

Best regards,
Lucinda

From: Adrienne Montgomery <Adrienne.Montgomery.1005291071@advocacymessages.com>
Date: April 7, 2025 at 8:19:35 PM MST
To: Quorum CustomTarget <stacie.gravito@azdhs.gov>
Subject: Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
Reply-To: Adrienne Montgomery <amontgomery@vilivng.com>

Dear ADHS:

I am an Assisted Living Manager at Vi at Silverstone. I have read thru the proposed rules posted on the ADHS website.
I would like to request consideration for changes in a few areas:
1. pg 717, R9-10-122 A,1,f - please consider allowing the 4 hour annual training for staff to be online
2. pg 717, R9-10-122 A, 1, g - please also consider allowing the existing managers with 12 or more months as ALMs to be grandfathered in and annual training available online. Request all new managers in training take the training during the ALM course
3. pg 719, R9-10-125, - please consider allowing all licensed nurses to be considered: RN and LPN

I'm writing to share my comments and support for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents needs;
5) Supportive evidence-based environmental features to support memory care;
6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. Please don't change the rules as proposed. The proposed rules will ensure the safety of residents, and improve the quality of care for people living with dementia.

Thank you,
Adrienne Montgomery
22605 N 74th St Scottsdale AZ 85255
480-478-6212
amontgomery@vilivng.com

Lucinda Sallaway 8:46 AM (1 minute ago)

to amontgomery, bcc: Stacie, bcc: Tiffany, bcc: Aaron, bcc: Dawn, bcc: Harmony

Hello Adrienne,

Thank you for your thoughtful comments on the proposed rules.

R9-10-122(B) clarifies that the memory care services training program must include in-person components and may incorporate online elements. The in-person component must include a demonstration of the individual's skills and knowledge necessary to provide memory care services.

The manager training is required pursuant to Arizona Revised Statutes (A.R.S.) § 36-405.03.

We appreciate your recommendation regarding R9-10-125 and will take it into consideration during the Department's internal discussions.

The Department values your feedback and your recognition of the key provisions that aim to enhance the quality of care and safety for residents receiving memory care services. We also appreciate your acknowledgment of the updates to the enforcement matrix, which are designed to strengthen compliance and accountability across health care facilities.

Thank you again for your continued collaboration and participation in this rulemaking process.

Best regards,

Lucinda

From: **Phyllis Denison** <tucsonteamdenison@gmail.com>
Date: Mon, Apr 7, 2025 at 8:52 AM
Subject: Edited version!
To: Tory Roberg <troberg@alz.org>

Mr. Salow:

I recently listened to the webinar with Tory Roberg with the Alzheimers Org of Az.

I was impressed as to the depth of the study done by the team with regard, in particular, to the proposed rules for Memory Care Services.

This is personal for me as my husband, having been diagnosed in 2019 with Alzheimer's Type 4, Vascular Dementia, and having 3 strokes on Jan 31, 2023, has been in a Memory Care Unit here in Tucson.

The proposed rules include:

1. Initial and ongoing evidence based training for staff and managers of, at this time, Assisted living facilities. The unit my husband is a patient in, is not Assisted Living as that is a whole different type of care, but is in an actual Memory Care Unit where Core Staff is trained in and wants to work with those that have Dementia. This takes a special caregiver as each patient and each case of Dementia is individual. However, I think this is a good rule, a good beginning and urge that it be passed.

2. Person-centered Care. Absolutely needed and should include at least 3 month assessments of the progression of the Dementia, the Cognitive ability and overall physical health,

3. Medical Practitioner review of appropriateness of placement – if this is up to a caregiver or family to obtain, that is not being done. If it is to be done at the time a patient is placed, then, yes, that is most likely being done. Again, this is essential.

4. Staffing to ensure adequate supervision and care. In many Arizona facilities this is not being done! There are no guidelines anywhere that provide number of staff doing direct care, nurses on a unit for even minimal care! Staffing is an issue as very few wish to work in a facility and in particular, with Dementia Patients. This issue is across all facilities including hospitals since COVID. It needs to be addressed by the state and by schools where people go to get training as CMA's, CNA's and Nurses as well as added to public education about Alzheimer's and other forms of Dementia.

All in all, I would like to see the state adopt these changes and then, continue to develop rules, regulations that provide first and foremost, for the patients!

Sincerely,

Phyllis Denison

Former RN, Caregiver 24/7, now responsible party.

Charlie & Phyllis

Denison Mobile Notary Services, LLC
Phyllis Denison, Notary Public
Notarial services Tucson and Pima County

520-247-3800

Lucinda Sallaway 2:24 PM (2 minutes ago)

to tucsonteamdenison, bcc: Dawn, bcc: Aaron, bcc: Tiffany

Hi Phyllis,

Thank you for taking the time to share your personal experience and thoughtful feedback on the proposed rules for Memory Care Services. The Department appreciates your recognition of the depth of work involved in developing these rules, and for your support in this rulemaking, specifically for key provisions such as evidence-based training, person-centered care, medical practitioner review, and appropriate staffing levels.

You are also welcome to attend the Oral Proceeding on this rulemaking to provide any additional formal comments on April 8, 2025, at 1 p.m. in person at the Arizona Department of Health Services, located at 150 North 18th Avenue, 4th Floor Training Room, Phoenix, Arizona 85007. If you plan to attend, please RSVP to this email by April 7.

Thank you again for your collaboration and participation in this rulemaking.

Best regards,

Lucinda Sallaway

From: **Becky Hill** <Becky@hilladvo.com>

RE Public Written Comments for: 9 A.A.C. 10 Department of Health Services - Health Care Institutions: Licensing- as Noticed in the March 7, 2025 Administrative Register notice of Rulemaking regarding Memory Care Services and Licensure.

TO: Governor's Regulatory Review Council: emailed to DHS emails as directed in the Rulemaking instructions to the public, as well as grrc@azdoa.gov

My name is Becky Hill and I am one of the stakeholders who helped negotiate HB2764; a member of the state board that licenses managers for long-term care; and a long time lobbyist and policy expert who understands the important role GRRC plays in rulemaking.

But most importantly, I am the daughter of an Alzheimer's sufferer who spent nearly a decade in and out of "memory care." As such, I not only had a front row seat to the horrors of dementia, but a long experience with the varied abilities of long-term care facilities and homes to provide care and safe accommodations to this medically and cognitively fragile population.

With that, I respectfully ask that you approve the draft Rule in front of you or pass with minor changes if they conform to HB2764.

HB2764 reflects a compromise between industry and advocates to create a framework for Memory Care standards, training, and facilities and this Rule reflects the mandates and requirements of that law. While I do believe that DHS could have done more in some individual areas of the Rule to keep residents safe and to ease the burdens of ill-prepared caregivers, as a whole, I read the Rule to meet the requirements of the law to improve care and training for Memory Care Services.

Please keep in mind that the effort to define and regulate Memory Care had broad public support and a strong bipartisan vote in the Legislature. HB2764 was necessary due to the explosion of dementia in the elderly community; the growing demand on providers without clear expectations; and the marketing of memory care to families but without specific care standards, or relevant training for caregivers.

Though I would like to see more detail in this Rule on training, as well as ensuring requirements for "awake" caregivers are applicable to all facilities and not just "cottages," this draft Rule meets the letter of the law.

It most certainly does Not do what you might hear from some - exceed the requirements of the bill. **Please do not disregard the compromises that led to a deal on HB2764 by allowing concessions during rulemaking.**

A common refrain by those who are resistant to this framework is that too much regulation could reduce "access to care." I agree. Which is why compromises were made as reflected in HB2764.

I have witnessed both the good and the bad of "memory care," and supported dozens of friends and family through their own care journey. As such, I can assure you that access to less-than care is not the goal for families.

Ultimately, facilities do not have to take dementia sufferers if they are unable to care for them as intended by the law and detailed in these Rules. In my various roles, I often see Facilities and Care Homes grossly under enrolled. If supply is more aligned to quality, both industry profits and resident safety will improve.

Please adopt the Rule and allow facilities to decide if they are willing and capable to provide the care and training required.

Thank you for your thoughtful consideration.

Should it interest you, I have provided information regarding the mandates in HB2764 below.

The Mandates of HB2764: In the 2024 legislative session, advocates and industry came together to negotiate a new statute to define "memory care services" and to create a regulatory framework for care and training requriements.

Three of the important areas of this bill that drove the resulting Rule in front of you are:

1. **The Definition of *Memory Care Services-MCS***
2. **The requirement of DHS to establish by rule the standards of care for *MCS*.**
3. **The requirement of DHS to establish by rule the training standards for *MCS*.**

This Rule package aligns with these mandates and more on each of these is provided below.

1. **THE DEFINITION OF MEMORY CARE SERVICES:**

MEMORY CARE SERVICES MEANS SERVICES THAT SUPPORT INDIVIDUALS WITH DEMENTIA AND OTHER PROGRESSIVE AND NEURODEGENERATIVE BRAIN DISORDERS, INCLUDING SPECIALIZED ENVIRONMENTAL FEATURES, CARE PLANNING, DIRECTED CARE SERVICES, MEDICATION ADMINISTRATION SERVICES, SPECIALIZED ACCOMMODATIONS, ACTIVITY PROGRAMMING OR OTHER SERVICES REQUIRED BY THE DEPARTMENT IN RULE.

While Memory Care is a commonly used term for dementia care, Alzheimer's and other dementia diagnosis are tragically much more than the loss of memories or the inability to make new ones. This comprehensive, and agreed-to, definition recognizes the complexity of the disease and sets the stage for how training and care standards are to be designed in Rule.

Consider how dementia robs sufferers of the ability to safely get through the day.

- They may be unable to safely stand, walk, dress, bathe or toilet without assistance.
- They likely cannot self-report harm or pain from a fall, abuse, neglect, or illness.
- They may identify common non-food objects as digestible.
- They do not know how to appropriately sense temperature which can lead to burns when not able to react to scalding hot water in sinks and showers.
- Chewing, swallowing, and drinking become problematic and eventually dangerous.
- They may wander, have terrifying hallucinations, and suffer from realistic delusions that are inseparable to them from reality.

These challenging symptoms appear even in the early to middle stages of dementia.

These horrifying symptoms require more than adult day care. They require expert care.

Please keep this agreed-to comprehensive statutory definition of Memory Care Services in mind when evaluating comments regarding the Rule.

2. **ESTABLISH STANDARDS OF CARE FOR MEMORY CARE SERVICES:**

The Department is responding to the letter of the law by creating care standards aligned to the definition of Memory Care Services for neurogenerative disease.

Even families that do not want to turn to care facilities may have to do so because they lack the physical strength to help with mobility, bathing, toileting, or to prevent falls. Or just as tragically, those with dementia may no longer recognize husbands and wives and think of them as intruders in their home, not caregivers.

And so it is that families turn to facilities marketing Memory Care. They believe they are doing the right thing in moving their loved one to a facility where experts can keep their loved ones safe.

However, often the marketing does not match reality, and the specialized services, staffing and facilities are not available. This leaves residents at risk for any number of injuries and neglect, and why HB2764 created the mandate to establish standards of care.

I have heard of some push back regarding certain care standards. For example, the requirement that facilities have “awake” caregivers. To have sleeping caregivers is akin to having no caregivers. Indeed, the need for 24-hour care is why many of us choose LTC to begin with.

Wandering, not remembering that they cannot stand and falling, wandering into someone else’s room, or having a confused man walk into the room of a sleeping woman and approach her as if she is his wife are all common examples of why **dementia care needs to be awake care**.

Nighttime is also when the medications that make residents even more of a fall risk are provided.

Staffing levels are also appropriate components of this Rule pursuant to the requirement to adopt standards of care in the definition for Memory Care Services.

3. **ESTABLISH BY RULE THE MINIMUM TRAINING STANDARDS FOR MEMORY CARE SERVICES**

This area of the law is to provide a baseline training for caregivers and managers as well as annual continuing education. While I believe more detail in this area of the Rule would be helpful, I do think the framework allows DHS to collect the information needed from training program applicants thru the application process to judge the quality of the program pursuant to the bill. I am willing to see if this happens without more detail in the Rule.

I also believe that the framework of the proposed Rule will allow DHS to accumulate training programs *over time* that could meet the needs of an industry of caregivers who must be better trained and supported than they are now.

I am aware of some consternation regarding the requirements for MCS trainers. While I agree that RNs are not the only professionals who can deliver high quality dementia training, any rewrite to allow discretion for who can do the trainings must require DHS to evaluate trainers for some expertise *or* experience in memory care and dementia-not just experience being a trainer.

Recipients of training need a trainer who can answer their questions about care and the disease. Having trainers who can only repeat what is in the handbook is not sufficient.

Conclusion: HB2764 was introduced by Rep. Dunn, and passed with strong support from both parties, because we all recognize that Memory Care should not just be adult day care with intermittent assistance. Indeed, as the disease progresses, every moment of a dementia sufferer's life is clouded in risk.

The National Institutes of Health recently noted that nearly 14 million Americans suffer from dementia. Of relevance here, 1 in 9 Americans have Alzheimer's Disease-the most common form of Dementia – and deaths from AD increased more than 140% from 2000 to 2021.

While research on prevention and treatments is promising, they are not yet approved, affordable, or universally available. A strong network of care and caregivers will matter for many more years and the combination of HB2764 and DHS rule are the appropriate framework for basic care.

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

April 9, 2025

Sent Via Email: Becky@hilladvo.com

Becky Hill
Hill Advocacy, LLC
(602) 618-2301

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Department of Health Services – Health Care Institutions: Licensing, Article 1 and 8; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Hill:

Thank you for your thoughtful and detailed comments on the Department's proposed rules regarding Memory Care Services. The Department appreciates your support for the rulemaking package and your recognition of the collaborative work that led to the passage of HB2764. Your unique perspective as a policy expert, board member, and most importantly, as a family member of someone affected by Alzheimer's adds meaningful insight to this process.

Your comments underscore the importance of establishing clear standards for care and training that align with the intent of HB2764. Thank you for your recognition of the Department's efforts to establish rules that create a balance between flexibility for providers and the need to ensure safe, quality care for individuals living with dementia.

Thank you again for your engagement and continued advocacy in support of Arizona's most vulnerable residents. The Department appreciates your feedback and collaboration in this rulemaking process, and we look forward to engaging with you and other stakeholders during the upcoming rulemaking process. If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

Arizona LeadingAge (AzLA) – Formal Comments on ADHS Final HCI & Memory Care Rules Package (Implementation of HB2764)

Submitted by: Jaime Roberts, CEO, Arizona LeadingAge
Date: April 4, 2025
To: Arizona Department of Health Services (ADHS)

Executive Summary

On behalf of Arizona LeadingAge (AzLA), I want to begin by thanking the Arizona Department of Health Services (ADHS) for its commitment to engaging stakeholders throughout the development of the HCI & Memory Care Rules, dated January 29, 2025. These rules represent an important step in aligning regulatory expectations with the care and safety of individuals receiving services in Arizona's senior living communities.

AzLA is pleased to see that several of our critical recommendations were incorporated into the final rule language. These include improvements in enforcement transparency, portability of memory care training certificates, and expanded eligibility for trainers. However, we are deeply concerned by the inclusion of new, undefined staffing mandates and by the current interpretation of Directed Care requirements, which contradicts the stakeholder discussions and pose significant risks to the operational flexibility and person-centered principles that providers strive to uphold.

Key Areas of Concern

New Staffing Mandates in R9-10-816

R9-10-816(A)(4): Adequate Supervision and Care

"There is staffing to ensure adequate supervision and care for residents receiving memory care services."

AzLA is disappointed by this broad and undefined staffing requirement. The term "adequate supervision and care" is subjective and lacks clear criteria, leaving providers vulnerable to inconsistent citations and interpretations. We strongly believe that staffing levels should be tied to individual service plans and resident acuity rather than vague, unquantified standards.

R9-10-816(A)(6): Staffing Adjustments Based on Resident Needs

"If applicable, staffing is increased to compensate for the evaluated care and service needs of residents at move-in or for the changing physical or cognitive needs of the residents."

This provision imposes an ongoing requirement to increase staffing as resident needs evolve, yet provides no guidance on how to determine adequacy or thresholds for adjustment. This introduces ambiguity into compliance monitoring and imposes potential financial and operational burdens without guardrails. Providers already have obligations to assess and update service plans; this rule goes beyond existing standards and mandates an open-ended staffing escalation model.

Directed Care Interpretation and Secured Environments

AzLA is also alarmed by recent enforcement interpretations related to Directed Care services and the requirement for secured environments. Specifically, providers are being cited for housing residents with Directed Care service plans in unsecured areas of a facility, despite the entire building being licensed at the Directed level. This interpretation contradicts the lived experience of providers and prior regulatory practice.

Key Issues:

1. **Violation of Least Restrictive Environment (LRE) Principles** Mandating secured environments for all Directed Care residents undermines autonomy and contradicts federal and state principles of least restrictive care. Residents who do not pose elopement risks should not be unnecessarily institutionalized.
2. **Oversimplification of Cognitive Needs** Directed Care includes a wide range of support needs. Not all residents require secured settings. Many individuals retain decisional capacity and benefit from greater freedom of movement.
3. **Undermining Aging in Place** Rigid enforcement of secured placements disrupts aging-in-place models that allow residents to remain in familiar settings as their needs evolve.
4. **Conflict with National Best Practices** Agencies such as CMS and the Administration for Community Living emphasize person-centered care. Universal secured placement requirements move away from this standard.
5. **Cost and System Impact** Unnecessary placement in secured environments increases costs, may accelerate Medicaid spend-downs, and adds strain to the ALTCS system.
6. **Conflict with Statutory Intent** The Directed Care category was intended to allow higher support levels within Assisted Living settings—not to mandate institutional-style care. HB2764 was specifically written to include memory care within existing licensure levels without requiring separate designations or locked settings.

AzLA strongly urges ADHS to revisit this interpretation and provide clear guidance that aligns with person-centered care principles and the original intent of the legislation.

Additional Concerns and Clarifications

Enforcement Matrix (Table 1.2)

While we acknowledge improvements in transparency through the inclusion of Table 1.2, AzLA continues to advocate for a more detailed Scope and Severity Matrix specific to Assisted Living. The current matrix lacks the granularity necessary to support consistent and proportional enforcement. We again encourage the Department to adopt or integrate a model akin to the one AzLA provided during the stakeholder process, which better reflects the complexity and variation of deficiencies in this setting.

Monitoring Scope and Fees

ADHS did not incorporate AzLA's recommendation to limit on-site monitoring to Level 5 deficiencies or to require mutual agreement before fees are assessed. These omissions may lead to punitive enforcement without adequate due process.

Conclusion and Recommendations

Arizona LeadingAge appreciates the Department's engagement with stakeholders and thoughtful efforts to improve care standards. However, we respectfully request the Department:

1. Reconsider or refine the language in R9-10-816(A)(4) and R9-10-816(A)(6) to remove vague staffing mandates.
2. Provide written clarification that Directed Care licensure does not require all residents to reside in secured environments unless clinically indicated.
3. Re-evaluate the enforcement matrix for greater specificity tailored to Assisted Living operations.
4. Limit the use of monitoring fees to Level 5 deficiencies and require provider agreement as discussed in stakeholder forums.

We remain committed to collaborating with ADHS to ensure that regulations are clinically sound, operationally feasible, and centered on the dignity and well-being of Arizona's seniors.

Respectfully submitted,
Jaime Roberts
CEO, Arizona LeadingAge

Updated comments from LeadingAge:

UPDATED April 7, 2025

Arizona LeadingAge (AzLA) – Formal Comments on ADHS Final HCI & Memory Care Rules Package (Implementation of HB2764)

Submitted by: Jaime Roberts, CEO, Arizona LeadingAge
Date: April 4, 2025
To: Arizona Department of Health Services (ADHS)

Executive Summary

On behalf of Arizona LeadingAge (AzLA), I want to begin by thanking the Arizona Department of Health Services (ADHS) for its commitment to engaging stakeholders throughout the development of the HCI & Memory Care Rules, dated March 7, 2025. These rules represent an important step in aligning regulatory expectations with the care and safety of individuals receiving services in Arizona's senior living communities.

AzLA is pleased to see that several of our critical recommendations were incorporated into the final rule language. These include improvements in enforcement transparency, portability of memory care training certificates, and expanded eligibility for trainers.

However, we are deeply concerned by the inclusion of new, undefined staffing mandates and by the current interpretation of Directed Care requirements, which contradicts the stakeholder discussions and pose significant risks to the operational flexibility and person-centered principles that providers strive to uphold.

R9-10-816 is in conflict with statute and legislative intent. The legislature did not authorize memory care as a separate level of care. Memory care is one type of care that falls under existing rules for Directed Care Services. R9-10-816 should be deleted in its entirety The legislature did not direct specialized environmental features nor other specific requirements outlined in R9-10-816. Eliminating this rule will address concerns regarding staffing mandates which will create liability. Creating a separate rule for Memory care effectively creates a "fourth level of care," conflicting with the statute. Memory care should remain under Directed Care. Current assisted living rules already require staffing to meet residents' needs as outlined in residents' service plans. Including staffing to provide "adequate supervision" is overly subjective and introduces liability risks. Including staffing to provide "adequate supervision" opens facilities to undue scrutiny and unfounded legal claims. In addition, removing R9-10-816 will eliminate redundancies that will create unnecessary steps and costs.

Key Areas of Concern

R9-10-801.3. Definition of Assisted living services. The Department is outside the statutory authority granted by the legislature. Memory care is one type of directed care services it is not a separate service.

New Staffing Mandates and creating a separate rule for memory care in R9-10-816; memory care is included in directed care services. Eliminating R9-10-816 will eliminate the other concerns regarding adequate supervision as outlined below.

R9-10-816(A)(4): Adequate Supervision and Care

"There is staffing to ensure adequate supervision and care for residents receiving memory care services."

AzLA is disappointed by this broad and undefined staffing requirement. The term "adequate supervision and care" is subjective and lacks clear criteria, leaving providers vulnerable to inconsistent citations and interpretations. We strongly believe that staffing levels should be tied to individual service plans and resident acuity, as they are in current rules, rather than vague, unquantified standards.

R9-10-816(A)(6): Staffing Adjustments Based on Resident Needs

"If applicable, staffing is increased to compensate for the evaluated care and service needs of residents at move-in or for the changing physical or cognitive needs of the residents."

This provision imposes an ongoing requirement to increase staffing as resident needs evolve, yet provides no guidance on how to determine adequacy or thresholds for adjustment. This introduces ambiguity into compliance monitoring and imposes potential financial and operational burdens without guardrails. It also creates liability for providers. Providers already have obligations to assess and update care plans; this rule goes beyond existing standards and mandates an open-ended staffing escalation model.

Directed Care Interpretation and Secured Environments

These draft rules highlight and reinforce other concerns regarding Directed Care. AzLA is alarmed by recent enforcement interpretations related to Directed Care services and the requirement for secured environments. Specifically, providers are being cited for housing residents with Directed Care service plans in unsecured areas of a facility, despite the entire building being licensed at the Directed level. This interpretation contradicts the lived experience of providers and prior regulatory practice.

Key Issues:

7. **Violation of Least Restrictive Environment (LRE) Principles** Mandating secured environments for all Directed Care residents undermines autonomy and contradicts federal and state principles of least restrictive care. Residents who do not pose elopement risks should not be unnecessarily institutionalized.
8. **Oversimplification of Cognitive Needs** Directed Care includes a wide range of support needs. Not all residents require secured settings. Many individuals retain decisional capacity and benefit from greater freedom of movement.
9. **Undermining Aging in Place** Rigid enforcement of secured placements disrupts aging-in-place models that allow residents to remain in familiar settings as their needs evolve.
10. **Conflict with National Best Practices** Agencies such as CMS and the Administration for Community Living emphasize person-centered care. Universal secured placement requirements move away from this standard although the new rules require strategies for person-centered care.
11. **Cost and System Impact** Unnecessary placement in secured environments increases costs, may accelerate Medicaid spend-downs, and adds strain to the ALTCS system.
12. **Conflict with Statutory Intent** The Directed Care category was intended to allow higher support levels within Assisted Living settings—not to mandate institutional-style care. HB2764 was specifically written to include memory care within existing licensure levels without requiring separate designations or locked settings.

AzLA strongly urges ADHS to revisit this interpretation and return to prior guidance that aligns with person-centered care principles and the original intent of the legislation.

Additional Concerns and Clarifications

Enforcement Matrix (Table 1.2)

While we acknowledge improvements in transparency through the inclusion of Table 1.2, AzLA continues to advocate for a more detailed Scope and Severity Matrix specific to Assisted Living. The current matrix lacks the granularity necessary to support consistent and proportional enforcement. We again encourage the Department to adopt or integrate a model akin to the one AzLA provided during the stakeholder process, which better reflects the complexity and variation of deficiencies in this setting.

Similar models were provided during the development of HB2764. Stakeholders were told that this matrix would be better in DHS rules rather than in statute.

Monitoring Scope and Fees

ADHS did not incorporate AzLA's recommendation to limit on-site monitoring to Level 5 deficiencies or to require mutual agreement before fees are assessed. These omissions may lead to punitive enforcement without adequate due process. Again, during the development of HB2764, monitoring fees were discussed and reserved for facilities with egregious infractions. As defined, the only severity level that matches what was discussed during the development of the legislation is level 5.

Conclusion and Recommendations

Arizona LeadingAge appreciates the Department's engagement with stakeholders and thoughtful efforts to improve care standards. However, we respectfully request the Department:

5. Eliminate R9-10-816 as it is beyond the scope of authority granted by the legislature. Memory care services is part of directed care..
6. Provide written clarification that Directed Care licensure does not require all residents to reside in secured environments unless clinically indicated.
7. Re-evaluate the enforcement matrix for greater specificity tailored to Assisted Living operations.
8. Limit the use of monitoring fees to Level 5 deficiencies and require provider agreement as discussed in stakeholder forums.

We remain committed to collaborating with ADHS to ensure that regulations are clinically sound, operationally feasible, and centered on the dignity and well-being of Arizona's seniors.

Respectfully submitted,
Jaime Roberts
CEO, Arizona LeadingAge

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

April 11, 2025

Sent Via Email: jroberts@arizonaleadingage.org

Jaime L. Roberts, MPH
Chief Executive Officer
Arizona LeadingAge
3877 North 7th St. #280
Phoenix, AZ 85014

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Department of Health Services – Health Care Institutions: Licensing, Article 1 and 8; Response to Stakeholder Comments on Proposed Rules

Dear Ms. Roberts:

Thank you for your detailed and thoughtful comments. The Department sincerely appreciates Arizona LeadingAge's active engagement throughout the rulemaking process and your continued commitment to the well-being of Arizona's seniors. We are pleased to hear that you support many of the key improvements in the final draft, including enhancements to enforcement transparency, the portability of memory care training certificates, and broader eligibility criteria for trainers. Your support on these items reflects the value of meaningful collaboration with stakeholders like Arizona LeadingAge.

The Department recognizes your concerns regarding the inclusion of R9-10-816, and the interpretation and operational implications of staffing provisions and directed care requirements. These issues, particularly as they relate to staffing flexibility, person-centered care, and the interpretation of secured environments, are complex and central to achieving both quality and feasibility in assisted living operations. The Department has carefully reviewed your comments and the legal and practical arguments you've raised. Your position that R9-10-816 may exceed the statutory scope of HB2764 and risk introducing an unintended "fourth level of care" has been noted. Also, the Department acknowledges your concerns regarding the subjectivity of terms such as "adequate supervision and care," and your recommendation to align staffing expectations with individualized service plans and resident acuity. While the Department's intent was to clarify expectations and elevate care standards for individuals needing memory care services, the Department understands the importance of maintaining statutory alignment and minimizing regulatory redundancy.

Regarding the enforcement of secured environments for all directed care residents, the Department appreciates your emphasis on least restrictive environments and aging-in-place principles. The

Department recognizes the importance of preserving autonomy, especially for individuals who do not present a risk of elopement, and we will evaluate your request for clarification of enforcement guidance to ensure it is consistent with statutory intent and best practices in person-centered care.

The Department appreciates your recommendations related to the enforcement matrix and monitoring scope. Your suggestions to refine the enforcement framework for greater clarity and proportionality, as well as to ensure that monitoring fees are used as intended under HB2764, is well taken and will be reviewed alongside other stakeholder feedback.

Once again, thank you for your continued partnership and constructive feedback. The Department values Arizona LeadingAge's commitment to the health, safety, and dignity of older Arizonans, and we look forward to ongoing collaboration as the Department works to finalize and implement these important rules. If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

Gmail Lucinda Sallaway <lucinda.sallaway@azdhs.gov>

Comments re: Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197
1 message

Diane Hyink <dhyink01@aol.com> Mon, Apr 7, 2025 at 3:51 PM
To: "lucinda.sallaway@azdhs.gov" <lucinda.sallaway@azdhs.gov>, "thomas.salow@azdhs.gov" <thomas.salow@azdhs.gov>, James Fitzpatrick <jfitzpatrick@alz.org>, "troberg@alz.org" <troberg@alz.org>
Cc: Stephanie <ssmith85249@gmail.com>, Lavon Wunderlich <lavonw@cox.net>

Lucinda and Thomas,

Thank you for the opportunity to comment on the proposed Memory Care Services rules. The below expands on my originally submitted comments for the proposed Memory Care Services rules within the Notice of Rulemaking Docket Opening: 30 A.A.R. 3066, October 18, 2024, Issue Number: 42, File Number: R24-197 "proposed rules" posted on the ADHS website. I plan to attend the oral proceedings tomorrow and welcome the opportunity to participate in any future forums or committees that will be discussing the details behind the implementation of these rules.

Based on my family's personal experience, I feel strongly that these proposed rules are critical. My family experienced a crisis situation when my father no longer recognized my mother in the evenings and wanted this stranger removed from his house; he would have no recollection of this in the morning and felt like we were playing a cruel joke on him when we would tell the story of the evening before. This is the ugly reality of dementia - it's a cruel disease impacting everyone in the family.

During this crisis mode, we began looking for a memory care facility for the safety of all involved. The first place we found for my father was a facility that provided independent living, assisted living, and full memory care. It seemed like a really nice place that would accommodate his situation. While we paid monthly fees to this facility for approximately 4 months, 50% of his time was spent offsite in geriatric psych hospitals (3 separate visits). The third episode where he was referred to a geriatric psych facility was due to an elopement. To this day we don't know exactly what happened - did he go over the 8-10' cinder block wall that they say he went over (just how?)? did he climb the tree near it to go over? if he went over the wall wouldn't he have injuries from going down the other side? did someone leave one of the "secured" gates open and he went through it? Video they had doesn't show us what happened, but they were adamant he did not go through a gate. We only know they found him outside in the parking lot. While his disease played a role in this, it felt like there was negligence in his care for this to have even happened.

The wall with my son-in-law for height reference:

As my sister and my mom waited with my dad for geriatric psych services to arrive to pick up our father due to this elopement, my sister asked about his medication for that day and discovered they were out of one medication; there was an issue with the refill that we were unaware of.

While our dad was away at the geriatric psych facility, we met with his memory care facility and were assured that he would be welcomed back. However, when the geriatric psych facility was ready to release our dad, the memory care facility informed us they could not accept him back; his behavior was more than they could handle.

With no advance notice of this decision, we were in crisis mode again looking for a new place with pressure from the geriatric psych facility to have a place to release him to. The challenge was increased further with many places denying him as a resident due to a record of incidents at his first facility. While we looked for a new facility, his geriatric psych stay extended to 34 days.

Fast forward to the new place we found, which was 100% focused on memory care - my dad lived out his remaining almost two years of life in this facility with no incidents or rather any incidents were considered part of the disease and the team working there was well trained and equipped on how to handle the realities of those living with dementia. He never visited a geriatric psych facility again. He was well cared for and well loved by the team working there.

My dad with my mom, Christmas Eve 2022 (4 days @ new facility)

We will never know what really happened with our father's elopement or his medication management where we discovered what appeared to be other gaps that left us uneasy, but we do know that the first facility that advertised themselves as "specializing in supporting seniors with Alzheimer's and other dementia related impairments" was not appropriately trained to handle dementia behaviors and related impairments. They relied heavily on geriatric psych services as their behavior management tocl creating undue stress on our father and our family.

In my opinion, it's critical that all centers that advertise as providing memory care services (whether they are standalone or also have other services such as assisted living) be held to the same standard of care. The proposed rules contain several provisions which will improve the quality of care and safety of residents receiving Memory Care services.

Thank you for including:
1) Person-centered care planning;
2) Reporting of critical incidents like elopements to ADHS within 24 hours;
3) Ongoing evidence-based dementia-specific training for all staff;
4) Adequate staffing to meet residents' needs;
5) Supportive evidence-based environmental features to support memory care;

6) Specialized environments including meaningful activities for residents;
7) Promotion of nutrition and hydration care;
8) Safety measures to prevent and quickly respond to critical incidents; and
9) Evacuation and emergency procedures specific to residents receiving memory care.

Additionally, thank you for improving the state's enforcement matrix for infractions related to health care facilities, including assisted living and nursing care facilities. The proposed rules will ensure the safety of residents and improve the quality of care for people living with dementia.

I do have a few questions on how some of the new rules would be deployed. As one example, if during an assessment it is determined that the resident's condition has progressed beyond the services a facility can safely manage and the facility is unable or unwilling to develop a plan to fill that gap, what safety measures would be in place for a family to minimize crisis situations and help them navigate finding an appropriately matched facility (e.g., notice periods, collaborative planning, etc.). I welcome the opportunity to participate in any future forums or committees that will be discussing details such as these.

Many Thanks,

Diane Hyink

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

April 10, 2025

Sent Via Email: dhyink01@aol.com

Diane Hyink

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Department of Health Services – Health Care Institutions: Licensing, Article 1 and 8; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Hyink:

Thank you for your thoughtful and heartfelt comments regarding the proposed memory care services. The Department appreciates the time you took to share your family's personal experience, as well as your participation in the rulemaking process.

We are very sorry for the distressing events your family endured while navigating memory care services for your father. Your story brings to light the very real challenges families face when the care provided does not meet the complex needs of individuals living with dementia. Your advocacy and perspective are invaluable as we work to strengthen the standards for facilities offering memory care services across Arizona.

We are especially grateful for your support of key provisions in the proposed rules, including the emphasis on person-centered care planning, critical incident reporting, dementia-specific staff training, and environmental features that support residents' cognitive needs. Your affirmation of these elements reinforces our commitment to ensuring these standards are meaningful and enforceable in practice.

The Department appreciates your interest in participating in future discussions. Your lived experience offers valuable insight into how policies affect families and residents. Once again, thank you for your advocacy, for attending the oral proceeding, and for offering such meaningful input. Your experience underscores why this rulemaking is so important.

If you have any questions, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

Written Comment Regarding Assisted Living Proposed Rules Re: Memory Care

External Inbox ×

Stephanie Smith 10:35 AM (1 hour ago)

to me, thomas.salow@azdhs.gov, James, troberg@alz.org, Diane, Lavon

Good Morning,

Thank you for the opportunity to offer my written support for the new Memory Care Regulations and thank you for working so diligently with stakeholders to develop a plan that requires facilities offering memory care services to do more to protect the health, dignity and lives of our loved ones who suffer with dementia.

Caring for someone with dementia is complicated and the behavior and needs of each person living with dementia varies greatly. When my dad was first admitted into a residential facility, he was very high functioning in terms of hygiene, eating independently, and could do math problems faster than most people twenty years younger. He knew which hands won in poker and cracked jokes often. He loved to be outside, go for walks and was very mobile. He didn't always know what state he was in, thought his mother who had been gone for many years visited him frequently, and wanted to know how you "got points" in this place. He was restless and anxious. He would recognize people one day and not the next, becoming fearful as he worried about those he loved. The "Other Chris" , as my mom called Dad when he slipped away into this alternate reality, still had core qualities of her "Chris". He was protective of people he loved and would find himself in situations that were not safe, such as not recognizing my mom at home and demanding that she leave because his wife (her) would be home soon, and it was not okay that a strange woman was in their house. The "Other Chris" needed to be cared for by people well trained to help those suffering with this awful, awful disease.

When our family began to look for a placement for Dad, we were in crisis. Because Dad was so high functioning, we wanted to find a facility whose residents looked like peers of Dad's, hoping that he would make friends and find a community. The facility we chose offered independent living, assisted living and memory care. It was vibrant and the sales manager who gave us a tour spoke of veteran's events in the other areas that Dad could attend, they showed us an activity schedule that listed several card games (not offered to the memory care residents but we didn't know that at the time) and we saw the memory care residents coming in from watching kayak races in the pool. One of the residents was dripping water as staff cheerfully toweled up the floor and explained that he had wanted to go swimming. The facility appeared to have flexibility, be resident centered and professed competence in dementia training and all of the medical needs that Dad would require. We discussed our various choices and made a decision to enroll Dad.

Over the next three months as Dad lived in this facility it was increasingly obvious that this facility offering "memory care" services had no idea how to care for dad appropriately. They advised us not to call or visit for the first week to allow him to acclimate to his new environment. This went against everything our hearts told us to do, but they were the experts, so we listened. They called us just a few days after admitting Dad to tell us that he was being taken to the hospital for a psych evaluation because he had tried to commit suicide by removing the razor blade from the razor that they allowed him to bring with him. When we got to the hospital, he was so happy to see us and then told us how he had been drafted into the Navy by an admiral on a boat and he felt so honored. The wounds to his arm where he tried to cut himself were incredibly superficial, but the wounds to our hearts were not.

After a stay at a geriatric psychiatric ward, he returned to the facility briefly before hallucinating that he was a prisoner in the Korean War. The staff told us that he was trying to escape to rescue his brothers by kicking at the windows. Again, he went to the hospital and again to geri-psych. I saw the video the staff took. Yes, Dad was kicking at the window. He wasn't yelling or screaming or even honestly kicking that hard. It was not out of control by any means, but they had no idea how to respond to him, called the ambulance and off he went. Upon digging into things further to understand what happened, it was revealed that his medications had not been given appropriately. We were assured that the medication issues would be addressed, and he returned back to the facility. Before too long, I got a call that Dad had climbed a tree and went over a fence but had no injuries?? After another visit to geri-psych, being evicted from the facility and the trauma that was inflicted on both Dad and our family, we found a loving home for Dad that specialized in memory care where he lived out the remainder of his life peacefully and was well taken care of by wonderful staff.

I share our story because it highlights how different dementia can look. Before living out this reality with Dad, and seeing Alzheimer's and Lewy Body firsthand, I thought dementia was a forgetfulness of time, place and people. I had no idea it could be accompanied by such fear, anxiety and delusions. The emotions the person is feeling are real to them and it is critical that staff in memory care settings are trained to deal with the behavioral issues that can accompany dementia. They also must be committed to a rigorous oversight of medication management that helps minimize the behavioral issues and unnecessary difficult emotional responses that can occur otherwise. Thank you for requiring specialized dementia training, including challenging behaviors, in these regulations as well as focusing on creating an environment that will support memory care and include meaningful activities .

Because dementia is an umbrella term referring to a group of cognitive diseases that can affect individuals needing memory care services differently, I appreciate that there is a focus on person-centered care planning in these regulations and feel that this is critical to providing the best care we can to Arizona residents. I have further questions on the implementation of R9-10-816 Section 3 that requires a medical practitioner to evaluate a specific placement every 6 months. I understand and support wholeheartedly the intention of this stipulation but ask that the implementation of this section be reviewed thoughtfully and with great care as to the practicality of receiving the signed determinations and the potential additional burden on the families.

Thank you for your time. Please feel free to contact me at any time via email or at 623-696-7061.

Kind Regards,
Stephanie Smith

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

April 9, 2025

Sent Via Email: ssmith85249@gmail.com

Stephanie Smith

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Department of Health Services – Health Care Institutions: Licensing, Article 1 and 8; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Smith:

Thank you for taking the time to share your family's experience and providing thoughtful feedback on the proposed memory care services rules. The Department appreciates your willingness to share your family's story and highlighting the need for the proposed memory care services rules. We are so sorry your family endured trauma while trying to find appropriate care for your father, and we're heartened to hear that he ultimately found peace and compassion in a facility truly equipped to support him.

The Department appreciates your affirmation of the new requirements in the proposed rules, including person-centered care planning, staff training in managing challenging dementia-related behaviors, and the importance of a supportive environment with meaningful activities. Your comments underscore why these standards are vital for ensuring that all residents in memory care settings receive the respect, dignity, and care they deserve.

You also raised a thoughtful concern regarding the implementation of R9-10-816(C)(3), which requires that a medical practitioner evaluate whether a specific memory care setting continues to meet a resident's needs at least every six months. We understand and share your support for the intent behind this requirement—to ensure regular reassessment of care appropriateness—but we also recognize the importance of implementing this provision in a practical and family-centered way. Your feedback about the potential burden on families and the challenges of obtaining signed medical determinations is valuable and will be carefully considered as we finalize the rules and develop supporting guidance for providers and families.

Thank you again for your engagement and continued advocacy in support of Arizona's most vulnerable residents. The Department appreciates your feedback and collaboration in this rulemaking process, and we look forward to engaging with you and other stakeholders during the upcoming rulemaking process. If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Katie Hobbs | Governor Jennie Cunico, MC | Director

150 North 18th Avenue, Phoenix, AZ 85007-3247
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Health and Wellness for all Arizonans

Sincerely,

Lucinda Sallaway

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

801 E. Jefferson Street
Phoenix, AZ 85034
602.417.4000

KATIE HOBBS
GOVERNOR

CARMEN HEREDIA
DIRECTOR

April 8, 2025

Arizona Department of Health Services
Attn: Lucinda Feely
Email: lucinda.feeley@azdhs.gov

RE: Title 9, Chapter 10, Articles 1 and 8 (HCI & Memory Care) Notice of Proposed Rulemaking Comments

The Arizona Health Care Cost Containment System (AHCCCS) appreciates the opportunity to provide input on the proposed regulations. As committed stakeholders, we understand the potential effects these rules may have on both AHCCCS operations and the members we serve. We value the Arizona Department of Health Services' openness to feedback and offer the following observations and recommendations with the goal of promoting greater clarity and supporting positive outcomes.

Rule	Current Language	AHCCCS Comment
R9-10-101(112)	"'Opioid antagonist' means a prescription medication, as defined in A.R.S. § 32-1901, that:"	AHCCCS suggests updating this definition. At least two Opioid Antagonist medications are currently approved for over-the-counter purchase without a prescription. See A.R.S. 32-1968(H): "A pharmacist may dispense naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration on the receipt of a standing order pursuant to section 36-2266."
R9-10-122(A)(1)(g)(ii)(13)	"Strategies to improve staff retention and job satisfaction;"	AHCCCS believes it would be appropriate to include recruitment efforts alongside the existing focus on staff retention.

R9-10-122(A)(1)(g)(ii)(15)	"Room assignments, operations, and environmental standards or;"	AHCCCS recommends that the curriculum also include topics related to creating dementia-friendly environments to help address challenging behaviors while promoting residents' dignity, comfort, and emotional well-being. For example, incorporating strategies such as the therapeutic use of music or environmental modifications to reduce elopement—such as placing a dark, solid-colored doormat in front of exit doors—can be effective approaches.
R9-10-122(B)	"The memory care services training program shall include in-person components and may incorporate online components. The in-person component shall include a demonstration of the individual's skills and knowledge necessary to provide memory care services."	AHCCCS believes this should include evaluating/testing any skills or competencies gained through the use of an online platform.
R9-10-801(5)	"'Elopement' means when a resident who is cognitively, physically, mentally, emotionally, or chemically impaired wanders away, walks away, runs away, or otherwise leaves the premises of an assisted living facility authorized to provide directed care services unsupervised or unnoticed, without the knowledge of the licensee's personnel."	AHCCCS recommends rephrasing this statement to include situations in which assisted living staff are aware of an elopement attempt but are unable to prevent it, as well as instances where the resident is able to evade staff detection.
R9-10-816(A)(1)(c)	"Systems to accommodate visitors, staff, and residents who do not need controlled egress;"	AHCCCS believes there should be a clear explanation of controlled egress, defined as a safety measure in which exit doors are designed to delay or restrict a resident's ability to leave a secured area. This approach is

		commonly used in memory care settings to help prevent unsafe wandering or elopement, while still allowing for safe exit during emergencies in compliance with fire and life safety codes.
R9-10-816(A)(1)(j)	"Specialized accommodations and progressive support for activities of daily living tailored to persons living with dementia following evidence-based best practices;"	AHCCCS believes it should be clearly stated that these accommodations and progressive supports are intended to be individualized, tailored to meet each person's unique needs and circumstances.
R9-10-816(A)(6)	"If applicable, staffing is increased to compensate for the evaluated care and service needs of residents at move-in or for the changing physical or cognitive needs of the residents."	AHCCCS suggests "service needs" be replaced with "individualized service needs."

If you have any questions or need additional clarification regarding our comments, please feel free to contact me at AHCCCSRules@azahcccs.gov. We truly appreciate your time and thoughtful consideration of AHCCCS's input.

Sincerely,

Sladjana Kuzmanovic
Sr. Rules Analyst
Office of the General Counsel

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

April 10, 2025

Sent Via Email: ahcccsrules@azahcccs.gov

Sladjana Kuzmanovic
Sr. Rules Analyst
AHCCCS
801 E Jefferson
Phoenix, AZ 85034

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Department of Health Services – Health Care Institutions: Licensing, Articles 1 and 8; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Kuzmanovic:

Thank you for taking the time to review the proposed rules in A.A.C. Title 9, Chapter 10, Articles 1 and 8 and providing your feedback. Below, are the Department's responses to your comments:

A.A.C. R9-10-101(112)
The Department believes you may have meant to cite A.A.C. R9-10-101(153) for the definition of 'opioid antagonist.' This rulemaking is focused on the provisions in HB2764 and is not amending the definition of 'opioid antagonist' as that would be outside of the scope of this rulemaking. However, the Department has noted your comment for possible discussion in future rulemakings.

A.A.C. R9-10-122(A)(1)(g)(ii)(13)
Thank you for your suggestion as to what the training topic for "strategies to improve staff retention and job satisfaction" may also include. The Department believes that recruitment efforts could be included within this training topic, but would not require a rule change.

A.A.C. R9-10-122(A)(1)(g)(ii)(15)
A.A.C. R9-10-122(A)(1)(g)(ii) specifies that any additional relevant topics, which may include evidence-based information or facility-specific information. The topic list in A.A.C. R9-10-122(A)(1)(g)(ii)(15) are examples of training topics that would be appropriate. The intent of the rule was to be as flexible as possible and allow for a wide range of evidence-based topics.

A.A.C. R9-10-122(B)
A.A.C. R9-10-122(A)(1)(e)(ii)(3) specifies that the testing method used to verify an individual has acquired the stated skills for each topic is required to be submitted to the Department in the application.

Thank you for your comments and recommendations on the rules in **A.A.C. R9-10-801**. The Department does not plan to amend the definition of elopement at this time. The Department may take this into consideration in the final rulemaking package.

The Department appreciates your feedback and collaboration in this rulemaking process. If you have any questions regarding this response, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

Steve Wagner <swagner@rightcare.org> 11:57 AM (56 minutes ago)
to me

Lucinda Sallaway,
Please accept this email as my LOS for the ADHS Rulemaking process relating to "Memory Care Services". The spirit of AZ HB2764 can only be realized with effective rules that allow effective enforcement and compliance. Intent of HB2764;

- Defining "Memory Care Services" and making strong requirements around this definition
- Encourage compliance by increasing penalties for bad actors by doubling the maximum allowable fine amount and allowing the Department to fine based upon the number of residents impacted
- Add "Elopement" to the definitions and provide new rules that allow the Department to hold HCIs and caregivers accountable for patient safety and wellbeing as wandering poses significant risk to residents with cognitive disability

We all want to age well and safely. This rulemaking process can make quality of life better for vulnerable Arizonans. Thank you for your time and consideration.

Respectfully,
Steve

Steve Wagner
President & Founder
RightCare Foundation, Inc.
501(c)(3) Public Charity
3120 West Carefree Highway, Suite 1-222
Phoenix, AZ 85086
swagner@rightcare.org
www.rightcare.org
(602) 614-0069

Lucinda Sallaway 1:13 PM (0 minutes ago)
to Steve

Good afternoon Steve,

Thank you for your letter of support and thoughtful comments on the proposed rules for memory care services.

Desert Southwest Chapter

alz.org/dsw
800.272.3900

Central Arizona Region
340 E Palm Ln, Suite 230
Phoenix, AZ 85004

602.528.0545 p
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Northern Arizona Region
3111 Clearwater Dr, Suite A
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928.771.9297 f

Southern Arizona Region
2990 N Swan Rd, Suite 147
Tucson, AZ 85712

520.322.6601 p
520.322.6739 f

Southern Nevada Region
5190 S Valley View Blvd,
#104 Las Vegas, NV 89118

702.248.2770 p
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ALZHEIMER'S ASSOCIATION

RE: NOTICE OF PROPOSED RULEMAKING 9 A.A.C. 10, ARTICLES 1 AND 8
TITLE 9 HEALTH SERVICES, CHAPTER 10 DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS LICENSING

Thomas Salow, Assistant Director
Arizona Department of Health Services Public Health Licensing
150 N. 18th Ave., Suite 500
Phoenix, AZ 85007-3248

April 8, 2025

Dear Assistant Director Salow,

The Alzheimer's and Related Disorders Association (Alzheimer's Association) strongly supports the proposed rules and urges the Department of Health Services and the Governor's Regulatory Review Council to finalize the rulemaking package with the non-substantive changes recommended in this letter. We want to express our sincere gratitude to you and your staff for the numerous stakeholder meetings and feedback sessions you've held on these rules The rules are urgently needed. Thank you for the opportunity to share comments with the Arizona Department of Health Services regarding the proposed rulemaking docket related to Health Care Institutions Licensing, 9 A.A.C. 10, Articles 1 and 8.

Founded in 1980, the Alzheimer's Association is the world's leading voluntary health organization in Alzheimer's care, support, and research. The Alzheimer's Association leads the way to end Alzheimer's and all other dementia — by accelerating global research, driving risk reduction and early detection, and maximizing quality care and support. The Alzheimer's Association is a renowned subject matter expert in this field.

Dementia is an overall term for a particular group of symptoms. The characteristic symptoms of dementia are difficulties with memory, language, problem-solving and other thinking skills that affect a person's ability to perform everyday activities. Changes to the brain cause dementia, and many different brain changes can lead to dementia. Dementia is a general term for memory loss and other cognitive abilities serious enough to interfere with daily life. Alzheimer's disease is the most common cause of dementia. Other common causes of dementia are related neurodegenerative disorders including cerebrovascular disease, frontotemporal degeneration, Hippocampal sclerosis, Lewy body disease, and Parkinson's disease. When an individual shows the brain changes of more than one cause of dementia, "mixed pathologies" are considered the cause.

Alzheimer's is a progressive neurodegenerative brain disease that causes problems with memory, thinking, and activities of daily living, and progresses over time. In its early stages, memory loss can be mild, but with late-stage Alzheimer's, individuals lose the ability to carry on a conversation and respond to their environment. On average, a person with Alzheimer's lives 4 to 8 years after diagnosis but can live as long as 20 years, depending on other factors. Age is the number one risk factor for Alzheimer's disease. At age 45, the lifetime risk for developing Alzheimer's is 20% for women and 10% for men. The prevalence of Alzheimer's continues to rise due to the aging population, a number which continues to grow at an alarming pace. Last year, an estimated 151,500 Arizonans over the age of 65 were living with

Alzheimer's. By 2028, the number of Arizonans aged 65+ will outnumber those under the age of 18[1].

People living with Alzheimer's are high users of long-term care services. People living with Alzheimer's are nearly five times more likely to need skilled nursing facility care and three times more likely to require home health care as individuals without the condition. Nationally, forty-two percent of residents living in residential care facilities had Alzheimer's or other dementias in 2020, up from 34% in 2016.[2] [3]

Individuals with Alzheimer's have needs that often make care delivery challenging and more demanding. Nearly 9 out of 10 Medicare beneficiaries with Alzheimer's disease or other dementias have at least one other chronic condition. Additionally, they are more likely than those without dementia to have other chronic conditions.[4] Caring for someone with multiple chronic conditions— especially when that includes dementia —significantly complicates the care needed. As the disease progresses, individuals are unable to complete activities of daily living (such as eating, dressing, and bathing) without assistance. Over time, people with Alzheimer's will lose the ability to use words and may communicate their needs through behavior, which presents added challenges for care workers.

Dementia training of those involved in the delivery of care can improve the quality of care and experiences for individuals with Alzheimer's and other dementias. A cornerstone of providing quality dementia care is to ensure that all professional care staff involved in the delivery of care to people with dementia receive dementia-specific training.

Dementia training should ensure that care workers have the ability to: provide person-centered dementia care; Communicate effectively with individuals with Alzheimer's; address behavioral symptoms, including alternatives to physical and chemical restraints; and address specific aspects of safety, such as wandering. Periodic continuing education is also needed to ensure that care workers have the latest information on best practices in the care of those with dementia.

H.B. 2764, the landmark Health Care Institution reform bill of 2024, was created out of necessity to address enforcement loopholes and the lack of direction in memory care. These systemic failures resulted in well-documented cases of abuse and neglect of vulnerable adults living in licensed residential facilities.[5] [6] [7] Senator Tim Dunn (*then-Representative Tim Dunn*) heard first-hand of the struggles during his time as co-chair of the bi-partisan ad-hoc study committee on vulnerable adults. He introduced H.B. 2764 to bridge the gap between building owners and patient advocacy groups. Media reports increased and several high profile cases were investigated and reported on by the Arizona Republic, resulting in public scrutiny and outcry for change. Prior to now, buildings licensed to provide directed care services advertised the services as memory care services without uniform regulations defining what memory care services meant. Often, memory care services meant the facility had a locked door. With over 2,000 facilities throughout the state licensed to provide directed services care, care standards varied widely. Some facilities excelled at providing quality care while others faltered. The Alzheimer's Association received hundreds of phone calls and emails from families who were desperately seeking quality care for their loved ones. It was clear that the time was right to create standards for memory care in order to raise the bar across the state. After several months of negotiations, H.B. 2764 was passed by the Arizona State Legislature with broad bipartisan support and was signed into law by Governor Katie Hobbs in the spring of 2024.

Over the last two years, the Alzheimer's Association participated heavily and offered subject matter expertise in the

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[1] Arizona Office of Economic Opportunity https://oeo.az.gov/population/estimates accessed April 8, 2025.

[2] Alzheimer's Association 2024 Facts and Figures Report; National Center for Health Statistics. Biennial Overview of Post-acute and Long-term Care in the United States. Available at: https://data.cdc.gov/d/wibz-pb5q. Accessed November 25, 2023.

[3] Alzheimer's Association 2024 Facts and Figures Report; Sengupta M, Caffrey C. Characteristics of residential care communities by percentage of resident population diagnosed with dementia: United States, 2016. National Health Statistics Reports 2020;148:1-7

[4] Alzheimer's Association 2024 Facts and Figures Report; Unpublished tabulations based on data from the 100% National Sample Medicare Fee-for-Service Beneficiaries for 2019. Prepared under contract by Health Care Cost Institute, November 2021.

[5] "Health agency director gives some answers about failure to investigate abuse in care facilities" Arizona Mirror. Jerod MacDonald-Evoy, July 15, 2022.: https://azmirror.com/2022/07/15/health-agency-director-gives-some-answers-about-failure-to-investigate-abuse-in-care-facilities/

[6] "Arizona senior living facilities fail to protect residents. These steps could help fix that" Arizona Republic. Melina Walling, Caitlin McGlade, and Sahana Jayaraman. https://www.azcentral.com/in-depth/news/local/arizona-investigations/2023/05/01/how-arizona-senior-living-facilities-protect-residents/70134922007/?gps-source=INDEPTHSERIALNAV&itm_medium=onsite&itm_source=storytellingStudio&itm_campaign=TheBitterEnd

[7] "Arizona Department of Health Services—Department failed to investigate or timely investigate some long-term care facility complaints, did not comply with some conflict-of-interest requirements, and has some gaps in 4 IT security areas" Arizona Auditor General. September 26, 2019 https://www.azauditor.gov/reports-publications/state-agencies/health-services-department/report/arizona-department-health-6

development of the proposed memory care services regulations to improve policies regarding safety and quality of care for people living with dementia in licensed Assisted Living Facilities. The Alzheimer's Association held listening sessions, examined current research, best practices in other states, and worked with stakeholders to find common ground in this legislation and proposed rule package. We have made concessions along the way to meet the industry in the middle, and the result is this package. Last year, the Alzheimer's Association provided Committee testimony and our advocates rallied in support of H.B. 2764 and now for the subsequent rulemaking package. As of the writing of this letter, over 115 letters of support from Alzheimer's Association advocates have been emailed to the Arizona Department of Health Services, many of these letters include personal stories of loved ones living in assisted living facilities and the importance of adopting the proposed rules.

Comments on the Proposed Memory Care Rules, Overall

Memory Care Services are defined in statute as "services that support individuals with dementia and other progressive and neurodegenerative brain disorders, including specialized environmental features, care planning, directed care services, medication administration services, specialized accommodations, activity programming or other services required by the department in rule."[8] The proposed Memory Care rules follow the statute and are appropriate. The proposed rules will result in better care for people living with dementia in assisted living facilities and will ensure care providers have specialized dementia training because the package aligns with several core principles of the Alzheimer's Association's Dementia Care Practice Recommendations[9] (DCPRs). The final recommendations were developed by 27 dementia care experts convened by the Alzheimer's Association. They are based on a comprehensive review of current evidence, best practices, and expert opinion. In addition, the recommendations were informed by individuals living in the early stages of Alzheimer's and other dementias.[10]

Dementia Care Practice Recommendations	The proposed rules on Memory Care services include: o Fundamentals of person-centered care o Assessment and care planning o Ongoing care for behavioral and psychological symptoms of dementia o Supportive and therapeutic environments o Ancillary services / coordination of services o Information, education, and support o Staffing o Support of activities in daily living o Medical management

Comments by Section:

To enhance the safety of residents in Assisted Living Facilities, the Alzheimer's Association endorses the Health Department's ability to enforce regulations, monitor compliance, and provide technical assistance to health care institutions, as outlined in the following sections:

R9-10-101 *Adds definition of "Immediate jeopardy" (P710)*

R9-10-102 *Adds new Section E regarding on-site monitoring (P715)*

R9-10-106 *Adds Sections H and I regarding fees for on-site monitoring and in-service training (P716)*

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[8] Arizona Revised Statute Section 36-405.03.(D) https://www.azleg.gov/arsDetail/?title=36htm

[9] Dementia Care Practice Recommendations, Alzheimer's Association, published in the Gerontologist 2017 https://www.alz.org/getmedia/1a0020aa-0bfb-47ac-a545-1dd8a3ee1444/alzheimers-dementia-care-practice-recommendations.pdf

[10] A GUIDE TO QUALITY CARE FROM THE PERSPECTIVES OF PEOPLE LIVING WITH DEMENTIA, Alzheimer's Association https://www.alz.org/getmedia/a6b80947-18cb-4daf-91e4-7f4c52d598fd/quality-care-person-living-with-dementia

R9-10-111 *Redefines sections A and B to include updated enforcement matrices and clarifies how the Department determines the final penalty, including mitigating factors. (P716)*
Table 1.2 *New section. Specifies enforcement levels, including criteria and department action. (P721)*

The following sections regarding preventing and tracking elopements are appropriate and necessary for safety and quality of care and the Association supports without comment:
R9-10-801 *Adds "memory care services" to "assisted living services", and adds new definitions for "memory care services" and "elopements".*
R9-10-803 *Adds requirement for facility governing authorities to ensure the health, safety, or welfare of a resident is not placed at risk of harm, and requires tracking/reporting of elopements.*
R9-10-819 *Adds requirement for elopement drill for employees.*

R9-10-122 *New Section. Creates the framework for memory care services training programs, including the application process, course content, and trainer qualifications. (P717-719)*
Support with comments.
This section is appropriate and necessary. Dementia care training is a cornerstone of improving quality of care. High quality evidence-based training drives the transformation of quality care. Research shows that high-quality dementia care training can lead to an improvement in communication between caregivers and individuals living with dementia, a reduction in dementia-related behaviors, and an increase in job satisfaction for staff. The Association recommends training be evidence-based, current, and recognized by subject matter experts in dementia care.

The list of subjects to be covered for dementia training curriculum within R9-10-122(A)(1)(e)(i)(2) are appropriate although it is not an exhaustive list and could be improved. However, the Department addressed our concerns through the allowance of "any additional relevant topics." The Association would recommend that additional relevant topics should include transitions of care, something which is missing from the required list but is included in the DCPRs and briefly mentioned in R9-10-808 with the addition of "ancillary services" in service planning.

Allowing the use of online evidence-based curriculums in conjunction with in-person hands-on training is appropriate and necessary, especially for rural areas without access to the same resources as urban areas. For example, the Alzheimer's Association offers a 3-hour online training which could be submitted by a facility in conjunction with 5 hours of hands-on in person training by a qualified trainer. Ensuring that the in-person component includes a demonstration of the individual's skills and knowledge necessary to provide memory care services, along with a certificate of completion and passing the exam, is necessary and appropriate. Additionally, the Association appreciates the inclusion of an annual review of training materials to ensure the most current information is utilized.

The inclusion of medication management as a topic is appropriate and relevant. Common comorbidities can negatively impact a person living with dementia, and conversely, a diagnosis of dementia can make the treatment and management of comorbid conditions quite challenging. Nonmedical care providers should encourage persons living with dementia and their families to report acute changes in health and function to the person's physician, and to let the physician know about difficulties they encounter in managing acute and chronic comorbidities at home or in a residential care facility.

NON-SUBSTANTIVE CHANGES REQUESTED:

For clarity and to ensure high-quality dementia care training curriculums recognized by subject matter experts[11] can be fast-tracked, we recommend updating:

> R9-10-122 (A)(1)(e)(i)(1) Updating from "Dementia care training curriculum from a nationally recognized organization; or"
> to "Dementia care training curriculum that has current recognition by a national non-profit health organization renowned as experts in Alzheimer's care, support and research, and whose curriculum recognition is based on a comprehensive review of current evidence, best practice and expert opinion; or"

Including the importance of supportive and therapeutic environments listed in other sections and in the statute, we recommend updating:

> R9-10-122(A)(1)(e)(i)(2)(cc) "Managing challenging behaviors such as aggression, wandering, and agitation;"
> to "Preventing and care of behavioral and psychological symptoms of dementia, including but not limited to night disturbances, aggression, wandering, and agitation;"

R9-10-123 *New section. Specifies the procedures for notifying the Department of changes to the Memory Care Services training program (P719)*
Support; no comments.

R9-10-124 *New section. Specifies the training program must have a designated administrator and parameters for the department's access to records (P719)*
Support; no comments.

R9-10-125 *New section. Specifies parameters for eligibility for memory care services trainer (P719-720)*
Support with comments:
Ensuring a qualified dementia care trainer is necessary; however parts of this section refer to trademarked certifications. For clarity, the Alzheimer's Association recommends the Department remove R9-10-125 Section A completely and R9-10-125 Section B(2). However, if this is considered a substantive change that would delay the rulemaking process it is not something we recommend.

R9-10-126 *New section. Specifies the parameters of the certificate of completion for both the applicant and the individual receiving the certificate. (P720)*
Support; no comments.

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The Association supports the following proposed sections specific to Memory Care Services as necessary, appropriate, evidence-based, and they should be implemented with minor changes recommended below. The sections intertwine to provide wraparound comprehensive memory care services as recommended by the Dementia Care Practice Recommendations.
R9-10-808 *Adds that resident service plans must be established, documented, and implemented; adds ancillary services to be listed in the service plan.*
This section is important because of the requirement that service plans be implemented and for residents and includes the addition of ancillary services. The inclusion of ancillary services aligns with the DCPRs on coordination of care, and supports the language in R9-10-815.

[11] The Alzheimer's Association dementia care training curriculum review offers professional long-term and community-based care providers and training companies the opportunity to submit their training programs for review. Curriculum is reviewed against the Dementia Care Practice Recommendations, the benchmark for quality care.Current list of recognized dementia training programs ready for use:
https://www.alz.org/professionals/professional-providers/dementia-care-training-certification/recognized-dementia-care-training-programs

R9-10-815 *Includes new inclusions for memory care services resident service plans.*
This section is appropriate, necessary, and aligns with the statutory requirements for memory care services and the DCPRs for person-centered assessment and care planning[12]:

1. Perform regular, comprehensive person-centered assessments and timely interim assessments
2. Use assessment as an opportunity for information gathering, relationship-building, education, and support
3. Approach assessment and care planning with a collaborative, team approach
4. Use documentation and communication systems to facilitate the delivery of person-centered information between all care providers
5. Encourage advance planning to optimize physical, psychosocial, and fiscal wellbeing and to increase awareness of all care options, including palliative care and hospice

To strengthen the rules, the Association recommends updating the service plan requirements for memory care services to ensure the plans are evidence-based:

R9-10-815(8)(a) from "Identification of specialized environmental features …" to
"Identification of specialized evidence-based environmental features …"
R9-10-815(b) from "Strategies for providing person-centered care …" to
"Evidence-based strategies for providing person-centered care …"
R9-10-815(8)(c) from "Strategies for administering medications as ordered." to
"Strategies for administering medications as ordered and care

R9-10-816 *Adds new regulations for memory care services requiring Assisted living facilities providing directed care services to establish and implement comprehensive policies and procedures for memory care, ensure adequate staffing and training, and incorporate specialized environmental features to support residents with dementia.*
The Alzheimer's Association strongly supports this section because it aligns with the memory care statute and the dementia care practice recommendations. The requirements are appropriate and necessary, and we recommend adopting all of them. There are several provisions that will profoundly improve quality of care and safety of residents by aligning with current research, evidence, and best practices from the DCPRs.Some of these sections include:

R9-10-816(A)(1-3) regarding policies, activities, and appropriateness of placement are appropriate and thorough. These provisions take into consideration the needs of people living with dementia and person-centered care planning. Well-trained staff, preventative safety measures, person-centered care planning, and supportive and therapeutic environments will reduce challenging dementia behaviors. It is important to see the world from the perspective of the individual living with dementia. Doing so recognizes behavior as a form of communication, thereby promoting effective and empathetic communication that validates feelings and connects with the individual in his/her reality.[13]

R9-10-816(A)(4-6) regarding staffing:
A review of scholarly literature on this subject verifies that there is a clear association between higher levels of licensed staff and higher quality of care. A resident's individual outcomes (including the presence of weight loss, bed sores and general functional ability), is regularly linked to staffing and there is an association between higher turnover rates and lower quality of care.[14] Requiring awake caregivers at night is essential due to well-documented dementia related

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[12] Dementia Care Practice Recommendations P84-85
https://www.alz.org/getmedia/1a0020aa-0bfb-47ac-a545-1dd8a3ee1444/alzheimers-dementia-care-practice-recommendations.pdf

[13] The Fundamentals of Person-Centered Care for Individuals With Dementia Sam Fazio, PhD,* Douglas Pace, NHA, Janice Flinner, MS, and Beth Kallmyer, MSW
https://www.alz.org/getmedia/1a0020aa-0bfb-47ac-a545-1dd8a3ee1444/alzheimers-dementia-care-practice-recommendations.pdf

[14] 2024 Facts and Figures Report, Alzheimer's Association, originally cited to Bostick JE, Rantz MJ, Flesner MK, Riggs CJ. Systematic review of studies of staffing and quality in nursing homes. J Am Med Dir Assoc. 2006 Jul;7(6):366-76. doi: 10.1016/j.jamda.2006.01.024. Epub 2006 Apr 25. PMID: 16843237

behaviors called "sundowning" and "night disturbances." Sundowning is increased confusion that people living with Alzheimer's and dementia may experience from dusk through night. Also called "sundowner's syndrome," it is not a disease but a set of symptoms or dementia-related behaviors that may include difficulty sleeping, anxiety, agitation, hallucinations, pacing and disorientation. Although the exact cause is unknown, sundowning may occur due to disease progression and changes in the brain. Regarding night disturbances, many people with Alzheimer's wake up more often and stay awake longer during the night. Brain wave studies show decreases in both dreaming and non-dreaming sleep stages. Those who cannot sleep may wander, be unable to lie still, or yell or call out, disrupting the sleep of their caregivers. Caregivers must be both awake and trained to address these challenging dementia-related symptoms.[15]

R9-10-816(B-C) Regarding training hours and certificates conform with statutory requirements and are appropriate.

R9-10-816(D-E) These sections align with previous sections in the proposed rules specific to service plans and the requirements are supported by the DCPRs on Person-centered assessment and care planning.

R9-10-816(G) regarding therapeutic and supportive environments aligns with the evidence-based research and best practices in the DCPRs on supportive and therapeutic environments:

1. Create a sense of community within the care environment. The environment should support building relationships with others as a result of sharing common attitudes, interests, and the goals of the individuals living with dementia, their caregivers, and other care providers.
2. Enhance comfort and dignity for everyone in the care community. It is important that members of the care community are able to live and work in a state of physical and mental comfort free from pain or restraint. Environments are designed to maintain continuity of self and identity through familiar spaces that support orientation to place, time, and activity.
3. Provide opportunities for choice for all persons in the care community. The environment can provide opportunities for self-expression, and self-determination, reinforcing the individual's continued right to make decisions for him/herself.
4. Offer opportunities for meaningful engagement to members of the care community. Relationships are built on knowing the person, which itself is based on doing things together.

Recommended minor changes:

R9-10-816(A) Consider adding a requirement that policies are regularly reviewed and updated as necessary to improve resident safety and quality of care.

R9-10-816(A)(3)(a) Consider adding "and after any hospitalization or other significant change requiring a transition in care or level of care."

R9-10-816 (Repealed) and R9-10-817 *This section includes the repealed language from R9-10-816, and adds procedures for memory care services, exceptions for naloxone nasal spray storage, and guidelines for donated medicine.*
Support with no comment.

Thank you for the opportunity to comment on the proposed rules, and for your consideration of our comments and recommendations. To be clear, if any of the recommendations we make would result in substantive changes that would delay the rules process, we respectfully request the Department move forward without those changes. It is often said in public policy that perfect is the enemy of good. The rules are good, they are necessary, and they need to move forward without further delay.

[15] Alzheimer's Association - alz.org

Respectfully,

Tory Roberg
Arizona Director of Government Affairs
Alzheimer's Association

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

April 10, 2025

Sent Via Email: troberg@alz.org

Tory Roberg
Director of Government Affairs
Alzheimer's Association
Desert Southwest Chapter

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Department of Health Services – Health Care Institutions: Licensing, Article 1 and 8; Response to Stakeholder Comment on Proposed Rules

Dear Ms. Roberg:

Thank you for your thoughtful and detailed comments on the proposed memory care services rules. The Department sincerely appreciates the Alzheimer's Association's support of this rulemaking effort. Your recommendations reflect a deep commitment to improving the safety, quality, and consistency of care for individuals who need memory care services. The Department values your subject matter expertise, as well as the voices of your advocates and community members who have shared personal experiences throughout this process. Your collaboration has been instrumental in shaping meaningful, evidence-based regulations that uphold the intent of HB2764 and promote person-centered care across Arizona's assisted living facilities.

The Department has carefully reviewed your recommended non-substantive revisions. The suggestions regarding the clarification of dementia care training curriculum in R9-10-122(A)(1)(e)(i)(1), language updates to reflect a broader scope of behavioral symptoms in R9-10-122(A)(1)(e)(i)(2)(cc), and edits to emphasize evidence-based service plan elements in R9-10-815 are well-aligned with the Dementia Care Practice Recommendations and the statutory intent of Laws 2024, Chapter 100. These changes will be considered as part of the final review.

We also acknowledge your concerns regarding references to trademarked certifications in R9-10-125 and appreciate your thoughtful approach to balancing clarity with the need to advance rulemaking efficiently. The Department is evaluating ways to maintain the intent of trainer qualifications without inadvertently favoring specific entities or introducing unnecessary delays.

The Department especially values your support for R9-10-808, R9-10-815, and R9-10-816, which form the backbone of individualized, coordinated, and high-quality care for residents with dementia. Your organization's emphasis on person-centered care, staff training, and therapeutic environments is echoed throughout these rules, and we are grateful for your partnership in bringing this framework to life.

Thank you again for your continued engagement, collaboration, and leadership. We look forward to implementing these rules in a way that advances high-quality care, supports caregivers, and improves the lives of those living with Alzheimer's and other dementias across our state. If you have any questions, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

AARP Arizona

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Hello, my name is Brendon Blake and I'm the Director of Advocacy for AARP here in Arizona. I'm here today to share our support for the proposed Rules. First, I'd like to thank the Department for the work that they've done in drafting these proposed Rules, and for seriously considering the input that we and other stakeholders have provided throughout the process.

AARP as a stakeholder has been involved in finding improvements to our Long-Term Care System for years, and we see this as an incredible opportunity to continue to push ourselves forward.

We have participated in Task Forces, Study Committees, and legislative stakeholder meetings all with the intent of seeing the quality of care for patients and residents improved, while making sure to hold those who harm these vulnerable people accountable for their actions.

Regarding these specific rulemaking meetings with the industry, advocates, and the Department we have provided comments at every opportunity. These comments have been taken into consideration by the Department and while not all have been accepted we have appreciated those that were accepted. Again, we want to reiterate that we support the Rules as currently drafted and emphasize that we believe that the Department has come to a fair compromise.

I would also like to discuss a few issues that were presented at the Oral Hearing, April 8th, that is important to address.

1. **Directed Care & Memory Care Services**

During the stakeholder process for HB 2764, the enabling legislation for the current rulemaking, AARP had originally wished for "Memory Care Services" to either be a designated subsection of "Directed Care Services" or a new, higher level of care. We argued for this with then-Rep. Dunn due to our belief that currently "Directed Care" doesn't address the additional needs of theose suffering from neurodegenerative conditions. However, after the industry had suggested that all facilities be held to that standard, we ultimately agreed. I was surprised to hear in the April 8th meeting that the industry now has concerns with this approach. We believe that the approach outlined in the draft should continue forward as the standard.

2. **Critical Need**

As discussed, the need here is absolutely critical. No-Sen. Dunn recognized the need for this legislation and dedicated hours of negotiating to make sure that we were able to find a compromise. We are concerned that the issues raised today, some of which are new and should have been discussed in previous stakeholder meetings, is an attempt to prevent these proposed Rules from taking effect. We believe that the process, both at the legislature and at the Department have been rigorous and have provided ample opportunities for community and stakeholder feedback.

Next, I'd like to highlight our support in areas that we believe are paramount to improving quality of care and ensuring the protection of patients and residents of these facilities:

1. **Memory Care Services**

As a key part of the intent behind the enabling legislation, HB2764, creating definitions and requirements around what it means to provide Memory Care Services is the foundation under which we can provide critical care to people who are experiencing cognitive decline as a result of a neurodegenerative condition. As we see more and more of our population aging in Arizona and the US broadly, and the correlation between age and neurodegenerative conditions, the need to establish strong training and care requirements cannot be understated.

2. **Increased Enforcement**

Another large part of the enabling legislation from last year was around making sure that an appropriate deterrent was available to the Department. AARP has been very troubled by the reports that facilities have seen fines as nothing more than "The cost of doing business," rather than a real punishment for bad actors. We believe that, as we do in other areas of our society, providing a strong deterrent to acting badly will yield the results of moving some of these facilities into more compliance. We believe that giving the Department the tools it needs, coupled with good decision-making on their part, will usher in more compliance with various facilities who have shown patterns of noncompliance. We should never find ourselves in a position where an entity like the Attorney General's Office should have to step in.

3. **Elopements**

For those who have had experience with or knowledge of neurodegenerative conditions, you know that one behavior that may present itself is wandering. When I and my wife were support group facilitators for families caring for a loved one with a neurodegenerative condition, we heard all sorts of solutions to prevent wandering as well as plenty of scary stories that those solutions were borne out of. We support the proposed Rule around adding "Elopement," and the subsequent requirements to the Rules as we believe that facilities do have a responsibility, regarding patients and residents who may wander and

get lost, to put into place prevention mechanisms and and respond quickly when such things do occur.

In conclusion, we believe that these Rules are a strong step forward to improving care in our state and support the Rules as drafted. These improvements are a necessity to the growing need for care in our state, both as we see more people with neurodegenerative conditions and to ensure that quality of care given to these individuals is at the highest possible level. We look forward to the Department being able to implement these updates to the Rules

Thank you for your time and consideration.

ARIZONA
DEPARTMENT OF
HEALTH SERVICES

April 10, 2025

Sent Via Email: bblake@aarp.org

Brendon Blake
Director of Advocacy
AARP Arizona
7250 N. 16th St., Ste. 302
Phoenix, AZ 85020

Re: Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Department of Health Services – Health Care Institutions: Licensing, Article 1 and 8; Response to Stakeholder Comment on Proposed Rules

Dear Mr. Blake:

Thank you for your thoughtful letter and your participation in the rulemaking process. The Department appreciates AARP's continued engagement and advocacy. We are grateful for your support of the proposed rules.

Your acknowledgment of the Department's efforts to engage with stakeholders throughout this process is deeply appreciated. The collaborative input provided by AARP and other advocates has been instrumental in shaping the current draft. The Department appreciates your recognition of the Department's work to find balance and compromise in the development of standards for memory care services. Strong training and care standards are essential to the delivery of high-quality memory care services.

With respect to enforcement, we agree that meaningful deterrents are a necessary component of an effective regulatory system. The tools provided through the enabling legislation and reinforced in the rules are intended to promote accountability and improve compliance.

Your comments regarding elopement are also well taken. The Department agrees that facilities have a responsibility to implement prevention strategies and respond promptly to elopement incidents. We appreciate your personal reflections and the support you and your wife have offered to families navigating these challenges.

Thank you again for your time, your advocacy, and your commitment to improving care for Arizona's most vulnerable residents. We look forward to continued collaboration with AARP as we work to implement the new rules. If you have any questions, please contact the Office of Administrative Counsel and Rules at 602-542-1020.

Sincerely,

Lucinda Sallaway

Lucinda Sallaway, Senior Rules Analyst
Director's Office, Administrative Counsel and Rules
Arizona Department of Health Services

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Ms. Jessica Klien
Chairperson
Governor's Regulatory Review Council
100 North 15th Ave., Ste. 305
Phoenix, AZ, 85007

RE: Healthcare Institution Rulemaking

Dear Chairperson Klien,

As you may be aware, the Arizona Department of Health Services has submitted a proposed rulemaking to the Governor's Regulatory Review Council (GRRC), relating to long-term and memory care, as established under Laws 2024, Chapter 100.

We are providing this letter in support of the proposed rules that were promulgated as a result of the above referenced legislation and subsequent stakeholder meetings conducted by ADHS. This correspondence is intended to provide some additional context we believe is important for you to consider in this decision.

Regarding the proposed rules, we believe that they are a fair representation of the original legislative stakeholder process and of the input provided by all parties during the open meetings that were conducted by ADHS for the drafting of the proposed rules. In addition, we believe that the process by which ADHS considered the proposed rules was transparent and were open to discussion and feedback during both the meetings held and in the comment periods in which stakeholders were afforded additional opportunity to provide written feedback.

As one might suspect, AARP Arizona has been at the table throughout the stakeholder conversations on this issue for the past two years. In addition, during the legislative debate, legislators received thousands of emails and telephone calls from AARP. At present, over 2,000 individuals have signed a petition expressing their collective support for the submitted rules that are under GRRC review.

It is our position that these proposed rules, for which ample time has been provided to discuss concerns, should be adopted with no additional substantive changes. Recognizing the difficulty associated with the subject matter, I believe it would be beneficial to provide additional context on the history of this issue, particularly as related to the increase in the civil money penalties and need for on-site monitoring, the new category of "memory care services."

History

AARP Arizona has been a part of this effort since 2018, as triggered by the tragic and disturbing incident that occurred at Hacienda in which a woman with intellectual and developmental disabilities was sexually assaulted by a staff member, ultimately becoming pregnant, which went unnoticed until she was delivering the child.

Since then, we have seen a number of both high-profile and under-the-radar cases of great concern. These range from additional cases of sexual assault, a case in which one resident suffered a gruesome death at the hands of another resident, and instances of residents wandering away from their facilities. In the case of these individuals wandering, there are examples where individuals have left the facilities without shoes and suffered severe burns, have fallen, and in some cases have died.

These types of issues have drawn the attention of the *Arizona Republic,* which published a series of articles on this industry and some of the worst issues within it. In addition, we have seen the ultimate backstop in the form of the Attorney General stepping in as a last resort to protect the residents of some facilities. As we continue to see these types of issues arise consistently, we believe that action must be taken to mitigate the harm being caused.

Increased Fines & On-Site Monitoring

As part of our efforts, we've been invested in raising care standards by trying to give ADHS the tools it needs to both support facilities who want to do the right thing, but may need some additional guidance to do so, and to have effective and reasonable enforcement mechanisms for when facilities are found to be out of substantial compliance. Unfortunately, we have heard from the department during the stakeholder conversations on the proposed rules that, regarding the current level of financial penalties available to ADHS, some facilities have responded with nonchalance to the $500 or even $1,000 fine levels. We believe that it is unacceptable for facilities to be able to effectively ignore such laws or regulations as merely the "cost of doing business". The increases laid out in the legislation, which have been further clarified by the proposed rules, provide the Department with the tools necessary to properly address such cavalier behavior.

In addition, those facilities that wish to provide high-quality care and to be in compliance with Arizona's laws and regulations but need some support in doing so, will now have a path forward. The introduction of on-site monitoring, not as a punishment tool, but an opportunity for facilities to partner with the Department to address these issues for a simple fee.

Memory Care Services

In Arizona, Alzheimer's Disease and Related Dementias (ADRD) are being diagnosed at an alarming rate. As we have learned more about the disease and the variations of Dementias, we have been able to more accurately diagnose which allows us to also create unique care plans. Historically, however, there has been no guidance on elevated levels of care, requisite knowledge

to provide care, or any requirements to administer care for those with these types of diagnosis. While some facilities raised their level of competence to meet this great need, this was not the case for all. These new rules provide strong definitions around what "memory care services" is, the training that staff an managers need to have in order to provide care, and lays out some additional requirements that will ultimately raise the quality of care for all residents.

Additional Context

Unfortunately, we have observed actions and remarks made by the industry that attempts to obscure or otherwise influence the process and the original intent of the enabling legislation.

An example of such obfuscation can be found during the final stakeholder meeting at ADHS on the rules on April 8th, in which we were surprised and equally disappointed to hear the industry arguing against raising the "Directed Care Services" level of care to include "Memory Care Services" rather than have "Memory Care Services" as a separate and new level. This was in contrast to the industry's previous position during the legislative stakeholder process in which the industry had argued that creating a new level of care would mean additional fees and licensure requirements. In addition, during this meeting, the industry discussed new items of concern on language that has been present throughout the draft process.

From our perspective, there are additional examples of a pattern in which the industry would frequently move the proverbial goal posts when policy issues got resolved – it was never enough. We believe that these are attempts to not only make the process more confusing for regulators, but also to delay the implementation or ultimately change the proposed rules to reflect something that was not intended in the enabling legislation.

Accordingly, we respectfully encourage GRRC to approve the proposed rulemaking package submitted by the department, as in doing so it will move Arizona forward in raising the quality of care for all of Arizona's most vulnerable who live in these facilities.

If you have any questions, please do not hesitate to contact me or the AARP Arizona Advocacy Director, Brendon Blake (bblake@aarp.org).

Thank you, in advance, for your consideration.

Sincerely,

Dana Marie Kennedy, MSW
State Director, AARP Arizona

Cc: Jenna Bentley
Rana Lashgari
Jenny Poon
John Sundt
Frank Thorwald
Jeff Wilmer

Ms. Jessica Klein
Chairperson
Governor's Regulatory Review Council
100 North 15th Ave, Suite 305
Phoenix, AZ 85007

May 27, 2025

Re: May 28, 2025 GRRC Study Session – Proposed DHS, Title 9, Chapter 10, Article 1 & 8 Rules

Chairperson Klein,

On behalf of The Hampton Group Inc., a Scottsdale based development corporation that owns, controls and manages senior living facilities throughout Arizona, we submit the following comments regarding the proposed Department of Health Services, Title 9, Chapter 10, Articles 1 & 8 Rules. As a former state legislator, I never supported the idea of exempting an executive agency (DHS) from the GRRC rule-making process, as I believe it is detrimental to the public interest, diminishes public input and participation, and vests too much authority in the bureaucracy. For that reason alone, but also for the concerns raised by the other stakeholders and our objections delineated below, we strongly encourage the Commission not allow the rules package to move forward until these issues have been satisfactorily addressed.

The Hampton Group Inc. believes the proposed rules go beyond the statutory authority granted by the Arizona legislature in 2024 under Laws 2024, Chapter 100 (HB 2764) are not clear, concise, and understandable to the general public.

1. **Establishing minimum training standards for memory care trainer eligibility.** As enacted, HB 2764 establishes a minimum training standard of eight hours of initial memory care services training and four hours of annual continuing education. Additionally, the standards for assisted living facility managers must include a minimum of four hours of training specifically for assisted living facility managers. The legislation only requires DHS to approve memory care services training **programs**, not memory care trainers and their eligibility.
   The proposed rule, R9-10-125, grossly exceeds DHS's authority by establishing the "memory care trainer" position and the eligibility to qualify for that role. We stress here again, the legislation only requires DHS to approve memory services **programs** (Laws 2024, Chapter 100, page 2, lines 45 and 45). These provisions exceed the statutory authority of DHS, and there is no demonstrable evidence to justify and support the inclusion of these criteria prescribed by DHS.

2. **Establishing memory care as a separate level of care, a mitigation model for civil monetary penalties, and on-site monitoring conditions beyond statutory authority.** The Hampton Group Inc. strongly concurs with the concerns expressed by other stakeholders regarding these crucial matters. All are additional egregious examples

of DHS exceeding its authority, and why the rule package must not be allowed to move forward. Identifying memory care services as a fourth level of care was considered but not enacted by the legislature; a mitigation model was required to be developed but is severely lacking in the rule package, and HB 2674 does not provide for authority for on-site monitoring of substantially compliant facilities.

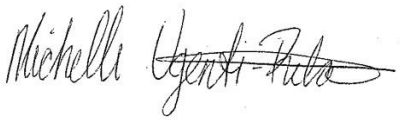
The Hampton Group Inc. respectfully requests GRRC not allow the rules package to move forward until these deficiencies and concerns are rectified:

1. Eliminate R9-10-125 regarding memory care trainers and their eligibility. HB 2764 only requires DHS to approve training programs.
2. Eliminate R9-10-816 and establish a civil monetary penalty model and an on-site monitoring model that comply with statute.

It is the opinion of The Hampton Group Inc. that this endeavor was not borne from a perspective of addressing a systemic problem that could be addressed in other ways, but to simply satisfy a political and media problem on the backs of the industry with little to no meaningful input from those financially impacted by an out-of-control bureaucracy. Specifically, by circumventing the process in the Administrative Procedures Act, GRRC will have no input into evaluating the actual financial and economic impact of these rules. Lastly, this rule-making package clearly exceeds the authority granted it by HB 2764 and should not move forward without significant modification and improvement.

Creating a rule package of this consequence requires significant industry participation and time, which this endeavor was not afforded. This wrong can be resolved by not moving this package forward and giving it the effort it requires and deserves. We stand ready to participate in any meaningful way.

Sincerely,



Michelle Ugenti-Rita
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C: Jenna Bentley
Frank Thornwald
Jeff Wilmer
Jenny Poon
John Sundt

La Posada
GREEN VALLEY

Ms. Jessica Klein Chairperson
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

Re: GRRC May 28 Study Session - Proposed DHS, Title 9, Chapter 10, Articles 1 & 8 rules

Chairperson Klein,

I have been working in Senior Living, Assisted Living and Skilled Nursing care for over 30 years. I am writing to you today to implore you not to move the proposed DHS, Title 9, Chapter 10, Articles 1 and 8 rules package forward due to several very concerning aspects.

First, let me be clear that after many conversations with multiple operators in the state, all of us support strengthening our Assisted Living services across Arizona. Assisted Living is fast becoming the alternative to higher cost skilled care. People entering Assisted Living today, would have been entering a skilled nursing home 10 years ago. Many operators are successfully adapting to this new reality, within the existing regulations. This is not a matter of simply pushing back on new regulations. Updated regulations are a way of life for all of us and we accept them. We are all use to change.

However, the following aspects of the proposed rules are not only very concerning, they threaten the viability of Directed Care across the state. I understand Arizona Leading Age has sent a letter outlining many of the technical aspects of the flawed rules, my goal is to highlight the impacts on the operational side of providing directed care services.

First, creating another licensure category (R9-10-816) while one already exists to cover Directed Care is creating an un needed economic burden on providers that already struggle to operate these programs. Arizona is on track to be one of the top states to record nursing and caregiving shortages over the next few years. Costs continue to rise and staffing our communities continues to be a struggle as the number of certified caregivers and nurses continue to dwindle across the state. These lower applicant pools, combined with an ever-increasing minimum wage, has placed significant constraints on providers. The last thing needed is an additional licensure element.

Facilities already struggling may find themselves asking if providing this level of service is worth the effort. As our aging population rises and the need for Memory Care increase, placing operators in a position deciding if they should remain open, does nothing to enhance Memory Care across the state. In fact, it jeopardizes that service.

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La Posada
GREEN VALLEY

Second, DHS has not clearly stated the rules and structure in many aspects of this regulation. As stated above, we as providers are comfortable with changes, if those changes are clear, concise, workable and all parties understand their role in administering the changes. The language here is vague, not defined and many providers feel they are being unnecessarily exposed to potential citation, litigation and enforcement. Just one example in R9-10-816 is the need for "adequate supervision". Providers are already held to provide the needed, staff, care and services as outlined in a client's service plan and noted within our current regulations. This is needless and confusing duplication, again placing providers in a confusing situation that threatens the viability of these programs.

Third, the enforcement outlined is unclear and again, leaves operators at risk for violations, fines and citations as they are held accountable to undefined terms. When providers are assessing their own tolerances for risk and exposure, if the situation becomes too un manageable, providers may simply begin to curtail Memory Care services within their organizations. At the risk of restating the obvious, the state will need more providers offering this service in the future for a healthy Arizona, not less.

I hope that you will pause the forward motion and allow these items to be addressed. Providers want to work with regulators so we all succeed in our collective mission of offering high quality services for our Arizona seniors. Please review the Arizona Leading Age document as well and we are here to offer our assistance as needed.

Thank you for your time.

Sincerely,

Steve Kolnacki, MHS, CASP
Vice President Health Services
La Posada at Park Centre Inc.

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Ms. Jessica Klein
Chairperson
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

Re: GRRC May 28 Study Session - Proposed DHS, Title 9, Chapter 10, Articles 1 & 8 rules

Chairperson Klein,

On behalf of Arizona LeadingAge (AZLA), we submit the following comments regarding the proposed Department of Health Services, Title 9, Chapter 10, Articles 1 & 8 rules. AZLA believes that certain provisions of the proposed rules go beyond the statutory authority granted by the Arizona legislature in 2024 under Laws 2024, Chapter 100 (HB 2764), and in other cases are not clear, concise and understandable to the general public.

1. **Establishing memory care as a separate level of care goes beyond DHS' authority specified in HB 2764 -** The Legislature considered but did not enact memory care services as a separate level of care (the three Assisted Living levels of care already exist as: Supervisory Care, Personal Care and Directed Care). In contrast to HB 2764, the proposed DHS rules carve out memory care services as an additional, separate level of care, effectively creating a fourth level of care within Assisted Living. Further, staffing mandates were considered by the Legislature but were not enacted by the legislature.

2. **DHS proposed rules do not clearly implement the requirement in HB 2764 to develop a mitigation model for civil monetary penalties -** HB 2764 required DHS to develop a mitigation model but DHS largely repeated the statutory language of what the model should include; the result is that mitigation factors are basically non-existent as they only contemplate if an infraction did not occur;

3. **The DHS rules to establish conditions for when DHS can impose on-site monitoring go beyond statutory authority -** HB 2764 requires DHS to establish a model to provide on-site monitoring only for facilities not in substantial compliance; in contrast, the DHS rules provide for on-site monitoring for those facilities that are in substantial compliance.

Memory Care is not a separate level of care – The proposed rule, R9-10-816, creating Memory Care Services, is in conflict with statute and legislative intent. Although creating a separate level of care for Memory Care was considered by the Legislature, the Legislature rejected Memory Care as a separate level of care. Assisted living facilities are licensed based on the provided level of care provided by the licensed facility as either: Supervisory Care, Personal Care; or Directed Care Services. Directed Care is the highest level of care, and Memory Care is fully included as part of Directed Care Services.

Proposed rule R9-10-816 should be deleted in its entirety as it creates confusion, is not based on the statute and is contrary to legislative history. Instead, adding Memory Care standards to R9-10-815, Directed Care Services, along with the other existing Memory Care service requirements already outlined, would fulfill HB 2764 requirements.

Eliminating R9-10-816 will also eliminate the subjective staffing requirement to provide "adequate supervision." This standard is overly subjective, fails the requirement that rules be "clear and concise," and introduces liability risks for the facilities. Current assisted living rules effectively require staffing implicitly by requiring licensed

facilities to meet residents' needs as outlined in residents' service plans regardless of their level of care and to follow all other service, care, training and facility requirements specified in current rules and statutes. Service

plans for residents are updated as the residents' needs change. Directed Care Service plans are updated at least every 3 months. In addition, removing R9-10-816 will eliminate redundancies that will create confusion, unnecessary steps, and increased costs.

Rules do not clearly implement the HB 2764 civil monetary penalty mitigation model – The civil monetary penalty mitigation model in the proposed rules does not follow the new statutory provisions in HB 2764 and additionally fails the "clear and concise" test. A more detailed scope and severity matrix specific to assisted living is what was contemplated in the stakeholder process for HB 2764. The proposed mitigation model lacks the necessary details to support consistent and proportional enforcement. The Department was provided with a matrix which reflects the complexity and variation of deficiencies in this setting. Similar matrices were provided during the development of HB 2764. Stakeholders were told that rather than including a matrix in statute it would be better in DHS rules. This model does not provide for varying degrees of scope and severity and transparency.

Rules establishing on-site monitoring conditions go beyond statutory authority – The rule providing for on-site monitoring conflicts with the statutory provisions in HB 2764 and lacks clarity. During the development of HB 2764, the subject of DHS providing on-site monitoring was discussed. On-site monitoring was established for facilities with egregious infractions and facilities not in "substantial compliance." (Substantial compliance, as defined in statute, means a facility whose violations do not pose a direct risk to the life, health or safety of patients or residents.) In contrast to the statute, the model clearly provides for on-site monitoring for those facilities that would be found to be in substantial compliance.

Arizona LeadingAge respectfully requests GRRC not allow the rules package to move forward until these deficiencies are corrected:

1. Eliminate R9-10-816 as it is beyond the scope of authority granted by the legislature. Memory Care services is part of Directed Care.
2. Establish a civil monetary penalty model that complies with the statute.
3. Establish an on-site monitoring model that complies with the statute.

Please let us know if we can answer any questions or provide any additional information.

Respectfully,

Marie Isaacson

Marie Isaacson

C: Jenna Bentley
Frank Thornwald
Jeff Wilmer
Jenny Poon
John Sundt

To: Governor's Regulatory Review Council

Regarding: Proposed Memory Care Rules

Date: 5/23/2025

Greetings Council Members,

I am an Assisted Living Manager overseeing a 181 bed Assisted Living Center in the west valley. This work and service to the greater geriatric community is critical and the need for quality and affordable care is increasing as baby boomers enter the market. Please consider the burdens associated with the proposed rules that will significantly impact all industry participants such owners, caregivers, managers, care recipients, and their families. The intention of this letter is to respectfully request a delay in the effective date or eliminate the proposed rules for Memory Care Services and the related training requirement:

1. It is not necessary to add a fourth level of care as provisions for memory care are well covered in the current rules under (R9-10-815) Directed Care Services and is defined as
    a. Programs and services, including personal care, provided to persons who are incapable of recognizing danger, summoning assistance, or making basic care decisions
2. The proposed rules include significant redundancy and are highly subjective such as R9-10-821(H.3).
    a. Residents do not use, have access to, or participate in the use of any materials, furnishings, equipment, activities, or treatments that may pose a threat to their health or safety.
3. It is certainly common sense that there is an increased level of safety interventions, but this rule puts providers at risk of citations, enforcement and subsequent civil penalties depending on individual interpretations [by surveyors]. Alternatively, the current rule requiring the facility to keep toxic materials locked up is clear and concise.
4. The enforcement matrix is not reasonable and only serves to widen the gap that already exists between providers and The Department. The approval of such significant civil penalties, training, and daily monitoring do not align with The Departments purpose to improve public health, rather it erodes trust between The Department and providers.
5. The Memory Care training requirements of concern as providers still are not clear on the rules (if approved). We also do know what or where the training programs will be offered. To apply to be an approved training program is complex and I am guessing many providers will choose to send staff to the training programs rather than trying to become a trainer and maintain program requirements. This will create significant financial burdens. Training is and always has been included in the current certified caregiving curriculum.

6. Additionally, The Department is also unable to answer specific questions as noted at the recent industry conference where a very brave DHS Representative spoke to the audience and said, "I also want to know about the memory care rules" or couldn't answer the question stating, "That is above my pay grade". How can providers possibly be ready for implementation by July when we cannot get answers from the very people who are writing the rules?

Thank you for your time and consideration!

Sincerely,

Carla Tover, BSc Sociology

Carla Tover

Sr. Assisted Living Manager

Royal Oaks Life Plan Community

623.815.4209

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Fwd: Request to Pause Memory Care Rules

1 message

Jessica Klein <jessica.klein@azdoa.gov> Fri, May 23, 2025 at 8:14 AM
To: GRRC - ADOA <grrc@azdoa.gov>

---------- Forwarded message ---------
From: **Mariele Soriano** <Mariele.Soriano@humangood.org>
Date: Thu, May 22, 2025 at 3:40 PM
Subject: Request to Pause Memory Care Rules
To: jessica.klein@azdoa.gov <jessica.klein@azdoa.gov>
Cc: jbentley@goldwaterinstitute.org <jbentley@goldwaterinstitute.org>, FrankThorwald@thorwaldgroup.com <FrankThorwald@thorwaldgroup.com>, jsundt@sundtlaw.com <jsundt@sundtlaw.com>, jwilmer@divindtech.com <jwilmer@divindtech.com>, jenny@joinhuub.com <jenny@joinhuub.com>, rana@az-ms.com <rana@az-ms.com>

Dear GRRC Chair and Council Members,

I urge you to reconsider and pause the proposed rules for assisted living facilities until critical issues are addressed. As the Executive Director at The Terraces of Phoenix, we deeply value the GRRC's dedication to quality care and are concerned about the potential negative impacts on our ability to provide quality care for Arizona's seniors. We share your commitment to ensuring the highest quality of care for Arizona Seniors.

We urgently request the GRRC to consider the following:

Key Issues with Proposed Rules

Eliminate R9-10-816: This rule, which creates a new and unnecessary fourth level of care for memory care, exceeds statutory authority. Memory care services are already covered under "Directed Care." This proposed change would introduce an undefined and duplicative level of care, leading to significant economic burden for providers like us. For example, this change could require us to hire additional specialized staff.

Align Civil Monetary Penalty (CMP) Structure with Statute: The proposed CMP structure needs to be revised to align with current statute and offer fair, consistent enforcement. Without this, providers will face unclear and potentially inequitable penalties.

Develop a Compliant On-Site Monitoring Process: The current proposal for on-site monitoring lacks clarity and would place an undue burden on providers. The lack of clarity on monitoring frequency and criteria could result in inconsistent enforcement. We need a process that complies with legislative intent and provides clear expectations, not one that leaves us vulnerable to citations without proper guidance.

These proposed changes would profoundly affect our organization. The economic burden of an undefined fourth level of care would divert resources away from vital resident services. Furthermore, the lack of clarity from ADHS regarding rule implementation leaves us exposed to citations without clear guidance, creating an environment of significant uncertainty and risk. Ultimately, these changes could severely impact our ability to serve residents and sustain our operations, directly affecting the well-being of the seniors we care for.

We look forward to working together to address these issues. Thank you for your time and attention to this critical matter.

Sincerely yours,
Mariele

Mariele Soriano | Executive Director LPC
The Terraces of Phoenix | 7550 N 16th Street, Phoenix, AZ 85020 | 602-371-4112
Mariele.Soriano@HumanGood.org | HumanGood.org

Named Best Independent Living 2025
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Tuesday, May 27, 2025

Ms. Jessica Klein, Chairperson
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

Re: Concerns Regarding Draft DHS Rules – HB2764 Implementation

Dear Chairperson Klein,

On behalf of our client, Arizona ALFA, I'm writing to urge that the current draft memory care rules developed from HB2764 be returned to the Arizona Department of Health Services for revision.

The proposed rules, while well-intended, contain several major oversteps and ambiguities that must be addressed before moving forward:

Creating a Fourth Level of Care: The draft rules establish Memory Care as a new, separate level of care. This goes beyond legislative intent. The legislature specifically considered—but rejected—creating Memory Care as a standalone category. Memory Care is already incorporated under Directed Care, the highest existing level of service. Adding another level only creates confusion, inconsistency, and unintended regulatory consequences.

Overly Burdensome and Vague Training Requirements: The proposed standards introduce subjective staffing requirements like "adequate supervision," which are not clearly defined. This opens the door to liability, inconsistent enforcement, and unnecessary cost burdens on providers without improving care outcomes.

The minimum training requirements should focus on what needs to be taught and the duration of the training. However, the proposed draft goes beyond that by prescribing who can serve as a certified trainer. This exceeds the "minimum training" scope outlined in the statute and would create a substantial financial burden on communities.

As an example, the draft rules allow someone without a bachelor's degree to serve as a trainer if they have three years of experience, but they must also meet four additional requirements.

Additionally, requiring individuals to pass a test goes beyond the scope of minimum training and instead ventures into demonstrating proficiency. The legislation states that the department will review and approve training programs, which will then issue a "certificate of completion." There is no mention of a test being required to obtain the certificate.

Lack of a Comprehensive Model for Civil Penalties: HB2764 directed DHS to create a model for assessing civil penalties. However, the model included in the proposed rules provides no meaningful guidance or framework to evaluate the scope and severity of infractions. As written, it fails to deliver the proportionality, transparency, and consistency discussed during stakeholder meetings.

On-Site Monitoring for Compliant Communities: The current draft improperly allows DHS to impose on-site monitoring on facilities that are in substantial compliance, which conflicts with the clear intent of HB2764. The statute states: "The director shall establish a model in rule for the department to monitor health care institutions on-site that are found to not be in substantial compliance."

The statute defines substantial compliance as when "the nature or number of violations revealed by any type of inspection or investigation of a health care institution does not pose a direct risk to the life, health or safety of patients or residents." In contrast, the proposed rules would allow on-site monitoring based on the potential for more than minimal physical or psychosocial harm, a standard that goes beyond what the law permits.

In light of these concerns, we respectfully ask that the rules package be returned to DHS with the following directives:

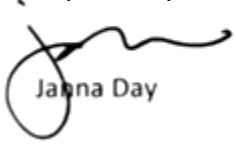
1. Eliminate R9-10-816. Memory Care is part of Directed Care—not a new category.
2. Develop a civil penalty model that reflects legislative intent and includes a true scope and severity matrix.
3. Limit on-site monitoring to facilities not in substantial compliance, in alignment with statute.

These corrections are essential to ensure the rules are lawful, clear, and implementable for providers across Arizona.

We remain committed to working with DHS and GRRC to support safe, high-quality assisted living, and we appreciate your leadership in ensuring that rules align with legislative authority and operational reality.

Please let me know if I can answer questions or provide further insight.

Respectfully,



Jenna Day

CC: Karen Barno, AZ ALFA President

ARTICLE 1. GENERAL

R9-10-101. Definitions

In addition to the definitions in A.R.S. §§ 36-401(A) and 36-439, the following definitions apply in this Chapter unless otherwise specified:

1. "Abortion clinic" has the same meaning as in A.R.S. § 36-449.01.
2. "Abuse" means:
   a. The same:
      i. For an individual 18 years of age or older, as in A.R.S. § 46-451; and
      ii. For an individual less than 18 years of age, as in A.R.S. § 8-201;
   b. A pattern of ridiculing or demeaning a patient;
   c. Making derogatory remarks or verbally harassing a patient; or
   d. Threatening to inflict physical harm on a patient.
3. "Accredited" has the same meaning as in A.R.S. § 36-422.
4. "Active malignancy" means a cancer for which:
   a. A patient is undergoing treatment, such as through:
      i. One or more surgical procedures to remove the cancer;
      ii. Chemotherapy, as defined in A.A.C. R9-4-401; or
      iii. Radiation treatment, as defined in A.A.C. R9-4-401;
   b. There is no treatment; or
   c. A patient is refusing treatment.
5. "Activities of daily living" means ambulating, bathing, toileting, grooming, eating, and getting in or out of a bed or a chair.
6. "Acuity" means a patient's need for medical services, nursing services, or behavioral health services based on the patient's medical condition or behavioral health issue.
7. "Acuity plan" means a method for establishing nursing personnel requirements by unit based on a patient's acuity.
8. "Adjacent" means not intersected by:
   a. Property owned, operated, or controlled by a person other than the applicant or licensee; or
   b. A public thoroughfare.
9. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
10. "Administrative office" means a location used by personnel for recordkeeping and record retention but not for providing medical services, nursing services, behavioral health services, or health-related services.
11. "Admission" or "admitted" means, after completion of an individual's screening or registration by a health care institution, the individual begins receiving physical health services or behavioral health services and is accepted as a patient of the health care institution.
12. "Adult" has the same meaning as in A.R.S. § 1-215.
13. "Adult behavioral health therapeutic home" means a residence that provides room and board, assists in acquiring daily living skills, coordinates transportation to scheduled appointments, monitors behaviors, assists in the self-administration of medication, and provides feedback to a case manager related to behavior for an individual 18 years of age or older based on the individual's behavioral health issue and need for behavioral health services and may provide behavioral health services under the clinical oversight of a behavioral health professional.
14. "Adult residential care institution" means a subclass of behavioral health residential facility that only admits residents 18 years of age and older and provides recidivism reduction services.
15. "Adverse reaction" means an unexpected outcome that threatens the health or safety of a patient as a result of a medical service, nursing service, or health-related service provided to the patient.
16. "Affiliated counseling facility" means a counseling facility that shares administrative support with one or more other counseling facilities that operate under the same governing authority.
17. "Affiliated outpatient treatment center" means an outpatient treatment center authorized by the Department to provide behavioral health services that provides administrative support to a counseling facility or counseling facilities that operate under the same governing authority as the outpatient treatment center.
18. "Alternate licensing fee due date" means the last calendar day in a month each year, other than the anniversary date of a facility's health care institution license, by which a licensee is required to pay the applicable fees in R9-10-106.
19. "Ancillary services" means services other than medical services, nursing services, or health-related services provided to a patient.
20. "Anesthesiologist" means a physician granted clinical privileges to administer anesthesia.
21. "Applicant" means a governing authority requesting:
   a. Approval of a health care institution's architectural plans and specifications for construction or modification,
   b. Approval of a modification,
   c. Approval of an alternate licensing fee due date, or
   d. A health care institution license.
22. "Application packet" means the information, documents, and fees required by the Department for the:
   a. Approval of a health care institution's architectural plans and specifications for construction or modification,
   b. Approval of a modification,

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

c. Approval of an alternate licensing fee due date, or
d. Licensing of a health care institution.

23. "Assessment" means an analysis of a patient's need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.
24. "Assistance in the self-administration of medication" means restricting a patient's access to the patient's medication and providing support to the patient while the patient takes the medication to ensure that the medication is taken as ordered.
25. "Attending physician" means a physician designated by a patient to participate in or coordinate the medical services provided to the patient.
26. "Authenticate" means to establish authorship of a document or an entry in a medical record by:
    a. A written signature;
    b. An individual's initials, if the individual's written signature appears on the document or in the medical record;
    c. A rubber-stamp signature; or
    d. An electronic signature code.
27. "Authorized service" means specific medical services, nursing services, behavioral health services, or health-related services provided by a specific health care institution class or subclass for which the health care institution is required to obtain approval from the Department before providing the medical services, nursing services, or health-related services.
28. "Available" means:
    a. For an individual, the ability to be contacted and to provide an immediate response by any means possible;
    b. For equipment and supplies, physically retrievable at a health care institution; and
    c. For a document, retrievable by a health care institution or accessible according to the applicable time-frames in this Chapter.
29. "Behavioral care"
    a. Means limited behavioral health services, provided to a patient whose primary admitting diagnosis is related to the patient's need for physical health services, that include:
        i. Assistance with the patient's psychosocial interactions to manage the patient's behavior that can be performed by an individual without a professional license or certificate including:
            (1) Direction provided by a behavioral health professional, and
            (2) Medication ordered by a medical practitioner or behavioral health professional; or
        ii. Behavioral health services provided by a behavioral health professional on an intermittent basis to address the patient's significant psychological or behavioral response to an identifiable stressor or stressors; and
    b. Does not include court-ordered behavioral health services.
30. "Behavioral health facility" means a behavioral health inpatient facility, a behavioral health residential facility, a substance abuse transitional facility, a behavioral health specialized transitional facility, an outpatient treatment center that only provides behavioral health services, an adult behavioral health therapeutic home, a behavioral health respite home, or a counseling facility.
31. "Behavioral health inpatient facility" means a health care institution that provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:
    a. Have a limited or reduced ability to meet the individual's basic physical needs;
    b. Suffer harm that significantly impairs the individual's judgment, reason, behavior, or capacity to recognize reality;
    c. Be a danger to self;
    d. Be a danger to others;
    e. Be persistently or acutely disabled, as defined in A.R.S. § 36-501; or
    f. Be gravely disabled.
32. "Behavioral health issue" means an individual's condition related to a mental disorder, a personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.
33. "Behavioral health observation/stabilization services" means crisis services provided, in an outpatient setting, to an individual whose behavior or condition indicates that the individual:
    a. Requires nursing services,
    b. May require medical services, and
    c. May be a danger to others or a danger to self.
34. "Behavioral health paraprofessional" means an individual who is not a behavioral health professional who provides the following services to a patient to address the patient's behavioral health issue:
    a. Under supervision by a behavioral health professional, services that, if provided in a setting other than a health care institution, would be required to be provided by an individual licensed under A.R.S. Title 32, Chapter 33; or
    b. Health-related services.
35. "Behavioral health professional" means:
    a. An individual licensed under A.R.S. Title 32, Chapter 33, whose scope of practice allows the individual to:
        i. Independently engage in the practice of behavioral health, as defined in A.R.S. § 32-3251; or
        ii. Except for a licensed substance abuse technician, engage in the practice of behavioral health, as defined in A.R.S. § 32-3251, under direct supervision as defined in A.A.C. R4-6-101;
    b. A psychiatrist as defined in A.R.S. § 36-501;
    c. A psychologist as defined in A.R.S. § 32-2061;

d. A physician;
e. A behavior analyst as defined in A.R.S. § 32-2091; or
f. A registered nurse practitioner licensed as an adult psychiatric and mental health nurse; or
g. A registered nurse with:
   i. A psychiatric-mental health nursing certification, or
   ii. One year of experience providing behavioral health services.

36. "Behavioral health residential facility" means a health care institution that provides treatment to an individual experiencing a behavioral health issue that:
    a. Limits the individual's ability to be independent, or
    b. Causes the individual to require treatment to maintain or enhance independence.
37. "Behavioral health respite home" means a residence where respite care services, which may include assistance in the self-administration of medication, are provided to an individual based on the individual's behavioral health issue and need for behavioral health services.
38. "Behavioral health specialized transitional facility" means a health care institution that provides inpatient behavioral health services and physical health services to an individual determined to be a sexually violent person according to A.R.S. Title 36, Chapter 37.
39. "Behavioral health technician" means an individual who is not a behavioral health professional who provides the following services to a patient to address the patient's behavioral health issue:
    a. With clinical oversight by a behavioral health professional, services that, if provided in a setting other than a health care institution, would be required to be provided by an individual licensed under A.R.S. Title 32, Chapter 33; or
    b. Health-related services.
40. "Benzodiazepine" means any one of a class of sedative-hypnotic medications, characterized by a chemical structure that includes a benzene ring linked to a seven-membered ring containing two nitrogen atoms, that are commonly used in the treatment of anxiety.
41. "Biohazardous medical waste" has the same meaning as in A.A.C. R18-13-1401.
42. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
43. "Case manager" means an individual assigned by an entity other than a health care institution to coordinate the physical health services or behavioral health services provided to a patient at the health care institution.
44. "Certification" means, in this Article, a written statement that an item or a system complies with the applicable requirements incorporated by reference in R9-10-104.01.
45. "Certified health physicist" means an individual recognized by the American Board of Health Physics as complying with the health physics criteria and examination requirements established by the American Board of Health Physics.
46. "Change in ownership" means conveyance of the ability to appoint, elect, or otherwise designate a health care institution's governing authority from an owner of the health care institution to another person.
47. "Chief administrative officer" or "administrator" means an individual designated by a governing authority to implement the governing authority's direction in a health care institution.
48. "Clinical laboratory services" means the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or impairment of a human being, or for the assessment of the health of a human being, including procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body.
49. "Clinical oversight" means:
    a. Monitoring the behavioral health services provided by a behavioral health technician to ensure that the behavioral health technician is providing the behavioral health services according to the health care institution's policies and procedures and, if applicable, a patient's treatment plan;
    b. Providing on-going review of a behavioral health technician's skills and knowledge related to the provision of behavioral health services;
    c. Providing guidance to improve a behavioral health technician's skills and knowledge related to the provision of behavioral health services; and
    d. Recommending training for a behavioral health technician to improve the behavioral health technician's skills and knowledge related to the provision of behavioral health services.
50. "Clinical privileges" means authorization to a medical staff member to provide medical services granted by a governing authority or according to medical staff bylaws.
51. "Collaborating health care institution" means a health care institution licensed to provide outpatient behavioral health services that has a written agreement with an adult behavioral health therapeutic home or a behavioral health respite home to:

a. Coordinate behavioral health services provided to a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home, and
b. Work with the provider to ensure a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home receives behavioral health services according to the resident's treatment plan.

52. "Common area" means licensed space in health care institution that is:
    a. Not a resident's bedroom or a residential unit,
    b. Not restricted to use by employees or volunteers of the health care institution, and
    c. Available for use by visitors and other individuals on the premises.
53. "Communicable disease" has the same meaning as in A.R.S. § 36-661.
54. "Conspicuously posted" means placed:
    a. At a location that is visible and accessible; and
    b. Unless otherwise specified in the rules, within the area where the public enters the premises of a health care institution.
55. "Consultation" means an evaluation of a patient requested by a medical staff member or personnel member.
56. "Contracted services" means medical services, nursing services, behavioral health services, health-related services, ancillary services, or environmental services provided according to a documented agreement between a health care institution and the person providing the medical services, nursing services, health-related services, ancillary services, or environmental services.
57. "Contractor" has the same meaning as in A.R.S. § 32-1101.
58. "Controlled substance" has the same meaning as in A.R.S. § 36-2501.
59. "Counseling" has the same meaning as "practice of professional counseling" in A.R.S. § 32-3251.
60. "Counseling facility" means a health care institution that only provides counseling, which may include:
    a. DUI screening, education, or treatment according to the requirements in 9 A.A.C. 20, Article 1; or
    b. Misdemeanor domestic violence offender treatment according to the requirements in 9 A.A.C. 20, Article 2.
61. "Court-ordered evaluation" has the same meaning as "evaluation" in A.R.S. § 36-501.
62. "Court-ordered treatment" means treatment provided according to A.R.S. Title 36, Chapter 5.
63. "Crisis services" means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.
64. "Current" means up-to-date, extending to the present time.
65. "Daily living skills" means activities necessary for an individual to live independently and include meal preparation, laundry, house-cleaning, home maintenance, money management, and appropriate social interactions.
66. "Danger to others" has the same meaning as in A.R.S. § 36-501.
67. "Danger to self" has the same meaning as in A.R.S. § 36-501.
68. "Detoxification services" means behavioral health services and medical services provided to an individual to:
    a. Treat the individual's signs or symptoms of withdrawal from alcohol or other drugs, and
    b. Reduce or eliminate the individual's dependence on alcohol or other drugs.
69. "Diagnostic procedure" means a method or process performed to determine whether an individual has a medical condition or behavioral health issue.
70. "Dialysis" means the process of removing dissolved substances from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.
71. "Dialysis services" means medical services, nursing services, and health-related services provided to a patient receiving dialysis.
72. "Dialysis station" means a designated treatment area approved by the Department for use by a patient receiving dialysis or dialysis services.
73. "Dialyzer" means an apparatus containing semi-permeable membranes used as a filter to remove wastes and excess fluid from a patient's blood.
74. "Disaster" means an unexpected occurrence that adversely affects a health care institution's ability to provide services.
75. "Discharge" means a documented termination of services to a patient by a health care institution.
76. "Discharge instructions" means documented information relevant to a patient's medical condition or behavioral health issue provided by a health care institution to the patient or the patient's representative at the time of the patient's discharge.
77. "Discharge planning" means a process of establishing goals and objectives for a patient in preparation for the patient's discharge.
78. "Discharge summary" means a documented brief review of services provided to a patient, current patient status, and reasons for the patient's discharge.
79. "Disinfect" means to clean in order to prevent the growth of or to destroy disease-causing microorganisms.
80. "Documentation" or "documented" means information in written, photographic, electronic, or other permanent form.
81. "Drill" means a response to a planned, simulated event.
82. "Drug" has the same meaning as in A.R.S. § 32-1901.
83. "Electronic" has the same meaning as in A.R.S. § 44-7002.
84. "Electronic signature" has the same meaning as in A.R.S. § 44-7002.
85. "Emergency" means an immediate threat to the life or health of a patient.
86. "Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.
87. "Emergency services" means unscheduled medical services provided in a designated area to an outpatient in an emergency.
88. "End-of-life" means that a patient has a documented life expectancy of six months or less.

89. "Environmental services" means activities such as housekeeping, laundry, facility maintenance, or equipment maintenance.
90. "Equipment" means, in this Article, an apparatus, a device, a machine, or a unit that is required to comply with the specifications incorporated by reference in R9-10-104.01.
91. "Exploitation" has the same meaning as in A.R.S. § 46-451.
92. "Factory-built building" has the same meaning as in A.R.S. § 41-4001.
93. "Family" or "family member" means an individual's spouse, sibling, child, parent, grandparent, or another individual designated by the individual.
94. "Follow-up instructions" means information relevant to a patient's medical condition or behavioral health issue that is provided to the patient, the patient's representative, or a health care institution.
95. "Food services" means the storage, preparation, serving, and cleaning up of food intended for consumption in a health care institution.
96. "Full-time" means 40 hours or more every consecutive seven calendar days.
97. "Garbage" has the same meaning as in A.A.C. R18-13-302.
98. "General consent" means documentation of an agreement from an individual or the individual's representative to receive physical health services to address the individual's medical condition or behavioral health services to address the individual's behavioral health issues.
99. "General hospital" means a subclass of hospital that provides surgical services and emergency services.
100. "Gravely disabled" has the same meaning as "grave disability" in A.R.S. § 36-501.
101. "Habilitation services" means activities provided to an individual to assist the individual with habilitation, as defined in A.R.S. § 36-551.
102. "Hazard" or "hazardous" means a condition or situation where a patient or other individual may suffer physical injury.
103. "Health care directive" has the same meaning as in A.R.S. § 36-3201.
104. "Hemodialysis" means the process for removing wastes and excess fluids from a patient's blood by passing the blood through a dialyzer.
105. "Home health agency" has the same meaning as in A.R.S. § 36-151.
106. "Home health aide" means an individual employed by a home health agency to provide home health services under the direction of a registered nurse or therapist.
107. "Home health aide services" means those tasks that are provided to a patient by a home health aide under the direction of a registered nurse or therapist.
108. "Home health services" has the same meaning as in A.R.S. § 36-151.
109. "Hospice inpatient facility" means a subclass of hospice that provides hospice services to a patient on a continuous basis with the expectation that the patient will remain on the hospice's premises for 24 hours or more.
110. "Hospital" means a class of health care institution that provides, through an organized medical staff, inpatient beds, medical services, continuous nursing services, and diagnosis or treatment to a patient.
111. "Immediate" means without delay.
112. "Incident" means an unexpected occurrence that harms or has the potential to harm a patient, while the patient is:
    a. On the premises of a health care institution, or
    b. Not on the premises of a health care institution but directly receiving physical health services or behavioral health services from a personnel member who is providing the physical health services or behavioral health services on behalf of the health care institution.
113. "Infection control" means to identify, prevent, monitor, and minimize infections.
114. "Infectious tuberculosis" has the same meaning as "infectious active tuberculosis" in A.A.C. R9-6-101.
115. "Informed consent" means:
    a. Advising a patient of a proposed treatment, surgical procedure, psychotropic medication, opioid, or diagnostic procedure; alternatives to the treatment, surgical procedure, psychotropic medication, opioid, or diagnostic procedure; and associated risks and possible complications; and
    b. Obtaining documented authorization for the proposed treatment, surgical procedure, psychotropic medication, opioid, or diagnostic procedure from the patient or the patient's representative.
116. "In-service education" means organized instruction or information that is related to physical health services or behavioral health services and that is provided to a medical staff member, personnel member, employee, or volunteer.
117. "Interdisciplinary team" means a group of individuals consisting of a resident's attending physician, a registered nurse responsible for the resident, and other individuals as determined in the resident's comprehensive assessment or, if applicable, placement evaluation.
118. "Intermediate care facility for individuals with intellectual disabilities" or "ICF/IID" has the same meaning as in A.R.S. § 36-551.
119. "Interval note" means documentation updating a patient's:
    a. Medical condition after a medical history and physical examination is performed, or
    b. Behavioral health issue after an assessment is performed.

120. "Isolation" means the separation, during the communicable period, of infected individuals from others, to limit the transmission of infectious agents.
121. "Leased facility" means a facility occupied or used during a set time period in exchange for compensation.
122. "License" means:
    a. Written approval issued by the Department to a person to operate a class or subclass of health care institution at a specific location; or
    b. Written approval issued to an individual to practice a profession in this state.
123. "Licensed occupancy" means the total number of individuals for whom a health care institution is authorized by the Department to provide crisis services in a unit providing behavioral health observation/stabilization services.
124. "Licensee" means an owner approved by the Department to operate a health care institution.
125. "Manage" means to implement policies and procedures established by a governing authority, an administrator, or an individual providing direction to a personnel member.
126. "Medical condition" means the state of a patient's physical or mental health, including the patient's illness, injury, or disease.
127. "Medical director" means a physician who is responsible for the coordination of medical services provided to patients in a health care institution.
128. "Medical history" means an account of a patient's health, including past and present illnesses, diseases, or medical conditions.
129. "Medical practitioner" means a physician, physician assistant, or registered nurse practitioner.
130. "Medical record" has the same meaning as "medical records" in A.R.S. § 12-2291.
131. "Medical staff" means physicians and other individuals licensed pursuant to A.R.S. Title 32 who have clinical privileges at a health care institution.
132. "Medical staff bylaws" means standards, approved by the medical staff and the governing authority, that provide the framework for the organization, responsibilities, and self-governance of the medical staff.
133. "Medical staff member" means an individual who is part of the medical staff of a health care institution.
134. "Medication" means one of the following used to maintain health or to prevent or treat a medical condition or behavioral health issue:
    a. Biologicals as defined in A.A.C. R18-13-1401,
    b. Prescription medication as defined in A.R.S. § 32-1901, or
    c. Nonprescription drug as defined in A.R.S. § 32-1901.
135. "Medication administration" means restricting a patient's access to the patient's medication and providing the medication to the patient or applying the medication to the patient's body, as ordered by a medical practitioner.
136. "Medication error" means:
    a. The failure to administer an ordered medication;
    b. The administration of a medication not ordered; or
    c. The administration of a medication:
        i. In an incorrect dosage,
        ii. More than 60 minutes before or after the ordered time of administration unless ordered to do so, or
        iii. By an incorrect route of administration.
137. "Mental disorder" means the same as in A.R.S. § 36-501.
138. "Mobile clinic" means a movable structure that:
    a. Is not physically attached to a health care institution's facility;
    b. Provides medical services, nursing services, behavioral health services, or health related service to an outpatient under the direction of the health care institution's personnel; and
    c. Is not intended to remain in one location indefinitely.
139. "Monitor" or "monitoring" means to check systematically on a specific condition or situation.
140. "Neglect" has the same meaning:
    a. For an individual less than 18 years of age, as in A.R.S. § 8-201; and
    b. For an individual 18 years of age or older, as in A.R.S. § 46-451.
141. "Nephrologist" means a physician who is board eligible or board certified in nephrology by a professional credentialing board.
142. "Nurse" has the same meaning as "registered nurse" or "practical nurse" as defined in A.R.S. § 32-1601.
143. "Nursing care institution administrator" means an individual licensed according to A.R.S. Title 36, Chapter 4, Article 6.
144. "Nursing personnel" means individuals authorized according to A.R.S. Title 32, Chapter 15 to provide nursing services.
145. "Observation chair" means a physical piece of equipment that:
    a. Is located in a designated area where behavioral health observation/stabilization services are provided,
    b. Allows an individual to fully recline, and
    c. Is used by the individual while receiving crisis services.
146. "Occupational therapist" has the same meaning as in A.R.S. § 32-3401.
147. "Occupational therapy assistant" has the same meaning as in A.R.S. § 32-3401.
148. "Ombudsman" means a resident advocate who performs the duties described in A.R.S. § 46-452.02.
149. "On-call" means a time during which an individual is available and required to come to a health care institution when requested by the health care institution.

150. "Opioid" means a controlled substance, as defined in A.R.S. § 36-2501, that meets the definition of "opiate" in A.R.S. § 36-2501.
151. "Opioid agonist treatment medication" means a prescription medication that is approved by the U.S. Food and Drug Administration under 21 U.S.C. § 355 for use in the treatment of opioid-related substance use disorder.
152. "Opioid antagonist" means a prescription medication, as defined in A.R.S. § 32-1901, that:
    a. Is approved by the U.S. Department of Health and Human Services, Food and Drug Administration; and
    b. When administered, reverses, in whole or in part, the pharmacological effects of an opioid in the body.
153. "Opioid treatment" means providing medical services, nursing services, behavioral health services, health-related services, and ancillary services to a patient receiving an opioid agonist treatment medication for opioid-related substance use disorder.
154. "Order" means instructions to provide:
    a. Physical health services to a patient from a medical practitioner or as otherwise provided by law; or
    b. Behavioral health services to a patient from a behavioral health professional.
155. "Orientation" means the initial instruction and information provided to an individual before the individual starts work or volunteer services in a health care institution.
156. "Outing" means a social or recreational activity that:
    a. Occurs away from the premises,
    b. Is not part of a behavioral health inpatient facility's or behavioral health residential facility's daily routine, and
    c. Lasts longer than four hours.
157. "Outpatient surgical center" means a class of health care institution that has the facility, staffing, and equipment to provide surgery and anesthesia services to a patient whose recovery, in the opinions of the patient's surgeon and, if an anesthesiologist would be providing anesthesia services to the patient, the anesthesiologist, does not require inpatient care in a hospital.
158. "Outpatient treatment center" means a class of health care institution without inpatient beds that provides physical health services or behavioral health services for the diagnosis and treatment of patients.
159. "Overall time-frame" means the same as in A.R.S. § 41-1072.
160. "Owner" means a person who appoints, elects, or designates a health care institution's governing authority.
161. "Pain management clinic" has the same meaning as in A.R.S. § 36-448.01.
162. "Participant" means a patient receiving physical health services or behavioral health services from an adult day health care facility or a substance abuse transitional facility.
163. "Participant's representative" means the same as "patient's representative" for a participant.
164. "Patient" means an individual receiving physical health services or behavioral health services from a health care institution.
165. "Patient's representative" means:
    a. A patient's legal guardian;
    b. If a patient is less than 18 years of age and not an emancipated minor, the patient's parent;
    c. If a patient is 18 years of age or older or an emancipated minor, an individual acting on behalf of the patient with the written consent of the patient or patient's legal guardian; or
    d. A surrogate as defined in A.R.S. § 36-3201.
166. "Person" means the same as in A.R.S. § 1-215 and includes a governmental agency.
167. "Personnel member" means, except as defined in specific Articles in this Chapter and excluding a medical staff member, a student, or an intern, an individual providing physical health services or behavioral health services to a patient.
168. "Pest control program" means activities that minimize the presence of insects and vermin in a health care institution to ensure that a patient's health and safety is not at risk.
169. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.
170. "Physical examination" means to observe, test, or inspect an individual's body to evaluate health or determine cause of illness, injury, or disease.
171. "Physical health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's medical condition.
172. "Physical therapist" has the same meaning as in A.R.S. § 32-2001.
173. "Physical therapist assistant" has the same meaning as in A.R.S. § 32-2001.
174. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
175. "Placement evaluation" means the same as in A.R.S. § 36-551.
176. "Pre-petition screening" has the same meaning as "prepetition screening" in A.R.S. § 36-501.
177. "Premises" means property that is designated by an applicant or licensee and licensed by the Department as part of a health care institution where physical health services or behavioral health services are provided to a patient.
178. "Prescribe" means to issue written or electronic instructions to a pharmacist to deliver to the ultimate user, or another individual on the ultimate user's behalf, a specific dose of a specific medication in a specific quantity and route of administration.
179. "Professional credentialing board" means a non-governmental organization that designates individuals who have met or exceeded established standards for experience and competency in a specific field.
180. "Progress note" means documentation by a medical staff member, nurse, or personnel member of:
    a. An observed patient response to a physical health service or behavioral health service provided to the patient,

b. A patient's significant change in condition, or
c. Observed behavior of a patient related to the patient's medical condition or behavioral health issue.

181. "PRN" means *pro re nata* or given as needed.
182. "Project" means specific construction or modification of a facility stated on an architectural plans and specifications approval application.
183. "Provider" means an individual to whom the Department issues a license to operate an adult behavioral health therapeutic home or a behavioral health respite home in the individual's place of residence.
184. "Provisional license" means the Department's written approval to operate a health care institution issued to an applicant or licensee that is not in substantial compliance with the applicable laws and rules for the health care institution.
185. "Psychotropic medication" means a chemical substance that:
    a. Crosses the blood-brain barrier and acts primarily on the central nervous system where it affects brain function, resulting in alterations in perception, mood, consciousness, cognition, and behavior; and
    b. Is provided to a patient to address the patient's behavioral health issue.
186. "Quality management program" means ongoing activities designed and implemented by a health care institution to improve the delivery of medical services, nursing services, health-related services, and ancillary services provided by the health care institution.
187. "Recovery care center" has the same meaning as in A.R.S. § 36-448.51.
188. "Referral" means providing an individual with a list of the class or subclass of health care institution or type of health care professional that may be able to provide the behavioral health services or physical health services that the individual may need and may include the name or names of specific health care institutions or health care professionals.
189. "Registered dietitian" means an individual approved to work as a dietitian by the American Dietetic Association's Commission on Dietetic Registration.
190. "Registered nurse" has the same meaning as in A.R.S. § 32-1601.
191. "Registered nurse practitioner" has the same meaning as A.R.S. § 32-1601.
192. "Regular basis" means at recurring, fixed, or uniform intervals.
193. "Rehabilitation services" means medical services provided to a patient to restore or to optimize functional capability.
194. "Research" means the use of a human subject in the systematic study, observation, or evaluation of factors related to the prevention, assessment, treatment, or understanding of a medical condition or behavioral health issue.
195. "Resident" means an individual living in and receiving physical health services or behavioral health services, including rehabilitation services or habilitation services if applicable, from a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, a behavioral health residential facility, an assisted living facility, or an adult behavioral health therapeutic home.
196. "Resident's representative" means the same as "patient's representative" for a resident.
197. "Respiratory care services" has the same meaning as "practice of respiratory care" as defined in A.R.S. § 32-3501.
198. "Respiratory therapist" has the same meaning as in A.R.S. § 32-3501.
199. "Respite capacity" means the total number of children who do not stay overnight for whom an outpatient treatment center or a behavioral health residential facility is authorized by the Department to provide respite services on the premises of the outpatient treatment center or behavioral health residential facility.
200. "Respite services" means respite care services provided to an individual who is receiving behavioral health services.
201. "Restraint" means any physical or chemical method of restricting a patient's freedom of movement, physical activity, or access to the patient's own body.
202. "Risk" means potential for an adverse outcome.
203. "Room" means space contained by a floor, a ceiling, and walls extending from the floor to the ceiling that has at least one door.
204. "Rural general hospital" means a subclass of hospital:
    a. Having 50 or fewer inpatient beds,
    b. Located more than 20 surface miles from a general hospital or another rural general hospital, and
    c. Requesting to be and being licensed as a rural general hospital rather than a general hospital.
205. "Satellite facility" has the same meaning as in A.R.S. § 36-422.
206. "Scope of services" means a list of the behavioral health services or physical health services the governing authority of a health care institution has designated as being available to a patient at the health care institution.
207. "Seclusion" means the involuntary solitary confinement of a patient in a room or an area where the patient is prevented from leaving.
208. "Sedative-hypnotic medication" means any one of several classes of drugs that have sleep-inducing, anti-anxiety, anti-convulsant, and muscle-relaxing properties.
209. "Self-administration of medication" means a patient having access to and control of the patient's medication and may include the patient receiving limited support while taking the medication.
210. "Sexual abuse" means the same as in A.R.S. § 13-1404(A).
211. "Sexual assault" means the same as in A.R.S. § 13-1406(A).
212. "Shift" means the beginning and ending time of a continuous work period established by a health care institution's policies and procedures.

213. "Short-acting opioid antagonist" means an opioid antagonist that, when administered, quickly but for a small period of time reverses, in whole or in part, the pharmacological effects of an opioid in the body.
214. "Signature" means:
    a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or
    b. An electronic signature.
215. "Significant change" means an observable deterioration or improvement in a patient's physical, cognitive, behavioral, or functional condition that may require an alteration to the physical health services or behavioral health services provided to the patient.
216. "Single group license" means a license that includes authorization to operate health care institutions according to A.R.S. § 36-422(F) or (G).
217. "Speech-language pathologist" means an individual licensed according to A.R.S. Title 36, Chapter 17, Article 4 to engage in the practice of speech-language pathology, as defined in A.R.S. § 36-1901.
218. "Special hospital" means a subclass of hospital that:
    a. Is licensed to provide hospital services within a specific branch of medicine; or
    b. Limits admission according to age, gender, type of disease, or medical condition.
219. "Student" means an individual attending an educational institution and working under supervision in a health care institution through an arrangement between the health care institution and the educational institution.
220. "Substance abuse" means an individual's misuse of alcohol or other drug or chemical that:
    a. Alters the individual's behavior or mental functioning;
    b. Has the potential to cause the individual to be psychologically or physiologically dependent on alcohol or other drug or chemical; and
    c. Impairs, reduces, or destroys the individual's social or economic functioning.
221. "Substance abuse transitional facility" means a class of health care institution that provides behavioral health services to an individual over 18 years of age who is intoxicated or may have a substance abuse problem.
222. "Substance use disorder" means a condition in which the misuse or dependence on alcohol or a drug results in adverse physical, mental, or social effects on an individual.
223. "Substance use risk" means an individual's unique likelihood for addiction, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids.
224. "Substantial" when used in connection with a modification means:
    a. An addition or removal of an authorized service;
    b. The addition or removal of a colocator;
    c. A change in a health care institution's licensed capacity, licensed occupancy, respite capacity, or the number of dialysis stations;
    d. A change in the physical plant, including facilities or equipment, that costs more than $300,000; or
    e. A change in the building where a health care institution is located that affects compliance with:
        i. Applicable physical plant codes and standards incorporated by reference in R9-10-104.01, or
        ii. Physical plant requirements in the specific Article in this Chapter applicable to the health care institution.
225. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.
226. "Supportive services" has the same meaning as in A.R.S. § 36-151.
227. "Surgical procedure" means the excision of or incision in a patient's body for the:
    a. Correction of a deformity or defect;
    b. Repair of an injury; or
    c. Diagnosis, amelioration, or cure of disease.
228. "Swimming pool" has the same meaning as "semipublic swimming pool" in A.A.C. R18-5-201.
229. "System" means interrelated, interacting, or interdependent elements that form a whole.
230. "Tapering" means the gradual reduction in the dosage of a medication administered to a patient, often with the intent of eventually discontinuing the use of the medication for the patient.
231. "Tax ID number" means a numeric identifier that a person uses to report financial information to the United States Internal Revenue Service.
232. "Telemedicine" has the same meaning as in A.R.S. § 36-3601.
233. "Therapeutic diet" means foods or the manner in which food is to be prepared that are ordered for a patient.
234. "Therapist" means an occupational therapist, a physical therapist, a respiratory therapist, or a speech-language pathologist.
235. "Time-out" means providing a patient a voluntary opportunity to regain self-control in a designated area from which the patient is not physically prevented from leaving.
236. "Transfer" means a health care institution discharging a patient and sending the patient to another licensed health care institution as an inpatient or resident without intending that the patient be returned to the sending health care institution.
237. "Transport" means a licensed health care institution:
    a. Sending a patient to a receiving licensed health care institution for outpatient services with the intent of the patient returning to the sending licensed health care institution, or

b. Discharging a patient to return to a sending licensed health care institution after the patient received outpatient services from the receiving licensed health care institution.

238. "Treatment" means a procedure or method to cure, improve, or palliate an individual's medical condition or behavioral health issue.
239. "Treatment plan" means a description of the specific physical health services or behavioral health services that a health care institution anticipates providing to a patient.
240. "Unclassified health care institution" means a health care institution not classified or subclassified in statute or in rule.
241. "Vascular access" means the point on a patient's body where blood lines are connected for hemodialysis.
242. "Volunteer" means an individual authorized by a health care institution to work for the health care institution on a regular basis without compensation from the health care institution and does not include a medical staff member who has clinical privileges at the health care institution.
243. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state and federal holiday or a statewide furlough day.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Amended by exempt rulemaking at 22 A.A.R. 1035, pursuant to Laws 2015, Ch. 158, § 3; effective May 1, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4). Amended by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022 (Supp. 22-2).

R9-10-102. Health Care Institution Classes and Subclasses; Requirements

A. A person may apply for a license as one of the following classes or subclasses of health care institution:
1. General hospital,
2. Rural general hospital,
3. Special hospital,
4. Behavioral health inpatient facility,
5. Nursing care institution,
6. Intermediate care facility for individuals with intellectual disabilities,
7. Recovery care center,
8. Hospice inpatient facility,
9. Hospice service agency,
10. Behavioral health residential facility,
11. Adult residential care institution,
12. Assisted living center,
13. Assisted living home,
14. Adult foster care home,
15. Outpatient surgical center,
16. Outpatient treatment center,
17. Abortion clinic,
18. Adult day health care facility,
19. Home health agency,
20. Substance abuse transitional facility,
21. Behavioral health specialized transitional facility,
22. Counseling facility,
23. Adult behavioral health therapeutic home,
24. Behavioral health respite home,
25. Unclassified health care institution,
26. Pain management clinic, or
27. Nursing-supported group home.

B. A person shall apply for a license for the class or subclass that authorizes the provision of the highest level of physical health services or behavioral health services the proposed health care institution plans to provide.

C. The Department shall review a proposed health care institution's scope of services to determine whether the requested health care institution class or subclass is appropriate.

D. A health care institution shall comply with the requirements in Article 17 of this Chapter if:
1. There are no specific rules in another Article of this Chapter for the health care institution's class or subclass, or
2. The Department determines that the health care institution is an unclassified health care institution.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022 (Supp. 22-2).

R9-10-103. Licensing Exceptions

A. A health care institution license is required for each health care institution facility except:
1. A facility exempt from licensing under A.R.S. § 36-402, or
2. A health care institution's administrative office.

B. The Department does not require a separate health care institution license for:
1. A satellite facility of a hospital under A.R.S. § 36-422(F);
2. An accredited facility of an accredited hospital under A.R.S. § 36-422(G);
3. A facility operated by a licensed health care institution that is:
   a. Adjacent to and contiguous with the licensed health care institution premises; or
   b. Not adjacent to or contiguous with the licensed health care institution but connected to the licensed health care institution facility by an all-weather enclosure and:
      i. Owned by the health care institution, or
      ii. Leased by the health care institution with exclusive rights of possession;
4. A mobile clinic operated by a licensed health care institution; or
5. A facility located on grounds that are not adjacent to or contiguous with the health care institution premises where only ancillary services are provided to a patient of the health care institution.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-104. Approval of Architectural Plans and Specifications

A. For approval of architectural plans and specifications for the construction or modification of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in R9-10-104.01, an applicant shall submit to the Department an application packet including:
1. An application in a Department-provided format that contains:
   a. For construction of a new health care institution:
      i. The health care institution's name, street address, city, state, zip code, telephone number, and e-mail address;
      ii. The name and mailing address of the health care institution's governing authority;
      iii. The requested health care institution class or subclass; and
      iv. If applicable, the requested licensed capacity, licensed occupancy, respite capacity, and number of dialysis stations for the health care institution;
   b. For modification of a licensed health care institution that requires approval of architectural plans and specifications:
      i. The health care institution's license number,
      ii. The name and mailing address of the licensee,
      iii. The health care institution's class or subclass, and
      iv. The health care institution's existing licensed capacity, licensed occupancy, respite capacity, or number of dialysis stations; and the requested licensed capacity, licensed occupancy, respite capacity, or number of dialysis stations for the health care institution;
   c. The health care institution's contact person's name, street mailing address, city, state, zip code, telephone number, and e-mail address;
   d. The name, street mailing address, city, state, zip code, telephone number, and e-mail address of:
      i. The project architect; or
      ii. If the construction or modification of the health care institution does not require a project architect, the project engineer or other individual responsible for the completion of the construction or modification;
   e. A narrative description of the project;
   f. The estimated total project cost including the costs of:
      i. Site acquisition,
      ii. General construction,
      iii. Architect fees,
      iv. Fixed equipment, and

v. Movable equipment;

g. If providing or planning to provide medical services, nursing services, or health-related services that require compliance with specific physical plant codes and standards incorporated by reference in R9-10-104.01, the number of rooms or inpatient beds designated for providing the medical services, nursing services, or health-related services;

h. If providing or planning to provide behavioral health observation/stabilization services, the number of behavioral health observation/stabilization observation chairs designated for providing the behavioral health observation/stabilization services;

i. For construction of a new health care institution and if modification of a health care institution requires a project architect, a statement signed and sealed by the project architect, according to the requirements in 4 A.A.C. 30, Article 3, that the:
   i. Project architect has complied with A.A.C. R4-30-301; and
   ii. Architectural plans and specifications comply with applicable licensing requirements in A.R.S. Title 36, Chapter 4 and this Chapter;

j. If construction or modification of a health care institution requires a project engineer, a statement signed and sealed by the project engineer, according to the requirements in 4 A.A.C. 30, Article 3, that the project engineer has complied with A.A.C. R4-30-301; and

k. A statement signed by the governing authority or the licensee that the architectural plans and specifications comply with applicable licensing requirements in A.R.S. Title 36, Chapter 4 and this Chapter;

2. If the health care institution is located on land under the jurisdiction of a local governmental agency, one of the following:
   a. A building permit for the construction or modification issued by the local governmental agency; or
   b. If a building permit issued by the local governmental agency is not required, zoning clearance issued by the local governmental agency that includes:
      i. The health care institution's name, street address, city, state, zip code, and county;
      ii. The health care institution's class or subclass and each type of medical services, nursing services, or health-related services to be provided; and
      iii. A statement signed by a representative of the local governmental agency stating that the address listed is zoned for the health care institution's class or subclass;

3. The following information that is as necessary to demonstrate that the project described on the application complies with applicable codes and standards incorporated by reference in R9-10-104.01:
   a. A table of contents containing:
      i. The architectural plans and specifications submitted;
      ii. The physical plant codes and standards incorporated by reference in R9-10-104.01 that apply to the project;
      iii. The physical plant codes and standards that are required by a local governmental agency, if applicable;
      iv. An index of the abbreviations and symbols used in the architectural plans and specifications; and
      v. The facility's specific International Building Code construction type and International Building Code occupancy type;
   b. If the facility is larger than 3,000 square feet and is or will be occupied by more than 20 individuals, the seal of an architect on the architectural plans and specifications according to the requirements in A.R.S. Title 32, Chapter 1 and 4 A.A.C. 30, Article 3;
   c. A site plan, drawn to scale, of the entire premises showing streets, property lines, facilities, parking areas, outdoor areas, fences, swimming pools, fire access roads, fire hydrants, and access to water mains;
   d. For each facility, on architectural plans and specifications:
      i. A floor plan, drawn to scale, for each level of the facility, showing the layout and dimensions of each room, the name and function of each room, means of egress, and natural and artificial lighting sources;
      ii. A diagram of a section of the facility, drawn to scale, showing the vertical cross-section view from foundation to roof and specifying construction materials;
      iii. Building elevations, drawn to scale, showing the outside appearance of each facility;
      iv. The materials used for ceilings, walls, and floors;
      v. The location, size, and fire rating of each door and each window and the materials and hardware used, including safety features such as fire exit door hardware and fireproofing materials;
      vi. A ceiling plan, drawn to scale, showing the layout of each light fixture, each fire protection device, and each element of the mechanical ventilation system;
      vii. An electrical floor plan, drawn to scale, showing the wiring diagram and the layout of each lighting fixture, each outlet, each switch, each electrical panel, and electrical equipment;
      viii. A mechanical floor plan, drawn to scale, showing the layout of heating, ventilation, and air conditioning systems;
      ix. A plumbing floor plan, drawn to scale, showing the layout and materials used for water, sewer, and medical gas systems, including the water supply and plumbing fixtures;
      x. A floor plan, drawn to scale, showing the communication system within the health care institution including the nurse call system, if applicable;
      xi. A floor plan, drawn to scale, showing the automatic fire extinguishing, fire detection, and fire alarm systems; and
      xii. Technical specifications or drawings describing installation of equipment or medical gas and the materials used for installation in the health care institution;

4. The estimated total project cost including the costs of:

a. Site acquisition,
b. General construction,
c. Architect fees,
d. Fixed equipment, and
e. Movable equipment;

5. The following, as applicable:
   a. If the health care institution is located on land under the jurisdiction of a local governmental agency, one of the following provided by the local governmental agency:
      i. A copy of the certificate of occupancy for the facility,
      ii. Documentation that the facility was approved for occupancy, or
      iii. Documentation that a certificate of occupancy for the facility is not available;
   b. A certification and a statement that the construction or modification of the facility is in substantial compliance with applicable licensing requirements in A.R.S. Title 36, Article 4 and this Chapter signed by the project architect, the contractor, and the owner;
   c. A written description of any work necessary to complete the construction or modification submitted by the project architect;
   d. If the construction or modification affects the health care institution's fire alarm system, a contractor certification and description of the fire alarm system in a Department-provided format provided by the Department;
   e. If the construction or modification affects the health care institution's automatic fire extinguishing system, a contractor certification of the automatic fire extinguishing system in a Department-provided format provided by the Department;
   f. If the construction or modification affects the health care institution's heating, ventilation, or air conditioning system, a copy of the heating, ventilation, air conditioning, and air balance tests and a contractor certification of the heating, ventilation, or air conditioning system;
   g. If draperies, cubicle curtains, or floor coverings are installed or replaced, a copy of the manufacturer's certification of flame spread for the draperies, cubicle curtains, or floor coverings;
   h. For a health care institution using inhalation anesthetics or nonflammable medical gas, a copy of the Compliance Certification for Inhalation Anesthetics or Nonflammable Medical Gas System required in the National Fire Codes incorporated by reference in R9-10-104.01;
   i. If a generator is installed, a copy of the installation acceptance required in the National Fire Codes incorporated by reference in R9-10-104.01;
   j. If equipment is installed, a certification from an engineer or from a technical representative of the equipment's manufacturer that the equipment has been installed according to the manufacturer's recommendations and, if applicable, calibrated;
   k. For a health care institution providing radiology, a written report from a certified health physicist of the location, type, and amount of radiation protection; and
   l. If a factory-built building is used by a health care institution:
      i. A copy of the installation permit and the copy of a certificate of occupancy for the factory-built building from the Office of Manufactured Housing; or
      ii. A written report from an individual registered as an architect or a professional structural engineer under 4 A.A.C. 30, Article 2, stating that the factory-built building complies with applicable design standards;
6. For construction of a new health care institution and for a modification of a health care institution that requires a project architect, a statement signed by the project architect that final architectural plans and specifications have been submitted to the person applying for a health care institution license or the licensee of the health care institution;
7. For modification of a health care institution that does not require a project architect, a statement signed by the project engineer or other individual responsible for the completion of the modification that final architectural plans and specifications have been submitted to the person applying for a health care institution license or the licensee of the health care institution; and
8. The applicable fee required by R9-10-106.

B. Before an applicant submits an application for approval of architectural plans and specifications for the construction or modification of a health care institution, an applicant may request an architectural evaluation by providing the documents in subsection (A)(3) to the Department.

C. The Department may conduct on-site facility reviews during the construction or modification of a health care institution.

D. The Department shall approve or deny an application for approval of architectural plans and specifications of a health care institution in this Section according to R9-10-108.

E. In addition to obtaining an approval of a health care institution's architectural plans and specifications, a person shall obtain a health care institution license before operating the health care institution.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5,

2019 (Supp. 19-4). Publication error corrected in R9-10-104(A)(1) removing "provided by the Department;" publication error corrected in R9-10-104(B) removing "submitting;" with both amendments made at 25 A.A.R. 1583. Publication error corrected in R9-10-104(A), incorporated by reference Section updated as amended at 25 A.A.R. 3481 (Supp. 21-2).

R9-10-104.01. Codes and Standards

A. For a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in this Section, an applicant shall follow the requirements in subsection (B), except as follows:
1. Physical plant standards specified in applicable Articles of this Chapter shall govern over the codes and standards incorporated by reference in subsection (B); and
2. If a conflict occurs among the codes and standards incorporated by reference in subsection (B), the more restrictive codes and standards shall govern over the less restrictive.

B. The following physical plant health and safety codes and standards are incorporated by reference as modified, are on file with the Department, and include no future editions or amendments:
1. Guidelines for Design and Construction of Health Care Facilities (2018 ed.), published by the American Society for Healthcare Engineering and available from The Facility Guidelines Institute at www.fgiguidelines.org;
2. The following National Fire Codes (2012), published by and available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, and at www.nfpa.org/catalog:
   a. NFPA70 National Electrical Code,
   b. NFPA101 Life Safety Code, and
   c. 2012 Supplements;
3. ICC/A117.1-2017, American National Standard: Accessible and Usable Buildings and Facilities (2017), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at ☐www.iccsafe.org;
4. International Building Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
   a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]";
   b. Section 101.2 is modified by deleting the "Exception";
   c. Section 101.4.7 is deleted;
   d. Sections 103.1 through 103.3 are deleted;
   e. Sections 104.1 through 104.11.2 are deleted;
   f. Sections 105.1 through 105.7 are deleted;
   g. Sections 106.1 through 106.3 are deleted;
   h. Sections 107.1 through 107.5 are deleted;
   i. Sections 108.1 through 108.4 are deleted;
   j. Sections 109.1 through 109.6 are deleted;
   k. Sections 110.1 through 110.6 are deleted;
   l. Sections 111.1 through 111.4 are deleted;
   m. Sections 112.1 through 112.3 are deleted;
   n. Sections 113.1 through 113.3 are deleted;
   o. Sections 114.1 through 114.4 are deleted;
   p. Sections 115.1 through 115.3 are deleted;
   q. Sections 116.1 through 116.5 are deleted; and
   r. Appendices A, B, C, D, K, L, and M are deleted;
5. International Mechanical Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
   a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]",
   b. Sections 103.1 through 103.4.1 are deleted,
   c. Sections 104.1 through 104.7 are deleted,
   d. Sections 105.1 through 105.5 are deleted,
   e. Sections 106.1 through 106.5.3 are deleted,
   f. Sections 107.1 through 107.6 are deleted,
   g. Sections 108.1 through 108.7.3 are deleted,
   h. Sections 109.1 through 109.7 are deleted,
   i. Sections 110.1 through 110.4 are deleted, and
   j. Appendix B is deleted;
6. International Plumbing Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
   a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]",
   b. Sections 103.1 through 103.4.1 are deleted,
   c. Sections 104.1 through 104.7 are deleted,

d. Sections 105.1 through 105.4.1 are deleted,
e. Sections 106.1 through 106.6.3 are deleted,
f. Sections 107.1 through 107.7 are deleted,
g. Sections 108.1 through 108.7.3 are deleted,
h. Sections 109.1 through 109.7 are deleted,
i. Sections 110.1 through 110.4 are deleted, and
j. Appendix A is deleted;

7. International Fire Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]",
b. Sections 102.3 and 102.5 are deleted,
c. Sections 103.1 through 103.4.1 are deleted,
d. Sections 104.1 through 104.11.3 are deleted,
e. Sections 105.1 through 105.7.25 are deleted,
f. Sections 106.1 through 106.5 are deleted,
g. Sections 107.1 through 107.4 are deleted,
h. Sections 109.1 through 109.3 are deleted,
i. Sections 110.1 through 110.4.1 are deleted,
j. Sections 111.1 through 111.4 are deleted,
k. Section 112.1 through 112.4 is deleted,
l. Section 113.1.is deleted, and
m. Appendix A is deleted;

8. International Fuel Gas Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]",
b. Section 101.2 is modified by deleting the "Exception",
c. Sections 103.1 through 103.4.1 are deleted,
d. Sections 104.1 through 104.7 are deleted,
e. Sections 105.1 through 105.5 are deleted,
f. Sections 106.1 through 106.6.3 are deleted,
g. Sections 107.1 through 107.6 are deleted,
h. Sections 108.1 through 108.7.3 are deleted,
i. Sections 109.1 through 109.7 are deleted, and
j. Sections 110.1 through 110.4 are deleted;

9. International Private Sewage Disposal Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]",
b. Sections 103.1 through 103.4.1 are deleted,
c. Sections 104.1 through 104.7 are deleted,
d. Sections 105.1 through 105.5 are deleted,
e. Sections 106.1 through 106.4.3 are deleted,
f. Sections 107.1 through 107.9 are deleted,
g. Sections 108.1 through 108.7.2 are deleted,
h. Sections 109.1 through 109.7 are deleted, and
i. Sections 110.1 through 110.4 are deleted.

C. The Department shall not assess any penalty or fee specified in the physical plant health and safety codes and standards that are incorporated by reference in this Section.

Historical Note

New Section made by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-105. License Application

A. A person applying for an initial a health care institution license shall submit to the Department an application packet that contains:
1. An application in a Department-provided format provided by the Department including:
a. The health care institution's:
i. Name;
ii. Street address, city, state, zip code;

iii. Mailing address;
iv. Telephone number, and;
v. E-mail address;
vi. Tax ID number; and
vii. Class or subclass listed in R9-10-102 for which licensing is requested;

b. Except for a home health agency, or hospice service agency, or behavioral health facility, whether the health care institution is located within 1/4 mile of agricultural land;
c. Whether the health care institution is located in a leased facility;
d. Whether the health care institution is ready for a licensing inspection by the Department;
e. If the health care institution is not ready for a licensing inspection by the Department, the date the health care institution will be ready for a licensing inspection;
f. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-10-108;
g. Owner information including:
i. The owner's name, mailing address, telephone number, and e-mail address;
ii. Whether the owner is a sole proprietorship, a corporation, a partnership, a limited liability partnership, a limited liability company, or a governmental agency;
iii. If the owner is a partnership or a limited liability partnership, the name of each partner;
iv. If the owner is a limited liability company, the name of the designated manager or, if no manager is designated, the names of any two members of the limited liability company;
v. If the owner is a corporation, the name and title of each corporate officer;
vi. If the owner is a governmental agency, the name and title of the individual in charge of the governmental agency or the name of an individual in charge of the health care institution designated in writing by the individual in charge of the governmental agency;
vii. Whether the owner or any person with 10% or more business interest in the health care institution has had a license to operate a health care institution denied, revoked, or suspended; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license;
viii. Whether the owner or any person with 10% or more business interest in the health care institution has had a health care professional license or certificate denied, revoked, or suspended; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license or certificate; and
ix. The name, title, address, and telephone number of the owner's statutory agent or the individual designated by the owner to accept service of process and subpoenas;
h. The name and mailing address of the governing authority;
i. The chief administrative officer's:
i. Name,
ii. Title,
iii. Highest educational degree, and
iv. Work experience related to the health care institution class or subclass for which licensing is requested; and
j. Signature required in A.R.S. § 36-422(B);

2. If the health care institution is located in a leased facility, a copy of the lease showing the rights and responsibilities of the parties and exclusive rights of possession of the leased facility;
3. If applicable, a copy of the owner's articles of incorporation, partnership or joint venture documents, or limited liability documents;
4. If applicable, the name and mailing address of each owner or lessee of any agricultural land regulated under A.R.S. § 3-365 and a copy of the written agreement between the applicant and the owner or lessee of agricultural land as prescribed in A.R.S. § 36-421(D);
5. Except for a home health agency or a hospice service agency, one of the following:
a. If the health care institution or a part of the health care institution is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in R9-10-104.01:
i. An application packet for approval of architectural plans and specifications in R9-10-104(A), or
ii. Documentation of the Department's approval of the health care institution's architectural plans and specifications approval in R9-10-104 R9-10-104(D); or
b. If a no part of the health care institution or a part of the health care institution is not required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in R9-10-104.01:
i. One of the following:
(1) Documentation from the local jurisdiction of compliance with applicable local building codes and zoning ordinances; or
(2) If documentation from the local jurisdiction is not available, documentation of the unavailability of the local jurisdiction compliance and documentation of a general contractor's inspection of the facility that states the facility is

safe for occupancy as the applicable health care institution class or subclass;

ii. The licensed capacity requested by the applicant for the health care institution;

iii. If applicable, the licensed occupancy requested by the applicant for the health care institution;

iv. If applicable, the respite capacity requested by the applicant for the health care institution;

v. A site plan showing each facility, the property lines of the health care institution, each street and walkway adjacent to the health care institution, parking for the health care institution, fencing and each gate on the health care institution premises, and, if applicable, each swimming pool on the health care institution premises; and

vi. A floor plan showing, for each story of a facility, the room layout, room usage, each door and each window, plumbing fixtures, each exit, and the location of each fire protection device;

6. The health care institution's proposed scope of services; and
7. The applicable application fee required by R9-10-106.

B. In addition to the initial license application requirements in this Section, an applicant shall comply with the supplemental application requirements in specific rules in this Chapter for the health care institution class or subclass for which licensing is requested.

C. The Department shall approve or deny a license application in this Section according to R9-10-108.

D. A health care institution license is valid:

1. Unless, as specified in A.R.S. § 36-425(C):
   a. The Department revokes or suspends the license according to R9-10-112, or
   b. The license is considered void because the licensee did not pay the applicable fees in R9-10-106 according to R9-10-107; or
2. Until a licensee voluntarily surrenders the license to the Department when terminating the operation of the health care institution, according to R9-10-109(B).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-106. Fees

A. An applicant who submits to the Department architectural plans and specifications for the construction or modification of a health care institution shall also submit an architectural plans and specifications review fee as follows:

1. Fifty dollars for a project with a cost of $100,000 or less;
2. One hundred dollars for a project with a cost of more than $100,000 but less than $500,000; or
3. One hundred fifty dollars for a project with a cost of $500,000 or more.

B. An applicant submitting an application for a health care institution license shall submit to the Department an application fee of $50.

C. Except as provided in subsection (D) or (E), an applicant submitting an application for a health care institution license or a licensee submitting annual health care institution licensing fees shall submit to the Department the following licensing fee:

1. For an adult day health care facility, assisted living home, or assisted living center:
   a. For a facility with no licensed capacity, $280;
   b. For a facility with a licensed capacity of one to 59 beds, $280, plus the licensed capacity times $70;
   c. For a facility with a licensed capacity of 60 to 99 beds, $560, plus the licensed capacity times $70;
   d. For a facility with a licensed capacity of 100 to 149 beds, $840, plus the licensed capacity times $70; or
   e. For a facility with a licensed capacity of 150 beds or more, $1,400, plus the licensed capacity times $70;
2. For a behavioral health facility:
   a. For a facility with no licensed capacity, $375;
   b. For a facility with a licensed capacity of one to 59 beds, $375, plus the licensed capacity times $94;
   c. For a facility with a licensed capacity of 60 to 99 beds, $750, plus the licensed capacity times $94;
   d. For a facility with a licensed capacity of 100 to 149 beds, $1,125, plus the licensed capacity times $94; or
   e. For a facility with a licensed capacity of 150 beds or more, $1,875, plus the licensed capacity times $94;
3. For a behavioral health facility providing behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(2), the licensed occupancy times $94;
4. For a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or a nursing-supported group home:
   a. For a facility with a licensed capacity of one to 59 beds, $290, plus the licensed capacity times $73;
   b. For a facility with a licensed capacity of 60 to 99 beds, $580, plus the licensed capacity times $73;
   c. For a facility with a licensed capacity of 100 to 149 beds, $870, plus the licensed capacity times $73; or
   d. For a facility with a licensed capacity of 150 beds or more, $1,450, plus the licensed capacity times $73;

5. For a hospital, a home health agency, a hospice service agency, a hospice inpatient facility, an abortion clinic, a recovery care center, an outpatient surgical center, an outpatient treatment center that is not a behavioral health facility, a pain management clinic, or an unclassified health care institution:
   a. For a facility with no licensed capacity, $365;
   b. For a facility with a licensed capacity of one to 59 beds, $365, plus the licensed capacity times $91;
   c. For a facility with a licensed capacity of 60 to 99 beds, $730, plus the licensed capacity times $91;
   d. For a facility with a licensed capacity of 100 to 149 beds, $1,095, plus the licensed capacity times $91; or
   e. For a facility with a licensed capacity of 150 beds or more, $1,825, plus the licensed capacity times $91;
6. For a hospital providing behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(5), the licensed occupancy times $91; and
7. For an outpatient treatment center that is not a behavioral health facility and provides:
   a. Dialysis services, in addition to the applicable fee in subsection (C)(5), the number of dialysis stations times $91; and
   b. Behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(5), the licensed occupancy times $91.

D. In addition to the applicable fees in subsections (C)(5) and (C)(6), an applicant submitting an application for a single group hospital license or a licensee with a single group license submitting annual health care institution licensing fees shall submit to the Department an additional fee of $365 for each of the hospital's satellite facilities and, if applicable, the fees required in subsection (C)(7).

E. Subsections (C) and (D) do not apply to a health care institution operated by a state agency according to state or federal law or to an adult foster care home.

F. In addition to the applicable fees in subsections (C) and (D), a licensee shall submit a late payment fee of $250 if submitting annual licensing fees according to R9-10-107(E)(1) or (2)(d).

G. All fees are nonrefundable except as provided in A.R.S. § 41-1077.

Historical Note

New Section R9-10-106 renumbered from R9-10-122 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022 (Supp. 22-2).

R9-10-107. Submission of Health Care Institution Licensing Fees

A. An applicant for a health care institution license shall submit the applicable licensing fees in R9-10-106 to the Department:
1. Within 60 calendar days after the date of the written notice of approval in R9-10-108(C)(3); or
2. Within 90 calendar days after the date of the written notice of approval in R9-10-108(C)(3), with the payment of an additional late payment fee of $250.

B. The Department shall notify a licensee of the due date of the facility's health care institution licensing fees no later than 90 calendar days before the date the facility's health care institution licensing fee is due to the Department.

C. Except as specified in subsection (E), a licensee shall submit to the Department, no earlier than 60 calendar days before the anniversary date of the facility's health care institution license:
1. The following information in a Department-provided format:
   a. The licensee's name, and
   b. The facility's name and license number;
2. Verification of the information in the Department's current records for the health care institution;
3. If applicable, information or documentation required in another Article of this Chapter, specific to the health care institution, to be submitted with the relevant fees required in R9-10-106; and
4. The applicable annual licensing fees in R9-10-106.

D. If any information in the Department's current records for a health care institution is incorrect, before a licensee submits annual licensing fees according to subsection (C), the licensee shall comply with the applicable requirements in R9-10-109 or R9-10-110 to update the Department's records for the health care institution.

E. A licensee may submit to the Department the information in subsection (C)(1), verification in subsection (C)(2), applicable information or documentation in subsection (C)(3), and applicable annual licensing fees in R9-10-106:
1. Within 30 calendar days after the anniversary date of the facility's health care institution license, with the payment of the additional late payment fee in R9-10-106(F); or
2. If an alternate licensing fee due date has been established for the licensee according to subsections (F) and (G):
   a. By the anniversary date of the facility's health care institution license, with the appropriate fee amount to prorate the annual licensing fees in R9-10-106 for a facility to the alternate licensing fee due date;
   b. By the alternate licensing fee due date;
   c. If a new alternate licensing fee due date has been established, by the current alternate licensing fee due date, with the appropriate fee amount to prorate the annual licensing fees in R9-10-106 for a facility to the new alternate licensing fee due date; or

d. Within 30 calendar days after the alternate licensing fee due date, with the payment of the additional late payment fee in R9-10-106(F).

F. Except as specified in subsection (H), a licensee may request a licensing fee due date for a facility that is different from the anniversary date of a facility's health care institution license by submitting an application for an alternate licensing fee due date to the Department, at least 30 calendar days before the anniversary date of the facility's health care institution license, that includes the following information in a Department-provided format:

1. The licensee's name and e-mail address,
2. The facility's name and license number,
3. The current licensing fee due date,
4. The proposed alternate licensing fee due date,
5. The reason the licensee is requesting an alternate licensing fee due date, and
6. The name of the health care institution's administrator's or individual representing the health care institution as designated in A.R.S. § 36-422 and the dated signature of the administrator or individual.

G. The Department shall review a request made according to subsection (F) according to R9-10-108.

H. A licensee may not request an alternate licensing fee due date according to subsection (F):

1. More frequently than once in each three-year period, or
2. For a facility for which the payment of licensing fees is not up-to-date.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-108. Time-frames

A. The overall time-frame for each type of approval granted by the Department is listed in Table 1.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.

B. The administrative completeness review time-frame for each type of approval granted by the Department as prescribed in this Article is listed in Table 1.1. The administrative completeness review time-frame begins on the date the Department receives an application packet or a written request for an alternate licensing fee due date.

1. The application packet for a health care institution license is not complete until the applicant provides the Department with written notice that the health care institution is ready for a licensing inspection by the Department.
2. If the application packet or written request is incomplete, the Department shall provide a written notice to the applicant specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives the missing document or information from the applicant.
3. When an application packet or written request is complete, the Department shall provide a written notice of administrative completeness to the applicant.
4. For an application packet for review of architectural plans and specifications, a health care institution license application packet, an application packet for a modification not requiring review of architectural plans and specifications, or a written request for an alternate licensing fee due date, the Department shall consider the application or written request withdrawn if the applicant fails to supply the missing documents or information included in the notice described in subsection (B)(2) within 60 calendar days after the date of the notice described in subsection (B)(2).
5. If the Department issues a license or grants an approval during the time provided to assess administrative completeness, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame is listed in Table 1.1 and begins on the date of the notice of administrative completeness.

1. The Department may conduct an onsite inspection of the facility:
   a. As part of the substantive review for approval of architectural plans and specifications;
   b. As part of the substantive review for issuing a health care institution license; or
   c. As part of the substantive review for approving a modification of a health care institution's license.
2. During the substantive review time-frame, the Department may make one comprehensive written request for additional information or documentation. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation. The time-frame for the Department to complete the substantive review is suspended from the date of a written request for additional information or documentation until the Department receives the additional information or documentation.
3. The Department shall send a written notice of approval to an applicant that is in substantial compliance with applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter.

4. After an applicant for a health care institution license receives the written notice of approval in subsection (C)(3), the applicant shall submit the applicable health care institution license fee in R9-10-106 according to R9-10-107(A).
5. After receiving the applicable health care institution licensing fee from an applicant according to subsection (C)(4) and R9-10-107(A), the Department shall send a health care institution license to the applicant.
6. The Department shall provide a written notice of denial that complies with A.R.S. § 41-1076 to an applicant who does not:
   a. For a health care institution license application or a request for approval of a modification of a health care institution requiring architectural plans and specifications, submit the information or documentation in subsection (C)(2) within 120 calendar days after the Department's written request to the applicant;
   b. For a request for approval of a modification of a health care institution not requiring architectural plans and specifications or a written request for an alternate licensing fee due date, submit the information or documentation in subsection (C)(2) within 30 calendar days after the Department's written request to the applicant;
   c. Comply with the applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter; or
   d. If applicable, submit a fee required in R9-10-106 or R9-10-107.
7. An applicant may file a written notice of appeal with the Department within 30 calendar days after receiving the notice described in subsection (C)(6). The appeal shall be conducted according to A.R.S. Title 41, Chapter 6, Article 10.
8. If a time-frame's last day falls on a Saturday, a Sunday, or an official state holiday, the Department shall consider the next working day to be the time-frame's last day.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 859, effective April 2, 2005 (Supp. 05-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

Table 1.1 Time-frames

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval of architectural plans and specifications R9-10-104	A.R.S. §§ 36-405, 36-406(1)(b), and 36-421	105 calendar days	45 calendar days	60 calendar days
Health care institution license R9-10-105	A.R.S. §§ 36-405, 36-407, 36-421, 36-422, 36-424, and 36-425	120 calendar days	30 calendar days	90 calendar days
Approval of an alternate licensing fee due date R9-10-107	A.R.S. § 36-405	30 calendar days	10 calendar days	20 calendar days
Approval of a modification of a health care institution R9-10-110	A.R.S. §§ 36-405, 36-407, and 36-422	75 calendar days	15 calendar days	60 calendar days

Historical Note

New Table 1 made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 859, effective April 2, 2005 (Supp. 05-1). Table 1 number amended to Table 1.1 and contents amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Table 1.1 amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Table 1.1 amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Table 1.1 heading added for clarity by the Division (21-2).

R9-10-109. Changes Affecting a License

A. A licensee shall ensure that:

1. The Department is notified in writing at least 30 calendar days before the effective date of:
   a. Except as provided in subsection (I), a change in the name of:
      i. A health care institution, or
      ii. The licensee;
   b. A change in the hours of operation:
      i. Of an administrative office, or
      ii. For providing physical health services or behavioral health services to patients of the health care institution;
   c. A change in the address of a health care institution that does not provide medical services, nursing services, behavioral health services, or health-related services on the premises; or
   d. A change in the geographic region to be served by the hospice service agency or home health agency; and
2. Documentation supporting the change is provided to the Department with the notification required in subsection (A)(1).

B. If a licensee intends to terminate the operation of a health care institution, the licensee shall ensure that the Department is notified in writing of:
1. The termination of the health care institution's operations, as required in A.R.S. § 36-422(D), at least 30 calendar days before the termination, and
2. The address and contact information for the location where the health care institution's medical records will be retained as required in A.R.S. § 12-2297.

C. A licensee shall ensure that the Department is notified in writing, according to A.R.S. § 36-425(I), of a change in the chief administrative officer of the health care institution.

D. If a health care institution is accredited by a nationally recognized accrediting organization, a licensee may submit to the Department the health care institution's current accreditation report.

E. Except as provided in A.R.S. § 36-424(B), if a licensee submits to the Department a health care institution's current accreditation report from a nationally recognized accrediting organization, the Department shall not conduct an onsite compliance inspection of the health care institution during the time the accreditation report is valid.

F. If a licensee is an adult behavioral health therapeutic home or a behavioral health respite home, the licensee shall ensure that:
1. The Department is notified in writing if the licensee does not have a written agreement with a collaborating health care institution, as required in R9-10-1603(A)(3) or R9-10-1803(A)(3) as applicable; and
2. The adult behavioral health therapeutic home or behavioral health respite home does not accept an individual as a resident or recipient, as applicable, or provide services to a resident or recipient, as applicable, until:
   a. The adult behavioral health therapeutic home or behavioral health respite home has a written agreement with a collaborating health care institution;
   b. The collaborating health care institution has approved the adult behavioral health therapeutic home's or behavioral health respite home's:
      i. Scope of services, and
      ii. Policies and procedures; and
   c. The collaborating health care institution has verified the provider's skills and knowledge.

G. If a licensee is an affiliated outpatient treatment center, the licensee shall ensure that if the affiliated outpatient treatment center:
1. Plans to begin providing administrative support to a counseling facility at a time other than during the affiliated outpatient treatment center's license application process, the following information for each counseling facility is submitted to the Department before the affiliated outpatient treatment center begins providing administrative support:
   a. The counseling facility's name,
   b. The license number assigned to the counseling facility by the Department, and
   c. The date the affiliated outpatient treatment center will begin providing administrative support to the counseling facility; or
2. No longer provides administrative support to a counseling facility previously identified by the affiliated outpatient treatment center as receiving administrative support from the affiliated outpatient treatment center, the following information for each counseling facility is submitted to the Department within 30 calendar days after the affiliated outpatient treatment center no longer provides administrative support:
   a. The counseling facility's name,
   b. The license number assigned to the counseling facility by the Department, and
   c. The date the affiliated outpatient treatment center stopped providing administrative support to the counseling facility.

H. If a licensee is a counseling facility, the licensee shall ensure that if the counseling facility:
1. Plans to begin receiving administrative support from an affiliated outpatient treatment center at a time other than during the counseling facility's license application process, the following information for the affiliated outpatient treatment center is submitted to the Department before the counseling facility begins receiving administrative support:
   a. The affiliated outpatient treatment center's name,
   b. The license number assigned to the affiliated outpatient treatment center by the Department, and
   c. The date the counseling facility will begin receiving administrative support;

2. No longer receives administrative support from an affiliated outpatient treatment center previously identified by the counseling facility as providing administrative support to the counseling facility, the following information for the affiliated outpatient treatment center is submitted to the Department within 30 calendar days after the counseling facility no longer receives administrative support from the affiliated outpatient treatment center:
   a. The affiliated outpatient treatment center's name,
   b. The license number assigned to the affiliated outpatient treatment center by the Department, and
   c. The date the counseling facility stopped receiving administrative support from the affiliated outpatient treatment center;
3. Plans to begin sharing administrative support with an affiliated counseling facility at a time other than during the counseling facility's license application process, the following information for each affiliated counseling facility sharing administrative support with the counseling facility is submitted to the Department before the counseling facility and affiliated counseling facility begin sharing administrative support:
   a. The affiliated counseling facility's name,
   b. The license number assigned to the affiliated counseling facility by the Department, and
   c. The date the counseling facility and the affiliated counseling facility will begin sharing administrative support; or
4. No longer shares administrative support with an affiliated counseling facility previously identified by the counseling facility as sharing administrative support with the counseling facility, the following information is submitted for each affiliated counseling facility within 30 calendar days after the counseling facility and affiliated counseling facility no longer share administrative support:
   a. The affiliated counseling facility's name,
   b. The license number assigned to the affiliated counseling facility by the Department, and
   c. The date the counseling facility and affiliated counseling facility will no longer be sharing administrative support.

I. A governing authority shall submit a license application required in R9-10-105 for:
1. A change in ownership of a health care institution;
2. A change in the address or location of a health care institution that provides medical services, nursing services, health-related services, or behavioral health services on the premises; or
3. A change in a health care institution's class or subclass.

J. A governing authority is not required to submit the documentation required in R9-10-105(A)(5) for a license application if:
1. The health care institution has not ceased operations for more than 30 calendar days,
2. A modification has not been made to the health care institution,
3. The services the health care institution is authorized by the Department to provide are not changed, and
4. The location of the health care institution's premises is not changed.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking at 26 A.A.R. 551, with an immediate effective date of March 3, 2020 (Supp. 20-1).

R9-10-110. Modification of a Health Care Institution

A. A licensee shall submit a request for approval of a modification of a health care institution when planning to make:
1. An addition or removal of an authorized service;
2. An addition or removal of a colocator;
3. A change in a health care institution's licensed capacity, licensed occupancy, respite capacity, or the number of dialysis stations;
4. A change in the physical plant, including facilities or equipment, that costs more than $300,000; or
5. A change in the building where a health care institution is located that affects compliance with:
   a. Applicable physical plant codes and standards incorporated by reference in R9-10-104.01, or
   b. Physical plant requirements in the specific Article in this Chapter applicable to the health care institution.

B. A licensee of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in R9-10-104.01 shall submit an application packet, according to R9-10-104(A), for approval of architectural plans and specifications for a modification of the health care institution described in subsections (A)(3) through (5).

C. A licensee of a health care institution shall submit a written request an application packet for a modification of the health care institution in a Department-provided format that contains:
1. The following information in a Department-provided format:
   a. The health care institution's name, mailing address, e-mail address, and license number;
   b. A narrative description of the modification, including as applicable:
      i. The services the licensee is requesting be added or removed as an authorized service;
      ii. The name and license number of an associated licensed provider being added or removed as a colocator;
      iii. The name and professional license number of an exempt health care provider being added or removed as a colocator;

iv. If an associated licensed provider or exempt health care provider is being added as a colocator, the proposed scope of services;
v. The current and proposed licensed capacity, licensed occupancy, respite capacity, and number of dialysis stations;
vi. The change being made in the physical plant; and
vii. The change being made that affects compliance with applicable physical plant codes and standards incorporated by reference in R9-10-104.01; and

c. The name and e-mail address of the health care institution's administrator's or individual representing the health care institution as designated in according to A.R.S. § 36-422 and the dated signature of the administrator or individual; and

2. Documentation that demonstrates that the requested modification complies with applicable requirements in this Chapter, including as applicable:
   a. A floor plan showing the location of each colocator's proposed treatment area and the areas of the collaborating outpatient treatment center's premises shared with a colocator;
   b. For a change in the licensed capacity, licensed occupancy, respite capacity, or number of dialysis stations or a modification of the physical plant:
      i. A floor plan showing, for each story of the facility affected by the modification, the room layout, room usage, each door and each window, plumbing fixtures, each exit, and the location of each fire protection device; or
      ii. For a health care institution or part of the health care institution that is required to comply with the physical plant codes and standards incorporated by reference in R9-10-104.01 or the building, documentation of the Department's approval of the health care institution's architectural plans and specifications in R9-10-104(D); and
   c. Any other documentation to support the requested modification; and
3. If applicable, a copy of the written agreement the associated licensed provider or exempt health care provider has with the collaborating outpatient treatment center.

D. The Department shall approve or deny a request for a modification described in subsection (C) according to R9-10-108.

E. A licensee shall not implement a modification described in subsection (C) until an approval or amended license is issued by the Department.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-110 renumbered to Section R9-10-111; new Section R9-10-110 made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-111. Enforcement Actions

A. If the Department determines that an applicant or licensee is violating applicable statutes and rules and the violation poses a direct risk to the life, health, or safety of a patient, the Department may:
1. Issue a provisional license to the applicant or licensee under A.R.S. § 36-425,
2. Assess a civil penalty under A.R.S. § 36-431.01,
3. Impose an intermediate sanction under A.R.S. § 36-427,
4. Remove a licensee and appoint another person to continue operation of the health care institution pending further action under A.R.S. § 36-429,
5. Suspend or revoke a license under A.R.S. § 36-427 and R9-10-112,
6. Deny a license under A.R.S. § 36-425 and R9-10-112, or
7. Issue an injunction under A.R.S. § 36-430.

B. In determining which action in subsection (A) is appropriate, the Department shall consider the direct risk to the life, health, or safety of a patient in the health care institution based on:
1. Repeated violations of statutes or rules,
2. Pattern of violations,
3. Types of violation,
4. Severity of violation, and
5. Number of violations.

Historical Note

Amended effective February 4, 1981 (Supp. 81-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 97, effective January 1, 2014 (Supp. 13-4). Section R9-10-111 renumbered to Section R9-10-112; new Section R9-10-111 renumbered from R9-10-110 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-112. Denial, Revocation, or Suspension of License

A. The Department may deny, revoke, or suspend a license to operate a health care institution if an applicant, a licensee, or a controlling person of the health care institution:
1. Provides false or misleading information to the Department;
2. Has had in any state or jurisdiction any of the following:
   a. An application or license to operate a health care institution denied, suspended, or revoked, unless the denial was based on failure to complete the licensing process or to pay a required licensing fee within a required time-frame; or
   b. A health care professional license or certificate denied, revoked, or suspended;
3. Does not comply with the applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter; or
4. Has operated a health care institution, within the preceding ten years, in violation of A.R.S. Title 36, Chapter 4 or this Chapter, that posed a direct risk to the life, health, or safety of a patient.

B. The Department shall suspend or revoke a hospital's license if the Department receives, pursuant to A.R.S. § 36-2901.08(H), notice from the Arizona Health Care Cost Containment System that the hospital's provider agreement registration with the Arizona Health Care Cost Containment System has been suspended or revoked.

Historical Note

Amended effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by exempt rulemaking at 9 A.A.R. 526, effective April 1, 2003 (Supp. 03-1). Section R9-10-112 renumbered to R9-10-113; new Section R9-10-112 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-112 renumbered to Section R9-10-113; new Section R9-10-112 renumbered from R9-10-111 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-113. Tuberculosis Screening

A. If a health care institution is subject to the requirements of this Section, as specified in an Article in this Chapter, the health care institution's chief administrative officer shall ensure that the health care institution establishes, documents, and implements tuberculosis infection control activities that:
1. Are consistent with recommendations in Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019, published by the U.S. Department of Health and Human Services, Atlanta, GA 30333, available at https://www.cdc.gov/mmwr/volumes/68/wr/mm6819a3.htm, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Include:
   a. For each individual who is employed by the health care institution, provides volunteer services for the health care institution, or is admitted to the health care institution and who is subject to the requirements of this Section, baseline screening, on or before the date specified in the applicable Article of this Chapter, that consists of:
      i. Assessing risks of prior exposure to infectious tuberculosis,
      ii. Determining if the individual has signs or symptoms of tuberculosis, and
      iii. Obtaining documentation of the individual's freedom from infectious tuberculosis according to subsection (B)(1);
   b. If an individual may have a latent tuberculosis infection, as defined in A.A.C. R9-6-1201:
      i. Referring the individual for assessment or treatment; and
      ii. Annually obtaining documentation of the individual's freedom from symptoms of infectious tuberculosis, signed by a medical practitioner, occupation health provider, as defined in A.A.C. R9-6-801, or local health agency, as defined in A.A.C. R9-6-101;
   c. Annually providing training and education related to recognizing the signs and symptoms of tuberculosis to individuals employed by or providing volunteer services for the health care institution;
   d. Annually assessing the health care institution's risk of exposure to infectious tuberculosis;
   e. Reporting, as specified in A.A.C. R9-6-202, an individual who is suspected of exposure to infectious tuberculosis; and
   f. If an exposure to infectious tuberculosis occurs in the health care institution, coordinating and sharing information with the local health agency, as defined in A.A.C. R9-6-101, for identifying, locating, and investigating contacts, as defined in A.A.C. R9-6-101.

B. A health care institution's chief administrative officer shall:
1. For an individual for whom baseline screening and documentation of freedom from infectious tuberculosis is required by an Article in this Chapter, as specified in subsection (A)(2)(a), obtain one of the following as evidence of freedom from infectious tuberculosis:
   a. Documentation of a negative Mantoux skin test or other tuberculosis screening test that:
      i. Is recommended by the U.S. Centers for Disease Control and Prevention (CDC),
      ii. Was administered within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution, and
      iii. Includes the date and the type of tuberculosis screening test;
   b. If the individual had a history of tuberculosis or documentation of latent tuberculosis infection, as defined in A.A.C. R9-6-1201, compliance with subsection (A)(2)(b); or

c. If the individual had a positive Mantoux skin test or other tuberculosis screening test according to subsection (B)(1)(a) and does not have history of tuberculosis or documentation of latent tuberculosis infection, as defined in A.A.C. R9-6-1201, a written statement:
   i. That the individual is free from infectious tuberculosis, signed by a medical practitioner or local health agency, as defined in A.A.C. R9-6-101; and
   ii. Dated within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution; and

2. As part of the annual assessment of the health care institution's risk of exposure to infectious tuberculosis according to subsection (A)(2)(d), ensure that documentation is obtained for each individual required to be screened for infectious tuberculosis that:
   a. Indicates the individual's freedom from symptoms of infectious tuberculosis; and
   b. Is signed by a medical practitioner, occupation health provider, as defined in A.A.C. R9-6-801, or local health agency, as defined in A.A.C. R9-6-101.

Historical Note

Former Section R9-10-113 repealed, new Section R9-10-113 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section R9-10-113 renumbered from R9-10-112 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-113 renumbered to Section R9-10-114; new Section R9-10-113 renumbered from R9-10-112 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking at 28 A.A.R. 1113 (May 27, 2022), with an immediate effective date of May 4, 2022 (Supp. 22-2).

R9-10-114. Clinical Practice Restrictions for Hemodialysis Technician Trainees

A. The following definitions apply in this Section:

1. "Assess" means collecting data about a patient by:
   a. Obtaining a history of the patient,
   b. Listening to the patient's heart and lungs, and
   c. Checking the patient for edema.
2. "Blood-flow rate" means the quantity of blood pumped into a dialyzer per minute of hemodialysis.
3. "Blood lines" means the tubing used during hemodialysis to carry blood between a vascular access and a dialyzer.
4. "Central line catheter" means a type of vascular access created by surgically implanting a tube into a large vein.
5. "Clinical practice restriction" means a limitation on the hemodialysis tasks that may be performed by a hemodialysis technician trainee.
6. "Conductivity test" means a determination of the electrolytes in a dialysate.
7. "Dialysate" means a mixture of water and chemicals used in hemodialysis to remove wastes and excess fluid from a patient's body.
8. "Dialysate-flow rate" means the quantity of dialysate pumped per minute of hemodialysis.
9. "Directly observing" or "direct observation" means a medical person stands next to an inexperienced hemodialysis technician trainee and watches the inexperienced hemodialysis technician trainee perform a hemodialysis task.
10. "Direct supervision" has the same meaning as "supervision" in A.R.S. § 36-401.
11. "Electrolytes" means chemical compounds that break apart into electrically charged particles, such as sodium, potassium, or calcium, when dissolved in water.
12. "Experienced hemodialysis technician trainee" means an individual who has passed all didactic, skills, and competency examinations provided by a health care institution that measure the individual's knowledge and ability to perform hemodialysis.
13. "Fistula" means a type of vascular access created by a surgical connection between an artery and vein.
14. "Fluid-removal rate" means the quantity of wastes and excess fluid eliminated from a patient's blood per minute of hemodialysis to achieve the patient's prescribed weight, determined by:
    a. Dialyzer size,
    b. Blood-flow rate,
    c. Dialysate-flow rate, and
    d. Hemodialysis duration.
15. "Germicide-negative test" means a determination that a chemical used to kill microorganisms is not present.
16. "Germicide-positive test" means a determination that a chemical used to kill microorganisms is present.
17. "Graft" means a vascular access created by a surgical connection between an artery and vein using a synthetic tube.
18. "Hemodialysis machine" means a mechanical pump that controls:
    a. The blood-flow rate,
    b. The mixing and temperature of dialysate,
    c. The dialysate-flow rate,
    d. The addition of anticoagulant, and

e. The fluid-removal rate.

19. "Hemodialysis technician" has the same meaning as in A.R.S. § 36-423(A).
20. "Hemodialysis technician trainee" means an individual who is working in a health care institution to assist in providing hemodialysis and who is not certified as a hemodialysis technician according to A.R.S. § 36-423(A).
21. "Inexperienced hemodialysis technician trainee" means an individual who has not passed all didactic, skills, and competency examinations provided by a health care institution that measure the individual's knowledge and ability to perform hemodialysis.
22. "Medical person" means:
    a. A physician who is experienced in dialysis;
    b. A registered nurse practitioner who is experienced in dialysis;
    c. A nurse who is experienced in dialysis;
    d. A hemodialysis technician who meets the requirements in A.R.S. § 36-423(A) approved by the governing authority; and
    e. An experienced hemodialysis technician trainee approved by the governing authority.
23. "Not established" means not approved by a patient's nephrologist for use in hemodialysis.
24. "Patient" means an individual who receives hemodialysis.
25. "pH test" means a determination of the acidity of a dialysate.
26. "Preceptor course" means a health care institution's instruction and evaluation provided to a nurse, hemodialysis technician, or hemodialysis technician trainee that enables the nurse, hemodialysis technician, or hemodialysis technician trainee to provide direct observation and education to hemodialysis technician trainees.
27. "Respond" means to mute, shut off, reset, or troubleshoot an alarm.
28. "Safety check" means successful completion of tests recommended by the manufacturer of a hemodialysis machine, a dialyzer, or a water system used for hemodialysis before initiating a patient's hemodialysis.
29. "Water-contaminant test" means a determination of the presence of chlorine or chloramine in a water system used for hemodialysis.

B. An experienced hemodialysis technician trainee may:
1. Perform hemodialysis under direct supervision, and
2. Provide direct observation to another hemodialysis technician trainee only after completing the health care institution's preceptor course approved by the governing authority.

C. An experienced hemodialysis technician trainee shall not access a patient's:
1. Fistula that is not established, or
2. Graft that is not established.

D. An inexperienced hemodialysis technician trainee may perform the following hemodialysis tasks only under direct observation:
1. Access a patient's central line catheter;
2. Respond to a hemodialysis-machine alarm;
3. Draw blood for laboratory tests;
4. Perform a water-contaminant test on a water system used for hemodialysis;
5. Inspect a dialyzer and perform a germicide-positive test before priming a dialyzer;
6. Set up a hemodialysis machine and blood lines before priming a dialyzer;
7. Prime a dialyzer;
8. Test a hemodialysis machine for germicide presence;
9. Perform a hemodialysis machine safety check;
10. Prepare a dialysate;
11. Perform a conductivity test and a pH test on a dialysate;
12. Assess a patient;
13. Check and record a patient's vital signs, weight, and temperature;
14. Determine the amount and rate of fluid removal from a patient;
15. Administer local anesthetic at an established fistula or graft, administer anticoagulant, or administer replacement saline solution;
16. Perform a germicide-negative test on a dialyzer before initiating hemodialysis;
17. Initiate or discontinue a patient's hemodialysis;
18. Adjust blood-flow rate, dialysate-flow rate, or fluid-removal rate during hemodialysis; or
19. Prepare a blood, water, or dialysate culture to determine microorganism presence.

E. An inexperienced hemodialysis technician trainee shall not:
1. Access a patient's:
    a. Fistula that is not established, or
    b. Graft that is not established; or
2. Provide direct observation.

F. When a hemodialysis technician trainee performs hemodialysis tasks for a patient, the patient's medical record shall include:
1. The name of the hemodialysis technician trainee;
2. The date, time, and hemodialysis task performed;
3. The name of the medical person directly observing or the nurse or physician directly supervising the hemodialysis technician trainee; and

4. The initials or signature of the medical person directly observing or the nurse or physician directly supervising the hemodialysis technician trainee.

G. If the Department determines that a health care institution is not in substantial compliance with this Section, the Department may take enforcement action according to R9-10-111.

Historical Note

Former Section R9-10-114 repealed, new Section R9-10-114 adopted effective February 4, 1981 (Supp. 81-1). Amended by adding paragraph (7) as an emergency effective November 17, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Amended by adding paragraph (7) as a permanent amendment effective August 2, 1984 (Supp. 84-4). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section R9-10-114 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-114 renumbered to Section R9-10-115; new Section R9-10-114 renumbered from R9-10-113 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-115. Behavioral Health Paraprofessionals; Behavioral Health Technicians

If a health care institution is a behavioral health facility or is authorized by the Department to provide behavioral health services, an administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
   a. Delineate the services a behavioral health paraprofessional is allowed to provide at or for the health care institution;
   b. Cover supervision of a behavioral health paraprofessional, including documentation of supervision;
   c. Establish the qualifications for a behavioral health professional providing supervision to a behavioral health paraprofessional;
   d. Delineate the services a behavioral health technician is allowed to provide at or for the health care institution;
   e. Cover clinical oversight for a behavioral health technician, including documentation of clinical oversight;
   f. Establish the qualifications for a behavioral health professional providing clinical oversight to a behavioral health technician;
   g. Delineate the methods used to provide clinical oversight, including when clinical oversight is provided on an individual basis or in a group setting; and
   h. Establish the process by which information pertaining to services provided by a behavioral health technician is provided to the behavioral health professional who is responsible for the clinical oversight of the behavioral health technician;
2. A behavioral health paraprofessional receives supervision according to policies and procedures;
3. Clinical oversight is provided to a behavioral health technician to ensure that patient needs are met based on, for each behavioral health technician:
   a. The scope and extent of the services provided,
   b. The acuity of the patients receiving services, and
   c. The number of patients receiving services;
4. A behavioral health technician receives clinical oversight at least once during each two week period, if the behavioral health technician provides services related to patient care at the health care institution during the two week period;
5. When clinical oversight is provided electronically:
   a. The clinical oversight is provided verbally with direct and immediate interaction between the behavioral health professional providing and the behavioral health technician receiving the clinical oversight,
   b. A secure connection is used, and
   c. The identities of the behavioral health professional providing and the behavioral health technician receiving the clinical oversight are verified before clinical oversight is provided; and
6. A behavioral health professional provides supervision to a behavioral health paraprofessional or clinical oversight to behavioral health technician within the behavioral health professional's scope of practice established in the applicable licensing requirements under A.R.S. Title 32.

Historical Note

Adopted effective February 4, 1981 (Supp. 81-1). Amended by final rulemaking 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-115 renumbered to Section R9-10-116; new Section R9-10-115 renumbered from R9-10-114 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-116. Nutrition and Feeding Assistant Training Programs

A. For the purposes of this Section, "agency" means an entity other than a nursing care institution that provides the nutrition and feeding assistant training required in A.R.S. § 36-413.

B. An agency shall apply for approval to operate a nutrition and feeding assistant training program by submitting:

1. An application in a Department-provided format that contains:
   a. The name of the agency;
   b. The name, telephone number, and e-mail address of the individual in charge of the proposed nutrition and feeding assistant training program;
   c. The address where the nutrition and feeding assistant training program records are maintained;
   d. A description of the training course being offered by the nutrition and feeding assistant training program including for each topic in subsection (I):
      i. The information presented for each topic,
      ii. The amount of time allotted to each topic,
      iii. The skills an individual is expected to acquire for each topic, and
      iv. The testing method used to verify an individual has acquired the stated skills for each topic;
   e. Whether the agency agrees to allow the Department to submit supplemental requests for information as specified in subsection (F)(2); and
   f. The signature of the individual in charge of the proposed nutrition and feeding assistant training program and the date signed; and
2. A copy of the materials used for providing the nutrition and feeding assistant training program.

C. For an application for an approval of a nutrition and feeding assistant training program, the administrative review time-frame is 30 calendar days, the substantive review time-frame is 30 calendar days, and the overall time-frame is 60 calendar days.

D. Within 30 calendar days after the receipt of an application in subsection (B), the Department shall:
1. Issue an approval of the agency's nutrition and feeding assistant training program;
2. Provide a notice of administrative completeness to the agency that submitted the application; or
3. Provide a notice of deficiencies to the agency that submitted the application, including a list of the information or documents needed to complete the application.

E. If the Department provides a notice of deficiencies to an agency:
1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the agency;
2. If the agency does not submit the missing information or documents to the Department within 30 calendar days, the Department shall consider the application withdrawn; and
3. If the agency submits the missing information or documents to the Department within 30 calendar days, the substantive review time-frame begins on the date the Department receives the missing information or documents.

F. Within the substantive review time-frame, the Department:
1. Shall issue or deny an approval of a nutrition and feeding assistant training program; and
2. May make one written comprehensive request for more information, unless the Department and the agency agree in writing to allow the Department to submit supplemental requests for information.

G. If the Department issues a written comprehensive request or a supplemental request for information:
1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives the information requested, and
2. The agency shall submit to the Department the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

H. The Department shall issue:
1. An approval for an agency to operate a nutrition and feeding assistant training program if the Department determines that the agency and the application comply with A.R.S. § 36-413 and this Section; or
2. A denial for an agency that includes the reason for the denial and the process for appeal of the Department's decision if:
   a. The Department determines that the agency does not comply with A.R.S. § 36-413 and this Section; or
   b. The agency does not submit information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

I. An individual in charge of a nutrition and feeding assistant training program shall ensure that:
1. The materials and coursework for the nutrition and feeding assistant training program demonstrate the inclusion of the following topics:
   a. Feeding techniques;
   b. Assistance with feeding and hydration;
   c. Communication and interpersonal skills;
   d. Appropriate responses to resident behavior;
   e. Safety and emergency procedures, including the Heimlich maneuver;
   f. Infection control;
   g. Resident rights;
   h. Recognizing a change in a resident that is inconsistent with the resident's normal behavior; and
   i. Reporting a change in subsection (I)(1)(h) to a nurse at a nursing care institution;

2. An individual providing the training course is:
   a. A physician,
   b. A physician assistant,
   c. A registered nurse practitioner,
   d. A registered nurse,
   e. A registered dietitian,
   f. A licensed practical nurse,
   g. A speech-language pathologist, or
   h. An occupational therapist; and
3. An individual taking the training course completes:
   a. At least eight hours of classroom time, and
   b. Demonstrates that the individual has acquired the skills the individual was expected to acquire.

J. An individual in charge of a nutrition and feeding assistant training program shall issue a certificate of completion to an individual who completes the training course and demonstrates the skills the individual was expected to acquire as a result of completing the training course that contains:
1. The name of the agency approved to operate the nutrition and feeding assistant training program;
2. The name of the individual completing the training course;
3. The date of completion;
4. The name, signature, and professional license of the individual providing the training course; and
5. The name and signature of the individual in charge of the nutrition and feeding assistant training program.

K. The Department may deny, revoke, or suspend an approval to operate a nutrition and feeding assistant training program if an agency operating or applying to operate a nutrition and feeding assistance training program:
1. Provides false or misleading information to the Department;
2. Does not comply with the applicable statutes and rules;
3. Issues a training completion certificate to an individual who did not:
   a. Complete the nutrition and feeding assistant training program, or
   b. Demonstrate the skills the individual was expected to acquire; or
4. Does not implement the nutrition and feeding assistant training program as described in or use the materials submitted with the agency's application.

L. In determining which action in subsection (K) is appropriate, the Department shall consider the following:
1. Repeated violations of statutes or rules,
2. Pattern of non-compliance,
3. Types of violations,
4. Severity of violations, and
5. Number of violations.

Historical Note

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-116 renumbered to Section R9-10-117; new Section R9-10-116 renumbered from R9-10-115 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-117. Repealed

Historical Note

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-117 renumbered to Section R9-10-118; new Section R9-10-117 renumbered from R9-10-116 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Repealed by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

R9-10-118. Collaborating Health Care Institution

A. An administrator of a collaborating health care institution shall ensure that:
1. A list is maintained of adult behavioral health therapeutic homes and behavioral health respite homes for which the collaborating health care institution serves as a collaborating health care institution;
2. For each adult behavioral health therapeutic home or behavioral health respite home in subsection (A)(1), the collaborating health care institution maintains the following information:
   a. A copy of the documented agreement that establishes the responsibilities of the adult behavioral health therapeutic home or behavioral health respite home and the collaborating health care institution consistent with the requirements in this Chapter;

b. For the adult behavioral health therapeutic home or behavioral health respite home, the following information:
   i. Provider's name;
   ii. Street address;
   iii. License number;
   iv. Whether the residence is an adult behavioral health therapeutic home or a behavioral health respite home;
   v. If the residence is a behavioral health respite home, whether the behavioral health respite home provides respite care services to:
      (1) Individuals 18 years of age or older, or
      (2) Individuals less than 18 years of age;
   vi. The beginning and ending dates of the documented agreement in subsection (A)(2)(a); and
   vii. The name and contact information for the individual assigned by the collaborating health care institution to monitor the adult behavioral health therapeutic home or behavioral health respite home;
c. For the adult behavioral health therapeutic home or behavioral health respite home, a copy of the following that have been approved by the collaborating health care institution:
   i. Scope of services,
   ii. Policies and procedures, and
   iii. Documentation of the review and update of policies and procedures;
d. A description of the required skills and knowledge for a provider, based on the scope of services of the adult behavioral health therapeutic home or behavioral health respite home, as established by the collaborating health care institution; and
e. For a provider in the adult behavioral health therapeutic home or behavioral health respite home, documentation of:
   i. The provider's skills and knowledge;
   ii. If applicable, the provider's completion of training in assistance in the self-administration of medication;
   iii. Verification of the provider's skills and knowledge; and
   iv. If the provider is required to have clinical oversight according to R9-10-1805(C), the provider's receiving clinical oversight;

3. A provider's skills and knowledge are verified by a personnel member according to policies and procedures;
4. A provider who provides behavioral health services receives clinical oversight, required in R9-10-1805(C), from a behavioral health professional; and
5. A provider, other than a provider who is a medical practitioner or nurse, receives training in assistance in the self-administration of medication:
   a. From a medical practitioner or registered nurse or from a personnel member of the collaborating health care institution trained by a medical practitioner or registered nurse;
   b. That includes:
      i. A demonstration of the provider's skills and knowledge necessary to provide assistance in the self-administration of medication,
      ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      iii. The process for notifying the appropriate entities when an emergency medical intervention is needed; and
   c. That is documented.

B. For a patient referred to an adult behavioral health therapeutic home or a behavioral health respite home, an administrator shall ensure that:

1. A resident or recipient accepted by and receiving services from the adult behavioral health therapeutic home or behavioral health respite home does not present a threat to the referred patient, based on the resident's or recipient's developmental levels, social skills, verbal skills, and personal history;
2. The referred patient does not present a threat to a resident or recipient accepted by and receiving services from the adult behavioral health therapeutic home or behavioral health respite home based the referred patient's developmental levels, social skills, verbal skills, and personal history;
3. The referred patient requires services within the adult behavioral health therapeutic home's or behavioral health respite home's scope of services;
4. A provider of the adult behavioral health therapeutic home or behavioral health respite home has the verified skills and knowledge to provide behavioral health services to the referred patient;
5. A treatment plan for the referred patient, which includes information necessary for a provider to meet the referred patient's needs for behavioral health services, is completed and forwarded to the provider before the referred patient is accepted as a resident or recipient;
6. A patient's treatment plan is reviewed and updated at least once every 12 months, and a copy of the patient's updated treatment plan is forwarded to the patient's provider;
7. If documentation of a significant change in a patient's behavioral, physical, cognitive, or functional condition and the action taken by a provider to address patient's changing needs is received by the collaborating health care institution, a behavioral health professional or behavioral health technician reviews the documentation and:
   a. Documents the review; and

b. If applicable:
   i. Updates the patient's treatment plan, and
   ii. Forwards the updated treatment plan to the provider within 10 working days after receipt of the documentation of a significant change;

8. If the review and updated treatment plan required in subsection (B)(7) is performed by a behavioral health technician, a behavioral health professional reviews and signs the review and updated treatment plan to ensure the patient is receiving the appropriate behavioral health services; and
9. In addition to the requirements for a medical record for a patient in this Chapter, a referred patient's medical record contains:
   a. The provider's name and the street address and license number of the adult behavioral health therapeutic home or behavioral health respite home to which the patient is referred,
   b. A copy of the treatment plan provided to the adult behavioral health therapeutic home or behavioral health respite home,
   c. Documentation received according to and required by subsection (B)(7),
   d. Any information about the patient received from the adult behavioral health therapeutic home or behavioral health respite home, and
   e. Any follow-up actions taken by the collaborating health care institution related to the patient.

C. For a patient referred to an adult behavioral health therapeutic home, an administrator shall ensure that the collaborating health care institution has documentation in the patient's medical record of evidence of freedom from infectious tuberculosis that meets the requirements in R9-10-113.

Historical Note

New Section R9-10-118 renumbered from R9-10-117 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). The word twelve has been changed to the numeral 12 in subsection (B)(6) for consistency in Chapter style and format (Supp. 21-2).

R9-10-119. Abortion Reporting

A. A licensed health care institution where abortions are performed shall submit to the Department, in a Department-provided format and according to A.R.S. § 36-2161(D) and (E), a report that contains the information required in A.R.S. § 36-2161(A) and the following:
1. The final disposition of the fetal tissue from the abortion; and
2. Except as provided in subsection (B), if custody of the fetal tissue is transferred to another person or persons:
   a. The name and address of the person or persons accepting custody of the fetal tissue,
   b. The amount of any compensation received by the licensed health care institution for the transferred fetal tissue, and
   c. Whether a patient provided informed consent for the transfer of custody of the fetal tissue.

B. A licensed health care institution where abortions are performed is not required to include the information specified in subsections (A)(2)(a) through (c) in the report required in subsection (A) if the licensed health care institution where abortions are performed:
1. Transfers custody of the fetal tissue:
   a. To a funeral establishment, as defined in A.R.S. § 32-1301;
   b. To a crematory, as defined in A.R.S. § 32-1301; or
   c. According to requirements in A.A.C. R18-13-1406, A.A.C. R18-13-1407, and A.A.C. R18-13-1408; or
2. Complies with requirements in A.A.C. R18-13-1405.

C. For purposes of this Section, the following definition applies: "Fetal tissue" means cells, or groups of cells with a specific function, obtained from an aborted human embryo or fetus.

Historical Note

New Section made by emergency rulemaking at 21 A.A.R. 1787, effective August 14, 2015 for 180 days (Supp. 15-3). Emergency expired February 10, 2016. Section amended by emergency rulemaking at 22 A.A.R. 420, effective February 11, 2016, for an additional 180 days; filed in the Office February 8, 2016 (Supp. 16-1). New Section made by final rulemaking at 22 A.A.R. 1343, with an immediate effective date upon filing under A.R.S. § 41-1032(A)(1) and (4) of May 5, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 25 A.A.R. 1893, effective July 2, 2019 (Supp. 19-3).

R9-10-120. Opioid Prescribing and Treatment

A. This Section does not apply to a health care institution licensed under Article 20 of this Chapter.

B. In addition to the definitions in A.R.S. §§ 32-3248.01 and 36-401(A) and R9-10-101, the following definitions apply in this Section:
1. "Episode of care" means medical services, nursing services, or health-related services provided by a health care institution to a patient for a specific period of time, ending in discharge, the completion of the patient's treatment plan, or 90 days from the start of service provision to the patient, whichever is later.
2. "Order" means to issue written, verbal, or electronic instructions for a specific dose of a specific medication in a specific quantity and route of administration to be obtained and administered to a patient in a health care institution.

C. An administrator of a health care institution where opioids are prescribed or ordered as part of treatment shall:

1. Establish, document, and implement policies and procedures for prescribing or ordering an opioid as part of treatment, to protect the health and safety of a patient, that:
   a. Cover which personnel members may prescribe or order an opioid in treating a patient and the required knowledge and qualifications of these personnel members;
   b. As applicable and except when contrary to medical judgment for a patient, are consistent with A.R.S. § 32-3248.01 and the Arizona Opioid Prescribing Guidelines or national opioid-prescribing guidelines, such as guidelines developed by the:
      i. Centers for Disease Control and Prevention, or
      ii. U.S. Department of Veterans Affairs and the U.S. Department of Defense;
   c. As applicable, include how, when, and by whom:
      i. A patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database is reviewed;
      ii. An assessment is conducted of a patient's substance use risk;
      iii. The potential risks, adverse outcomes, and complications, including death, associated with the use of opioids are explained to a patient or the patient's representative;
      iv. Alternatives to a prescribed or ordered opioid are explained to a patient or the patient's representative;
      v. Informed consent is obtained from a patient or the patient's representative and, if applicable, in what situations, described in subsection (G), (H), or (I), informed consent would not be obtained before an opioid is prescribed or ordered for a patient;
      vi. A patient receiving an opioid is monitored; and
      vii. The actions taken according to subsections (C)(1)(c)(i) through (vi) are documented;
   d. Address conditions that may impose a higher risk to a patient when prescribing or ordering an opioid as part of treatment, including:
      i. Concurrent use of a benzodiazepine or other sedative-hypnotic medication,
      ii. History of substance use disorder,
      iii. Co-occurring behavioral health issue, or
      iv. Pregnancy;
   e. Cover the criteria for co-prescribing a short-acting opioid antagonist for a patient who is not an inpatient, as defined in R9-10-201;
   f. Include that, if continuing control of a patient's pain after discharge is medically indicated due to the patient's medical condition, a method for continuing pain control will be addressed as part of discharge planning;
   g. Include the frequency of the following for a patient being prescribed an opioid for longer than a 30-calendar-day period:
      i. Face-to-face interactions with the patient,
      ii. Conducting an assessment of a patient's substance use risk,
      iii. Renewal of a prescription for an opioid without a face-to-face interaction with the patient, and
      iv. Monitoring the effectiveness of the treatment;
   h. If applicable according to A.R.S. § 36-2608, include documenting a dispensed opioid in the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
   i. As applicable and consistent with A.R.S. § 32-3248.01, cover the criteria and procedures for tapering opioid prescription or ordering as part of treatment; and
   j. Cover the criteria and procedures for offering or referring a patient for treatment for substance use disorder;
2. Include in the plan for the health care institution's quality management program a process for:
   a. Review of known incidents of opioid-related adverse reactions or other negative outcomes a patient experiences or opioid-related deaths, and
   b. Surveillance and monitoring of adherence to the policies and procedures in subsection (C)(1);
3. Except as prohibited by 42 CFR, Chapter I, Subchapter A, Part 2, or as provided in subsection (H)(1), ensure that, if a patient's death may be related to an opioid prescribed or ordered as part of treatment, written notification, in a Department-provided format, is provided to the Department of the patient's death within one working day after the health care institution learns of the patient's death; and
4. Ensure that informed consent, if required from a patient or the patient's representative, includes:
   a. The patient's:
      i. Name,
      ii. Date of birth or other patient identifier, and
      iii. Condition for which opioids are being prescribed;
   b. That an opioid is being prescribed or ordered;
   c. The potential risks, adverse reactions, complications, and medication interactions associated with the use of an opioid;
   d. If applicable, the potential risks, adverse outcomes, and complications associated with the concurrent use of an opioid and a benzodiazepine or another sedative-hypnotic medication;
   e. Alternatives to a prescribed or ordered opioid;
   f. The name and signature of the individual explaining the use of an opioid to the patient; and

g. The signature of the patient or the patient's representative and the date signed.

D. Except as provided in subsection (H) or (I), an administrator of a health care institution where opioids are prescribed as part of treatment shall ensure that a medical practitioner authorized by policies and procedures to prescribe an opioid in treating a patient:

1. Before prescribing an opioid for a patient of the health care institution:
   a. Conducts a physical examination of the patient or reviews the documentation from a physical examination conducted during the patient's same episode of care;
   b. Except as exempted by A.R.S. § 36-2606(G), reviews the patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
   c. Conducts an assessment of the patient's substance use risk or reviews the documentation from an assessment of the patient's substance use risk conducted during the same episode of care by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to conduct an assessment of the patient's substance use risk;
   d. Explains to the patient or the patient's representative the risks and benefits associated with the use of opioids or ensures that the patient or the patient's representative understands the risks and benefits associated with the use of opioids, as explained to the patient or the patient's representative by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to explain to the patient or the patient's representative the risks and benefits associated with the use of opioids;
   e. If applicable, explains alternatives to a prescribed opioid; and
   f. Obtains informed consent from the patient or the patient's representative that meets the requirements in subsection (C)(4), including the potential risks, adverse outcomes, and complications associated with the concurrent use of an opioid and a benzodiazepine or another sedative-hypnotic medication, if the patient:
      i. Is also prescribed or ordered a sedative-hypnotic medication, or
      ii. Has been prescribed a sedative-hypnotic medication by another medical practitioner;
2. Includes the following information in the patient's medical record, an existing treatment plan, or a new treatment plan developed for the patient:
   a. The patient's diagnosis;
   b. The patient's medical history, including co-occurring disorders;
   c. The opioid to be prescribed;
   d. Other medications or herbal supplements being taken by the patient;
   e. If applicable:
      i. The effectiveness of the patient's current treatment,
      ii. The duration of the current treatment, and
      iii. Alternative treatments tried by or planned for the patient;
   f. The expected benefit of the treatment and, if applicable, the benefit of the new treatment compared with continuing the current treatment; and
   g. Other factors relevant to the patient's being prescribed an opioid; and
3. If applicable, specifies in the patient's discharge plan how medically indicated pain control will occur after discharge to meet the patient's needs.

E. Except as provided in subsection (G) or (H), an administrator of a health care institution where opioids are ordered for administration to a patient in the health care institution as part of treatment shall ensure that a medical practitioner authorized by policies and procedures to order an opioid in treating a patient:

1. Before ordering an opioid for a patient of the health care institution:
   a. Conducts a physical examination of the patient or reviews the documentation from a physical examination conducted:
      i. During the patient's same episode of care; or
      ii. Within the previous 30 calendar days, at a health care institution transferring the patient to the health care institution or by the medical practitioner who referred the patient for admission to the health care institution;
   b. Except as exempted by A.R.S. § 36-2606(G), reviews the patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
   c. If medically appropriate based on the physical examination in subsection (E)(1)(a) and the patient's medical history, assesses the patient's substance use risk or reviews the documentation from an assessment of the patient's substance use risk conducted within the previous 30 calendar days by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to conduct an assessment of the patient's substance use risk;
   d. Ensures that the patient or the patient's representative understands the risks and benefits associated with the use of opioids, as explained to the patient or the patient's representative according to policies and procedures; and
   e. If applicable, explains alternatives to an ordered opioid; and
2. Includes the following information in the patient's medical record, an existing treatment plan, or a new treatment plan developed for the patient:
   a. The patient's diagnosis;
   b. The patient's medical history, including co-occurring disorders;
   c. The opioid being ordered and the reason for the order;

d. Other medications or herbal supplements being taken by the patient; and
e. If applicable:
i. The effectiveness of the patient's current treatment,
ii. The duration of the current treatment,
iii. Alternative treatments tried by or planned for the patient,
iv. The expected benefit of a new treatment compared with continuing the current treatment, and
v. Other factors relevant to the patient's being ordered an opioid.

F. For a health care institution where opioids are administered as part of treatment or where a patient is provided assistance in the self-administration of medication for a prescribed opioid, including a health care institution in which an opioid may be prescribed or ordered as part of treatment, an administrator, a manager as defined in R9-10-801, or a provider, as applicable to the health care institution, shall:

1. Establish, document, and implement policies and procedures for administering an opioid as part of treatment or providing assistance in the self-administration of medication for a prescribed opioid, to protect the health and safety of a patient, that:
a. Cover which personnel members may administer an opioid in treating a patient and the required knowledge and qualifications of these personnel members;
b. Cover which personnel members may provide assistance in the self-administration of medication for a prescribed opioid and the required knowledge and qualifications of these personnel members;
c. Include how, when, and by whom a patient's need for opioid administration is assessed;
d. Include how, when, and by whom a patient receiving an opioid is monitored; and
e. Cover how, when, and by whom the actions taken according to subsections (F)(1)(c) and (d) are documented;
2. Include in the plan for the health care institution's quality management program a process for:
a. Review of incidents of opioid-related adverse reactions or other negative outcomes a patient experiences or opioid-related deaths, and
b. Surveillance and monitoring of adherence to the policies and procedures in subsection (F)(1);
3. Except as prohibited by 42 CFR, Chapter I, Subchapter A, Part 2, or as provided in subsection (H)(1), ensure that, if a patient's death may be related to an opioid administered as part of treatment, written notification, in a Department-provided format, is provided to the Department of the patient's death within one working day after the patient's death; and
4. Except as provided in subsection (H), ensure that an individual authorized by policies and procedures to administer an opioid in treating a patient or to provide assistance in the self-administration of medication for a prescribed opioid:
a. Before administering an opioid or providing assistance in the self-administration of medication for a prescribed opioid in compliance with an order as part of the treatment for a patient, identifies the patient's need for the opioid;
b. Monitors the patient's response to the opioid; and
c. Documents in the patient's medical record:
i. An identification of the patient's need for the opioid before the opioid was administered or assistance in the self-administration of medication for a prescribed opioid was provided, and
ii. The effect of the opioid administered or for which assistance in the self-administration of medication for a prescribed opioid was provided.

G. A medical practitioner authorized by a health care institution's policies and procedures to order an opioid in treating a patient is exempt from the requirements in subsection (E), if:

1. The health care institution's policies and procedures, required in subsection (C)(1) or the applicable Article in 9 A.A.C. 10, contain procedures for:
a. Providing treatment without obtaining the consent of a patient or the patient's representative,
b. Ordering and administering opioids in an emergency situation, and
c. Complying with the requirements in subsection (E) after the emergency is resolved;
2. The order for the administration of an opioid is:
a. Part of the treatment for a patient in an emergency, and
b. Issued in accordance with policies and procedures; and
3. The emergency situation is documented in the patient's medical record.

H. The requirements in subsections (D), (E), and (F)(4), as applicable, do not apply to a health care institution's:

1. Prescribing, ordering, or administration of an opioid as part of treatment for a patient with an end-of-life condition or pain associated with an active malignancy;
2. Prescribing an opioid as part of treatment for a patient when changing the type or dosage of an opioid, which had previously been prescribed by a medical practitioner of the health care institution for the patient according to the requirements in subsection (D):
a. Before a pharmacist dispenses the opioid for the patient; or
b. If changing the opioid because of an adverse reaction to the opioid experienced by the patient, within 72 hours after the opioid was dispensed for the patient by a pharmacist;
3. Ordering an opioid as part of treatment for no longer than three calendar days for a patient remaining in the health care institution and receiving continuous medical services or nursing services from the health care institution; or
4. Ordering an opioid as part of treatment:
a. For a patient receiving a surgical procedure or other invasive procedure; or

b. When changing the type, dosage, or route of administration of an opioid, which had previously been ordered by a medical practitioner of the health care institution for a patient according to the requirements in subsection (E), to meet the patient's needs.

I. The requirements in subsections (D)(1)(c) through (f) do not apply to a health care institution's prescribing an opioid as part of treatment for a patient with chronic, intractable pain who has had an established health professional-patient relationship with the prescribing medical practitioner for at least 90 days before the opioid is prescribed.

Historical Note

New Section made by emergency rulemaking at 23 A.A.R. 2203, effective July 28, 2017, for 180 days (Supp. 17-3). Emergency expired; new Section renewed by emergency rulemaking at 24 A.A.R. 303, effective January 25, 2018, for 180 days; new Section made by final rulemaking at 24 A.A.R. 657, with an immediate effective date of March 6, 2018 (Supp. 18-1). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4). Amended by final expedited rulemaking at 28 A.A.R. 3568 (November 18, 2022), with an immediate effective date November 2, 2022 (Supp. 22-4).

R9-10-121. Disease Prevention and Control

A. This Section applies:
1. When the Governor has declared a state of emergency, as defined in A.R.S. § 26-301, to address a situation described under A.R.S. § 36-787; and
2. To health care institutions licensed under Article 4, 5, or 8 of this Chapter.

B. The following definitions apply in this Section:
1. "Communicable disease" has the same meaning as in A.A.C. R9-6-101.
2. "Infection" has the same meaning as in A.A.C. R9-6-101.
3. "Respiratory symptoms" means coughing, shortness of breath, or wheezing not known to be caused by asthma or another chronic lung-related disease.

C. An administrator or manager, as applicable, shall ensure that policies and procedures are established, documented, and implemented, to protect the health and safety of a resident, that:
1. Cover screening and triage of personnel members, employees, visitors, and, except as provided in subsection (E), any other individuals entering the facility;
2. Cover the manner and frequency of assessing residents to determine a change in a resident's medical condition;
3. Establish disinfection protocols and schedules for frequently touched surfaces; and
4. Specify requirements for distancing residents who exhibit symptoms of a communicable disease from other residents to reduce the chance for infection of another individual.

D. An administrator or manager, as applicable, shall ensure that:
1. Except as provided in subsection (E), before entering the facility, each individual, including a personnel member, employee, or visitor, is screened for fever or respiratory symptoms indicative of a communicable disease;
2. If an individual refuses to be screened, the individual is excluded from entry to the facility;
3. If an individual is determined to have a fever or respiratory symptoms, the individual is excluded from entry to the facility until symptoms have resolved or the individual has been evaluated and cleared by a medical practitioner;
4. If an individual, other than a resident, develops a fever or respiratory symptoms while in the facility, the individual is required to leave the facility and not return until symptoms have resolved or the individual has been evaluated and cleared by a medical practitioner; and
5. If insufficient personnel members are available to meet the needs of all residents in the facility, the administrator or manager, as applicable, implements the disaster plan required in R9-10-424, R9-10-523, or R9-10-818, as applicable, which may include moving a resident to a different facility.

E. An administrator or manager, as applicable, may allow an emergency medical care technician, as defined in A.R.S. § 36-2201, to enter the facility without screening if the emergency medical care technician is responding to a call for providing emergency medical services, as defined in A.R.S. § 36-2201, to a resident or other individual in the facility.

F. An administrator or manager, as applicable, shall ensure that:
1. An assessment of a resident includes whether the resident has a fever or respiratory symptoms indicative of a communicable disease and is documented in the resident's medical record; and
2. If a resident is found to have a fever or respiratory symptoms indicative of a communicable disease:
   a. The resident is evaluated by a medical practitioner within 24 hours to determine what services need to be provided to the resident and what precautions need to be taken by the facility, and the evaluation is documented in the resident's medical record;
   b. To reduce the chance for infection of another individual, the resident is:
      i. Kept at a distance of at least six feet from other residents; or
      ii. If not possible to keep the resident at a distance from other residents, required to wear a facemask;
   c. A personnel member:

i. Takes precautions, which may include the use of gloves and a facemask or other personal protection equipment, while providing services to the resident; and
ii. Removes and, if applicable, disposes of the personal protection equipment and washes the personnel member's hands with soap and water for at least 20 seconds or, if soap and water are not available, uses a hand sanitizer containing at least 60% alcohol immediately after providing services to the resident and before providing services to another resident;

d. Linens, dishes, utensils, and other items used by the resident are:
i. Kept separate from similar items used by a resident who does not have a fever or respiratory symptoms indicative of a communicable disease, and
ii. Disinfected or disposed of in a manner to reduce the chance for infection of another individual; and

e. Surfaces touched by the resident are disinfected before another individual touches the surface.

G. An administrator or manager, as applicable, shall ensure that door handles, tables, chair backs and arm rests, light switches, and other frequently touched surfaces are cleaned and disinfected, according to policies and procedures, with:
1. An alcohol solution containing at least 70% alcohol;
2. A bleach solution containing four teaspoons of bleach per quart of water; or
3. An EPA-approved household disinfectant specified in a list, which is incorporated by reference, available at https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19, and does not include any later amendments or editions of the incorporated matter.

Historical Note

Amended effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by emergency rulemaking at 26 A.A.R. 509, with an immediate effective date of March 16, 2020, for 180 days (Supp. 19-1). Emergency expired. New Section made by final rulemaking at 26 A.A.R. 2793, with an immediate effective date of October 7, 2020 (Supp. 20-4).

ARTICLE 8. ASSISTED LIVING FACILITIES

R9-10-801. Definitions

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

1. "Accept" or "acceptance" means:
   a. An individual begins living in and receiving assisted living services from an assisted living facility; or
   b. An individual begins receiving adult day health care services or respite care services from an assisted living facility.
2. "Assistant caregiver" means an employee or volunteer who helps a manager or caregiver provide supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
3. "Assisted living services" means supervisory care services, personal care services, directed care services, behavioral care, or ancillary services provided to a resident by or on behalf of an assisted living facility.
4. "Caregiver" means an individual who provides supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
5. "Manager" means an individual designated by a governing authority to act on behalf of the governing authority in the onsite management of the assisted living facility.
6. "Medication organizer" means a container that is designed to hold doses of medication and is divided according to date or time increments.
7. "Primary care provider" means a physician, a physician's assistant, or registered nurse practitioner who directs a resident's medical services.
8. "Residency agreement" means a document signed by a resident or the resident's representative and a manager, detailing the terms of residency.
9. "Service plan" means a written description of a resident's need for supervisory care services, personal care services, directed care services, ancillary services, or behavioral health services and the specific assisted living services to be provided to the resident.
10. "Termination of residency" or "terminate residency" means a resident is no longer living in and receiving assisted living services from an assisted living facility.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-802. Supplemental Application Requirements; Exemption

A. In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as an assisted living facility shall include in a Department-provided format:

1. Which of the following levels of assisted living services the applicant is requesting authorization to provide:
   a. Supervisory care services,
   b. Personal care services, or
   c. Directed care services; and
2. Whether the applicant is requesting authorization to provide:
   a. Adult day health care services, or
   b. Behavioral health services other than behavioral care.

B. The Arizona Pioneers' Home is exempt from:

1. Architectural plans and specifications for a health care institution specified in R9-10-104; and
2. Physical plant codes and standards for a health care institution specified in R9-10-105(A)(5)(a).

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective

October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking at 28 A.A.R. 869 (April 29, 2022), with an immediate effective date of April 8, 2022 (Supp. 22-2).

R9-10-803. Administration

A. A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of an assisted living facility;
2. Establish, in writing, an assisted living facility's scope of services;
3. Designate, in writing, a manager who:
   a. Is 21 years of age or older; and
   b. Except for the manager of an adult foster care home, has either a:
      i. Certificate as an assisted living facility manager issued under A.R.S. § 36-446.04(C), or
      ii. A temporary certificate as an assisted living facility manager issued under A.R.S. § 36-446.06;
4. Adopt a quality management program that complies with R9-10-804;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting manager who has the qualifications established in subsection (A)(3), if the manager is:
   a. Expected not to be present on the assisted living facility's premises for more than 30 calendar days, or
   b. Not present on the assisted living facility's premises for more than 30 calendar days;
7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the manager and identify the name and qualifications of the new manager;
8. Ensure that a manager or caregiver who is able to read, write, understand, and communicate in English is on an assisted living facility's premises; and
9. Ensure compliance with A.R.S. § 36-411.

B. A manager:
1. Is directly accountable to the governing authority of an assisted living facility for the daily operation of the assisted living facility and all services provided by or at the assisted living facility;
2. Has the authority and responsibility to manage the assisted living facility; and
3. Except as provided in subsection (A)(6), designates, in writing, a caregiver who is:
   a. At least 21 years of age, and
   b. Present on the assisted living facility's premises and accountable for the assisted living facility when the manager is not present on the assisted living facility premises.

C. A manager shall ensure that policies and procedures are:
1. Established, documented, and implemented to protect the health and safety of a resident that:
   a. Cover job descriptions, duties, and qualifications, including required skills and knowledge, education, and experience for employees and volunteers;
   b. Cover orientation and in-service education for employees and volunteers;
   c. Include how an employee may submit a complaint related to resident care;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Except as provided in subsection (M), cover cardiopulmonary resuscitation training for applicable employees and volunteers, including:
      i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the employee's or volunteer's ability to perform cardiopulmonary resuscitation;
      ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
      iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
      iv. The documentation that verifies that the employee or volunteer has received cardiopulmonary resuscitation training;
   f. Cover first aid training;
   g. Cover how a caregiver will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
   h. Cover staffing and recordkeeping;
   i. Cover resident acceptance and resident rights;
   j. Cover termination of residency, including:
      i. Termination initiated by the manager of an assisted living facility, and
      ii. Termination initiated by a resident or the resident's representative;
   k. Cover the provision of assisted living services, including:
      i. Coordinating the provision of assisted living services,
      ii. Making vaccination for influenza and pneumonia available to residents according to A.R.S. § 36-406(1)(d), and
      iii. Obtaining resident preferences for food and the provision of assisted living services;
   l. Cover the provision of respite services or adult day health services, if applicable;

m. Cover methods by which the assisted living facility is aware of the general or specific whereabouts of a resident, based on the level of assisted living services provided to the resident and the assisted living services the assisted living facility is authorized to provide;
n. Cover resident medical records, including electronic medical records;
o. Cover personal funds accounts, if applicable;
p. Cover specific steps for:
i. A resident to file a complaint, and
ii. The assisted living facility to respond to a resident's complaint;
q. Cover health care directives;
r. Cover assistance in the self-administration of medication, and medication administration;
s. Cover food services;
t. Cover contracted services;
u. Cover equipment inspection and maintenance, if applicable;
v. Cover infection control; and
w. Cover a quality management program, including incident report and supporting documentation;
2. Available to employees and volunteers of the assisted living facility; and
3. Reviewed at least once every three years and updated as needed.

D. A manager shall ensure that the following are conspicuously posted:
1. A list of resident rights;
2. The assisted living facility's license;
3. Current phone numbers of:
a. The unit in the Department responsible for licensing and monitoring the assisted living facility,
b. Adult Protective Services in the Department of Economic Security,
c. The State Long-Term Care Ombudsman, and
d. The Arizona Center for Disability Law; and
4. The location at which a copy of the most recent Department inspection report and any plan of correction resulting from the Department inspection may be viewed.

E. A manager shall ensure that, unless otherwise stated:
1. Documentation required by this Article is provided to the Department within two hours after a Department request; and
2. When documentation or information is required by this Chapter to be submitted on behalf of an assisted living facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the assisted living facility.

F. If a requirement in this Article states that a manager shall ensure an action or condition or sign a document:
1. A governing authority or licensee may ensure the action or condition or sign the document and retain the responsibility to ensure compliance with the requirement in this Article;
2. The manager may delegate ensuring the action or condition or signing the document to another individual, but the manager retains the responsibility to ensure compliance with the requirement in the Article; and
3. If the manager delegates ensuring an action or condition or signing a document, the delegation is documented and the documentation includes the name of the individual to whom the action, condition, or signing is delegated and the effective date of the delegation.

G. A manager shall:
1. Not act as a resident's representative and not allow an employee or a family member of an employee to act as a resident's representative for a resident who is not a family member of the employee;
2. If the assisted living facility administers personal funds accounts for residents and is authorized in writing by a resident or the resident's representative to administer a personal funds account for the resident:
a. Ensure that the resident's personal funds account does not exceed $2,000;
b. Maintain a separate record for each resident's personal funds account, including receipts and expenditures;
c. Maintain the resident's personal funds account separate from any account of the assisted living facility; and
d. Provide a copy of the record of the resident's personal funds account to the resident or the resident's representative at least once every three months;
3. Notify the resident's representative, family member, public fiduciary, or trust officer if the manager determines that a resident is incapable of handling financial affairs; and
4. Except when a resident's need for assisted living services changes, as documented in the resident's service plan, ensure that a resident receives at least 30 calendar days written notice before any increase in a fee or charge.

H. A manager shall permit the Department to interview an employee, a volunteer, or a resident as part of a compliance survey or a complaint investigation.

I. If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was accepted or while the resident is not on the premises and not receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall report the alleged or suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454.

J. If a manager has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect or exploitation has occurred on the premises or while a resident is receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall:

1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
2. Report the suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454;
3. Document:
   a. The suspected abuse, neglect, or exploitation;
   b. Any action taken according to subsection (J)(1); and
   c. The report in subsection (J)(2);
4. Maintain the documentation in subsection (J)(3) for at least 12 months after the date of the report in subsection(J)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (J)(2):
   a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
   b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
   c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
   d. The actions taken by the manager to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (J)(5) for at least 12 months after the date the investigation was initiated.

K. A manager shall provide written notification to the Department of a resident's:

1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency services provider.

L. If a resident is receiving services from a home health agency or hospice service agency, a manager shall ensure that:

1. The resident's medical record contains:
   a. The name, address, and contact individual, including contact information, of the home health agency or hospice service agency;
   b. Any information provided by the home health agency or hospice service agency; and
   c. A copy of resident follow-up instructions provided to the resident by the home health agency or hospice service agency; and
2. Any care instructions for a resident provided to the assisted living facility by the home health agency or hospice service agency are:
   a. Within the assisted living facility's scope of services,
   b. Communicated to a caregiver, and
   c. Documented in the resident's service plan.

M. A manager of an assisted living home may establish, in policies and procedures, requirements that a caregiver obtains and provides documentation of cardiopulmonary resuscitation training specific to adults, which includes a demonstration of the caregiver's ability to perform cardiopulmonary resuscitation, from one of the following organizations:

1. American Red Cross,
2. American Heart Association, or
3. National Safety Council.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Former Section R9-10-803 renumbered to R9-10-804; new Section R9-10-803 made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-804. Quality Management

A manager shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
   a. A method to identify, document, and evaluate incidents;

b. A method to collect data to evaluate services provided to residents;
c. A method to evaluate the data collected to identify a concern about the delivery of services related to resident care;
d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to resident care; and
e. The frequency of submitting a documented report required in subsection (2) to the governing authority;

2. A documented report is submitted to the governing authority that includes:
   a. An identification of each concern about the delivery of services related to resident care, and
   b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to resident care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed; new Section R9-10-804 renumbered from R9-10-803 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-805. Contracted Services

A manager shall ensure that:

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

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted as an emergency and (A)(1)(a)(i)(1) amended effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-806. Personnel

A. A manager shall ensure that:

1. A caregiver:
   a. Is 18 years of age or older; and
   b. Provides documentation of:
      i. Completion of a caregiver training program approved by the Department or the Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers;
      ii. For supervisory care services, employment as a manager or caregiver of a supervisory care home before November 1, 1998;
      iii. For supervisory care services or personal care services, employment as a manager or caregiver of a supportive residential living center before November 1, 1998; or
      iv. For supervisory care services, personal care services, or directed services, one of the following:
         (1) A nursing care institution administrator's license issued by the Board of Examiners;
         (2) A nurse's license issued to the individual under A.R.S. Title 32, Chapter 15;
         (3) Documentation of employment as a manager or caregiver of an unclassified residential care institution before November 1, 1998; or
         (4) Documentation of sponsorship of or employment as a caregiver in an adult foster care home before November 1, 1998;
2. An assistant caregiver:
   a. Is 16 years of age or older, and
   b. Interacts with residents under the supervision of a manager or caregiver;

3. The qualifications, skills, and knowledge required for a caregiver or assistant caregiver:
   a. Are based on:
      i. The type of assisted living services, behavioral health services, or behavioral care expected to be provided by the caregiver or assistant caregiver according to the established job description; and
      ii. The acuity of the residents receiving assisted living services, behavioral health services, or behavioral care from the caregiver or assistant caregiver according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description;
      ii. The type and duration of education that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description; and
      iii. The type and duration of experience that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services or behavioral care listed in the established job description;
4. A caregiver's or assistant caregiver's skills and knowledge are verified and documented:
   a. Before the caregiver or assistant caregiver provides physical health services or behavioral health services, and
   b. According to policies and procedures;
5. An assisted living facility has a manager, caregivers, and assistant caregivers with the qualifications, experience, skills, and knowledge necessary to:
   a. Provide the assisted living services, behavioral health services, behavioral care, and ancillary services in the assisted living facility's scope of services;
   b. Meet the needs of a resident; and
   c. Ensure the health and safety of a resident;
6. At least one manager or caregiver is present and awake at an assisted living center when a resident is on the premises;
7. Documentation is maintained for at least 12 months after the last date on the documentation of the caregivers and assistant caregivers working each day, including the hours worked by each;
8. A manager, a caregiver, and an assistant caregiver, or an employee or a volunteer who has or is expected to have more than eight hours per week of direct interaction with residents, provides evidence of freedom from infectious tuberculosis:
   a. On or before the date the individual begins providing services at or on behalf of the assisted living facility, and
   b. As specified in R9-10-113;
9. Before providing assisted living services to a resident, a caregiver or an assistant caregiver receives orientation that is specific to the duties to be performed by the caregiver or assistant caregiver; and
10. Before providing assisted living services to a resident, a manager or caregiver provides current documentation of first aid training and cardiopulmonary resuscitation training certification specific to adults.

B. A manager of an assisted living home shall ensure that:
1. An individual residing in an assisted living home, who is not a resident, a manager, a caregiver, or an assistant caregiver:
   a. Either:
      i. Complies with the fingerprinting requirements in A.R.S. § 36-411, or
      ii. Interacts with residents only under the supervision of an individual who has a valid fingerprint clearance card; and
   b. If the individual is 12 years of age or older, provides evidence of freedom from infectious tuberculosis as specified in R9-10-113;
2. Documentation of compliance with the requirements in subsection (B)(1)(a) and evidence of freedom from infectious tuberculosis, if required under subsection (B)(1)(b), is maintained for an individual residing in the assisted living home who is not a resident, a manager, a caregiver, or an assistant caregiver;
3. As part of the policies and procedures required in R9-10-803(C)(1)(h), a plan is established, documented, and implemented to ensure that the manager or a caregiver is available as back-up to provide assisted living services to a resident if the manager or a caregiver assigned to work is not available or not able to provide the required assisted living services; and
4. At least the manager or a caregiver is present at an assisted living home when a resident is present in the assisted living home and:
   a. Except for nighttime hours, the manager or caregiver is awake; and
   b. If the manager or caregiver is not awake during nighttime hours:
      i. The manager or caregiver can hear and respond to a resident needing assistance; and
      ii. If the assisted living home is authorized to provide directed care services, policies and procedures are developed, documented, and implemented to establish a process for checking on a resident receiving directed care services during nighttime hours to ensure the resident's health and safety.

C. A manager shall ensure that a personnel record for each employee or volunteer:
1. Includes:
   a. The individual's name, date of birth, and contact telephone number;
   b. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and

c. Documentation of:
   i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
   ii. The individual's education and experience applicable to the individual's job duties;
   iii. The individual's completed orientation and in-service education required by policies and procedures;
   iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or in policies and procedures;
   v. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
   vi. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (A)(8);
   vii. Cardiopulmonary resuscitation training, if required for the individual in this Article or policies and procedures;
   viii First aid training, if required for the individual in this Article or policies and procedures; and
   ix. Documentation of compliance with the requirements in A.R.S. § 36-411(A) and (C);

2. Is maintained:
   a. Throughout the individual's period of providing services in or for the assisted living facility, and
   b. For at least 24 months after the last date the individual provided services in or for the assisted living facility; and
3. For a manager, a caregiver, or an assistant caregiver who has not provided physical health services or behavioral health services at or for the assisted living facility during the previous 12 months, is provided to the Department within 72 hours after the Department's request.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-807. Residency and Residency Agreements

A. Except as provided in R9-10-808(B)(2), a manager shall ensure that a resident provides evidence of freedom from infectious tuberculosis:
1. Before or within seven calendar days after the resident's date of occupancy, and
2. As specified in R9-10-113.

B. A manager shall ensure that before or at the time of acceptance of an individual, the individual submits documentation that is dated within 90 calendar days before the individual is accepted by an assisted living facility and:
1. If an individual is requesting or is expected to receive supervisory care services, personal care services, or directed care services:
   a. Includes whether the individual requires:
      i. Continuous medical services,
      ii. Continuous or intermittent nursing services, or
      iii. Restraints; and
   b. Is dated and signed by a:
      i. Physician,
      ii. Registered nurse practitioner,
      iii. Registered nurse, or
      iv. Physician assistant; and
2. If an individual is requesting or is expected to receive behavioral health services, other than behavioral care, in addition to supervisory care services, personal care services, or directed care services from an assisted living facility:
   a. Includes whether the individual requires continuous behavioral health services, and
   b. Is signed and dated by a behavioral health professional.

C. A manager shall not accept or retain an individual if:
1. The individual requires continuous:
   a. Medical services;
   b. Nursing services, unless the assisted living facility complies with A.R.S. § 36-401(C); or
   c. Behavioral health services;
2. The primary condition for which the individual needs assisted living services is a behavioral health issue;
3. The services needed by the individual are not within the assisted living facility's scope of services and a home health agency or hospice service agency is not involved in the care of the individual;
4. The assisted living facility does not have the ability to provide the assisted living services needed by the individual; or

5. The individual requires restraints, including the use of bedrails.

D. Before or at the time of an individual's acceptance by an assisted living facility, a manager shall ensure that there is a documented residency agreement with the assisted living facility that includes:
1. The individual's name;
2. Terms of occupancy, including:
   a. Date of occupancy or expected date of occupancy,
   b. Resident responsibilities, and
   c. Responsibilities of the assisted living facility;
3. A list of the services to be provided by the assisted living facility to the resident;
4. A list of the services available from the assisted living facility at an additional fee or charge;
5. For an assisted living home, whether the manager or a caregiver is awake during nighttime hours;
6. The policy for refunding fees, charges, or deposits;
7. The policy and procedure for a resident to terminate residency, including terminating residency because services were not provided to the resident according to the resident's service plan;
8. The policy and procedure for an assisted living facility to terminate residency;
9. The complaint process; and
10. The manager's signature and date signed.

E. Before or within five working days after a resident's acceptance by an assisted living facility, a manager shall obtain on the documented agreement, required in subsection (D), the signature of one of the following individuals:
1. The resident,
2. The resident's representative,
3. The resident's legal guardian, or
4. Another individual who has been designated by the individual under A.R.S. § 36-3221 to make health care decisions on the individual's behalf.

F. A manager shall:
1. Before or at the time of an individual's acceptance by an assisted living facility, provide to the resident or resident's representative a copy of:
   a. The residency agreement in subsection (D),
   b. Resident's rights, and
   c. The policy and procedure on health care directives; and
2. Maintain the original of the residency agreement in subsection (D) in the resident's medical record.

G. A manager may terminate residency of a resident as follows:
1. Without notice, if the resident exhibits behavior that is an immediate threat to the health and safety of the resident or other individuals in an assisted living facility;
2. With a 14-calendar-day written notice of termination of residency:
   a. For nonpayment of fees, charges, or deposit; or
   b. Under any of the conditions in subsection (C); or
3. With a 30-calendar-day written notice of termination of residency, for any other reason.

H. A manager shall ensure that the written notice of termination of residency in subsection (G) includes:
1. The date of notice;
2. The reason for termination;
3. The policy for refunding fees, charges, or deposits;
4. The deposition of a resident's fees, charges, and deposits; and
5. Contact information for the State Long-Term Care Ombudsman.

I. A manager shall provide the following to a resident when the manager provides the written notice of termination of residency in subsection (G):
1. A copy of the resident's current service plan, and
2. Documentation of the resident's freedom from infectious tuberculosis.

J. If an assisted living facility issues a written notice of termination of residency as provided in subsection (G) to a resident or the resident's representative because the resident needs services the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide, a manager shall ensure that the written notice of termination of residency includes a description of the specific services that the resident needs that the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide.

Historical Note

Adopted as an emergency effective October 26, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989

(Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-808. Service Plans

A. Except as required in subsection (B), a manager shall ensure that a resident has a written service plan that:
1. Is completed no later than 14 calendar days after the resident's date of acceptance;
2. Is developed with assistance and review from:
   a. The resident or resident's representative,
   b. The manager, and
   c. Any individual requested by the resident or the resident's representative;
3. Includes the following:
   a. A description of the resident's medical or health problems, including physical, behavioral, cognitive, or functional conditions or impairments;
   b. The level of service the resident is expected to receive;
   c. The amount, type, and frequency of assisted living services being provided to the resident, including medication administration or assistance in the self-administration of medication;
   d. For a resident who requires intermittent nursing services or medication administration, review by a nurse or medical practitioner;
   e. For a resident who requires behavioral care:
      i. Any of the following that is necessary to provide assistance with the resident's psychosocial interactions to manage the resident's behavior:
         (1) The psychosocial interactions or behaviors for which the resident requires assistance,
         (2) Psychotropic medications ordered for the resident,
         (3) Planned strategies and actions for changing the resident's psychosocial interactions or behaviors, and
         (4) Goals for changes in the resident's psychosocial interactions or behaviors; and
      ii. Review by a medical practitioner or behavioral health professional; and
   f. For a resident who will be storing medication in the resident's bedroom or residential unit, how the medication will be stored and controlled;
4. Is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f):
   a. No later than 14 calendar days after a significant change in the resident's physical, cognitive, or functional condition; and
   b. As follows:
      i. At least once every 12 months for a resident receiving supervisory care services,
      ii. At least once every six months for a resident receiving personal care services, and
      iii. At least once every three months for a resident receiving directed care services; and
5. When initially developed and when updated, is signed and dated by:
   a. The resident or resident's representative;
   b. The manager;
   c. If a review is required in subsection (A)(3)(d), the nurse or medical practitioner who reviewed the service plan; and
   d. If a review is required in subsection (A)(3)(e)(ii), the medical practitioner or behavioral health professional who reviewed the service plan.

B. For a resident receiving respite care services, a manager shall ensure that:
1. A written service plan is:
   a. Based on a determination of the resident's current needs and:
      i. Is completed no later than three working days after the resident's date of acceptance; or
      ii. If the resident has a service plan in the resident's medical record that was developed within the previous 12 months, is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f) within three working days after the resident's date of acceptance; and
   b. If a significant change in the resident's physical, cognitive, or functional condition occurs while the resident is receiving respite care services, updated based on changes in the requirements in subsections (A)(3)(a) through (f) within three working days after the significant change occurs; and
2. If the resident is not expected to be present in the assisted living facility for more than seven calendar days, the resident is not required to comply with the requirements in R9-10-807(A).

C. A manager shall ensure that:
1. A caregiver or an assistant caregiver:
   a. Provides a resident with the assisted living services in the resident's service plan;
   b. Is only assigned to provide the assisted living services the caregiver or assistant caregiver has the documented skills and knowledge to perform;

c. Provides assistance with activities of daily living according to the resident's service plan;
d. If applicable, suggests techniques a resident may use to maintain or improve the resident's independence in performing activities of daily living;
e. Provides assistance with, supervises, or directs a resident's personal hygiene according to the resident's service plan;
f. Encourages a resident to participate in activities planned according to subsection (E); and
g. Documents the services provided in the resident's medical record; and

2. A volunteer or an assistant caregiver who is 16 or 17 years of age does not provide:
   a. Assistance to a resident for:
      i. Bathing,
      ii. Toileting, or
      iii. Moving the resident's body from one surface to another surface;
   b. Assistance in the self-administration of medication;
   c. Medication administration; or
   d. Nursing services.

D. A manager of an assisted living facility that is authorized to provide adult day health services shall ensure that the adult day health care services are provided as specified in R9-10-1113.

E. A manager shall ensure that:
1. Daily social, recreational, or rehabilitative activities are planned according to residents' preferences, needs, and abilities;
2. A calendar of planned activities is:
   a. Prepared at least one week in advance of the date the activity is provided,
   b. Posted in a location that is easily seen by residents,
   c. Updated as necessary to reflect substitutions in the activities provided, and
   d. Maintained for at least 12 months after the last scheduled activity;
3. Equipment and supplies are available and accessible to accommodate a resident who chooses to participate in a planned activity; and
4. Multiple media sources, such as daily newspapers, current magazines, internet sources, and a variety of reading materials, are available and accessible to a resident to maintain the resident's continued awareness of current news, social events, and other noteworthy information.

F. If a resident is not receiving assistance with the resident's psychosocial interactions under the direction of a behavioral health professional or any other behavioral health services at an assisted living facility, the resident is not considered to be receiving behavioral care or behavioral health services from the assisted living facility if the resident:
1. Is prescribed a psychotropic medication, or
2. Is receiving directed care services and has a primary diagnosis of:
   a. Dementia,
   b. Alzheimer's disease-related dementia, or
   c. Traumatic brain injury.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-809. Transport; Transfer

A. Except as provided in subsection (B), a manager shall ensure that:
1. A caregiver or employee coordinates the transport and the services provided to the resident;
2. According to policies and procedures:
   a. An evaluation of the resident is conducted before and after the transport, and
   b. Information from the resident's medical record is provided to a receiving health care institution; and
3. Documentation includes:
   a. If applicable, any communication with an individual at a receiving health care institution;
   b. The date and time of the transport; and
   c. If applicable, the name of the caregiver accompanying the resident during a transport.

B. Subsection (A) does not apply to:
1. Transportation to a location other than a licensed health care institution,
2. Transportation provided for a resident by the resident or the resident's representative,

3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative, or
4. A transport to another licensed health care institution in an emergency.

C. Except for a transfer of a resident due to an emergency, a manager shall ensure that:
1. A caregiver coordinates the transfer and the services provided to the resident;
2. According to policies and procedures:
   a. An evaluation of the resident is conducted before the transfer;
   b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
   c. A caregiver explains risks and benefits of the transfer to the resident or the resident's representative; and
3. Documentation in the resident's medical record includes:
   a. Communication with an individual at a receiving health care institution;
   b. The date and time of the transfer;
   c. The mode of transportation; and
   d. If applicable, the name of the caregiver accompanying the resident during a transfer.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Former Section R9-10-809 renumbered to R9-10-812; new Section R9-10-809 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). R9-10-809(E) reflects a corrected reference to Article 14 from Article 4 (05-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-810. Resident Rights

A. A manager shall ensure that, at the time of acceptance, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C).

B. A manager shall ensure that:
1. A resident is treated with dignity, respect, and consideration;
2. A resident is not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;
   g. Sexual assault;
   h. Seclusion;
   i. Restraint;
   j. Retaliation for submitting a complaint to the Department or another entity; or
   k. Misappropriation of personal and private property by the assisted living facility's manager, caregivers, assistant caregivers, employees, or volunteers; and
3. A resident or the resident's representative:
   a. Is informed of the following:
      i. The policy on health care directives, and
      ii. The resident complaint process;
   b. Consents to photographs of the resident before the resident is photographed, except that a resident may be photographed when accepted as a resident by an assisted living facility for identification and administrative purposes;
   c. Except as otherwise permitted by law, provides written consent before the release of information in the resident's:
      i. Medical record, or
      ii. Financial records;
   d. May:
      i. Request or consent to relocation within the assisted living facility; and
      ii. Except when relocation is necessary based on a change in the resident's condition as documented in the resident's service plan, refuse relocation within the assisted living facility;
   e. Has access to the resident's records during normal business hours or at a time agreed upon by the resident or resident's representative and the manager; and

f. Is informed of:
   i. The rates and charges for services before the services are initiated;
   ii. A change in rates or charges at least 30 calendar days before the change is implemented, unless the change in rates or charges results from a change in services; and
   iii. A change in services at least 30 calendar days before the change is implemented, unless the resident's service plan changes.

C. A resident has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive assisted living services that support and respect the resident's individuality, choices, strengths, and abilities;
3. To receive privacy in:
   a. Care for personal needs;
   b. Correspondence, communications, and visitation; and
   c. Financial and personal affairs;
4. To maintain, use, and display personal items unless the personal items constitute a hazard;
5. To choose to participate or refuse to participate in social, recreational, rehabilitative, religious, political, or community activities;
6. To review, upon written request, the resident's own medical record;
7. To receive a referral to another health care institution if the assisted living facility is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
8. To choose to access services from a health care provider, health care institution, or pharmacy other than the assisted living facility where the resident is residing and receiving services or a health care provider, health care institution, or pharmacy recommended by the assisted living facility;
9. To participate or have the resident's representative participate in the development of, or decisions concerning, the resident's service plan; and
10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Former Section R9-10-810 renumbered to R9-10-813; new Section R9-10-810 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-811. Medical Records

A. A manager shall ensure that:
1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a resident's medical record is:
   a. Only recorded by an individual authorized by policies and procedures to make the entry;
   b. Dated, legible, and authenticated; and
   c. Not changed to make the initial entry illegible;
3. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
4. A resident's medical record is available to an individual:
   a. Authorized according to policies and procedures to access the resident's medical record;
   b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
   c. As permitted by law; and
5. A resident's medical record is protected from loss, damage, or unauthorized use.

B. If an assisted living facility maintains residents' medical records electronically, a manager shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.

C. A manager shall ensure that a resident's medical record contains:
1. Resident information that includes:
   a. The resident's name, and

b. The resident's date of birth;
2. The names, addresses, and telephone numbers of:
   a. The resident's primary care provider;
   b. Other persons, such as a home health agency or hospice service agency, involved in the care of the resident; and
   c. An individual to be contacted in the event of emergency, significant change in the resident's condition, or termination of residency;
3. If applicable, the name and contact information of the resident's representative and:
   a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
   b. If the resident's representative:
      i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      ii. Is a legal guardian, a copy of the court order establishing guardianship;
4. The date of acceptance and, if applicable, date of termination of residency;
5. Documentation of the resident's needs required in R9-10-807(B);
6. Documentation of general consent and informed consent, if applicable;
7. Except as allowed in R9-10-808(B)(2), documentation of freedom from infectious tuberculosis as required in R9-10-807(A);
8. A copy of resident's health care directive, if applicable;
9. The resident's signed residency agreement and any amendments;
10. Resident's service plan and updates;
11. Documentation of assisted living services provided to the resident;
12. A medication order from a medical practitioner for each medication that is administered to the resident or for which the resident receives assistance in the self-administration of the medication;
13. Documentation of medication administered to the resident or for which the resident received assistance in the self-administration of medication that includes:
   a. The date and time of administration or assistance;
   b. The name, strength, dosage, and route of administration;
   c. The name and signature of the individual administering or providing assistance in the self-administration of medication; and
   d. An unexpected reaction the resident has to the medication;
14. Documentation of the resident's refusal of a medication, if applicable;
15. If applicable, documentation of any actions taken to control the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
16. If applicable, documentation of a determination by a medical practitioner that evacuation from the assisted living facility during an evacuation drill would cause harm to the resident;
17. Documentation of notification of the resident of the availability of vaccination for influenza and pneumonia, according to A.R.S. § 36-406(1)(d);
18. Documentation of the resident's orientation to exits from the assisted living facility required in R9-10-818(B);
19. If a resident is receiving behavioral health services other than behavioral care, documentation of the determination in R9-10-813(3);
20. If a resident is receiving behavioral care, documentation of the determination in R9-10-812(3);
21. If applicable, for a resident who is unable to direct self-care, the information required in R9-10-815(F);
22. Documentation of any significant change in a resident's behavior, physical, cognitive, or functional condition and the action taken by a manager or caregiver to address the resident's changing needs;
23. Documentation of the notification required in R9-10-803(G) if the resident is incapable of handling financial affairs; and
24. If the resident no longer resides and receives assisted living services from the assisted living facility:
   a. A written notice of termination of residency; or
   b. If the resident terminated residency, the date the resident terminated residency.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Former Section R9-10-811 renumbered to R9-10-814; new Section R9-10-811 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-812. Behavioral Care

A manager shall ensure that for a resident who requests or receives behavioral care from the assisted living facility, a behavioral health professional or medical practitioner:

1. Evaluates the resident:
   a. Within 30 calendar days before acceptance of the resident or before the resident begins receiving behavioral care, and
   b. At least once every six months throughout the duration of the resident's need for behavioral care;
2. Reviews the assisted living facility's scope of services; and
3. Signs and dates a determination stating that the resident's need for behavioral care can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989 (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989 (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed; new Section R9-10-812 renumbered from R9-10-809 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-813. Behavioral Health Services

If an assisted living facility is authorized to provide behavioral health services other than behavioral care, a manager shall ensure that:

1. Policies and procedures are established, documented, and implemented that cover when general consent and informed consent are required and by whom general consent and informed consent may be given;
2. The behavioral health services:
   a. Are provided under the direction of a behavioral health professional; and
   b. Comply with the requirements:
      i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115; and
      ii. For an assessment, in R9-10-1011(B); and
3. For a resident who requests or receives behavioral health services from the assisted living facility, a behavioral health professional:
   a. Evaluates the resident within 30 calendar days before acceptance of the resident and at least once every six months throughout the duration of the resident's need for behavioral health services;
   b. Reviews the assisted living facility's scope of services; and
   c. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility.

Historical Note

New Section renumbered from R9-10-810 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-814. Personal Care Services

A. A manager of an assisted living facility authorized to provide personal care services shall not accept or retain a resident who:
1. Is unable to direct self-care;
2. Except as specified in subsection (B), is confined to a bed or chair because of an inability to ambulate even with assistance; or
3. Except as specified in subsection (C), has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.

B. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who is confined to a bed or chair because of an inability to ambulate even with assistance if:
1. The condition is a result of a short-term illness or injury; or
2. The following requirements are met at the onset of the condition or when the resident is accepted by the assisted living facility:
   a. The resident or resident's representative requests that the resident be accepted by or remain in the assisted living facility;
   b. The resident's primary care provider or other medical practitioner:
      i. Examines the resident at the onset of the condition, or within 30 calendar days before acceptance, and at least once every six months throughout the duration of the resident's condition;
      ii. Reviews the assisted living facility's scope of services; and
      iii. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility; and
   c. The resident's service plan includes the resident's increased need for personal care services.

C. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner, if the requirements in subsection (B)(2) are met.

D. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who:

1. Is receiving nursing services from a home health agency or a hospice service agency; or
2. Requires intermittent nursing services if:
   a. The resident's condition for which nursing services are required is a result of a short-term illness or injury, and
   b. The requirements of subsection (B)(2) are met.

E. A manager shall ensure that a bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available and accessible in a bedroom or residential unit being used by a resident receiving personal care services.

F. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving personal care services includes:
1. Skin maintenance to prevent and treat bruises, injuries, pressure sores, and infections;
2. Offering sufficient fluids to maintain hydration;
3. Incontinence care that ensures that a resident maintains the highest practicable level of independence when toileting; and
4. If applicable, the determination in subsection (B)(2)(b)(iii).

G. A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving personal care services unless the resident has an order from the resident's primary care provider or another medical practitioner for the non-prescription medication.

Historical Note

New Section renumbered from R9-10-811 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-815. Directed Care Services

A. A manager shall ensure that a resident's representative is designated for a resident who is unable to direct self-care.

B. A manager of an assisted living facility authorized to provide directed care services shall not accept or retain a resident who, except as provided in R9-10-814(B)(2):
1. Is confined to a bed or chair because of an inability to ambulate even with assistance; or
2. Has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.

C. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving directed care services includes:
1. The requirements in R9-10-814(F)(1) through (3);
2. If applicable, the determination in R9-10-814(B)(2)(b)(iii);
3. Cognitive stimulation and activities to maximize functioning;
4. Strategies to ensure a resident's personal safety;
5. Encouragement to eat meals and snacks;
6. Documentation:
   a. Of the resident's weight, or
   b. From a medical practitioner stating that weighing the resident is contraindicated; and
7. Coordination of communications with the resident's representative, family members, and, if applicable, other individuals identified in the resident's service plan.

D. A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving directed care services unless the resident has an order from a medical practitioner for the non-prescription medication.

E. A manager shall ensure that:
1. A bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available in a bedroom being used by a resident receiving directed care services; or
2. An assisted living facility has implemented another means to alert a caregiver or assistant caregiver to a resident's needs or emergencies.

F. A manager of an assisted living facility authorized to provide directed care services shall ensure that:
1. Policies and procedures are established, documented, and implemented that ensure the safety of a resident who may wander;
2. There is a means of exiting the facility for a resident who does not have a key, special knowledge for egress, or the ability to expend increased physical effort that meets one of the following:
   a. Provides access to an outside area that:
      i. Allows the resident to be at least 30 feet away from the facility, and
      ii. Controls or alerts employees of the egress of a resident from the facility;
   b. Provides access to an outside area:
      i. From which a resident may exit to a location at least 30 feet away from the facility, and
      ii. Controls or alerts employees of the egress of a resident from the facility; or
   c. Uses a mechanism that meets the Special Egress-Control Devices provisions in the International Building Code incorporated by reference in R9-10-104.01; and

3. A caregiver or an assistant caregiver complies with the requirements for incidents in R9-10-804 when a resident who is unable to direct self-care wanders into an area not designated by the governing authority for use by the resident.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-816. Medication Services

A. A manager shall ensure that:
1. Policies and procedures for medication services include:
   a. Procedures for preventing, responding to, and reporting a medication error;
   b. Procedures for responding to and reporting an unexpected reaction to a medication;
   c. Procedures to ensure that a resident's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the resident's needs;
   d. Procedures for:
      i. Documenting, as applicable, medication administration and assistance in the self-administration of medication; and
      ii. Monitoring a resident who self-administers medication;
   e. Procedures for assisting a resident in procuring medication; and
   f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
2. If a verbal order for a resident's medication is received from a medical practitioner by the assisted living facility:
   a. The manager or a caregiver takes the verbal order from the medical practitioner,
   b. The verbal order is documented in the resident's medical record, and
   c. A written order verifying the verbal order is obtained from the medical practitioner within 14 calendar days after receiving the verbal order.

B. If an assisted living facility provides medication administration, a manager shall ensure that:
1. Medication is stored by the assisted living facility;
2. Policies and procedures for medication administration:
   a. Are reviewed and approved by a medical practitioner, registered nurse, or pharmacist;
   b. Include a process for documenting an individual, authorized, according to the definition of "administer" in A.R.S. § 32-1901, by a medical practitioner to administer medication under the direction of the medical practitioner;
   c. Ensure that medication is administered to a resident only as prescribed; and
   d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record; and
3. A medication administered to a resident:
   a. Is administered by an individual under direction of a medical practitioner,
   b. Is administered in compliance with a medication order, and
   c. Is documented in the resident's medical record.

C. If an assisted living facility provides assistance in the self-administration of medication, a manager shall ensure that:
1. A resident's medication is stored by the assisted living facility;
2. The following assistance is provided to a resident:
   a. A reminder when it is time to take the medication;
   b. Opening the medication container or medication organizer for the resident;
   c. Observing the resident while the resident removes the medication from the container or medication organizer;
   d. Except when a resident uses a medication organizer, verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:
      i. The resident taking the medication is the individual stated on the medication container label,
      ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
      iii. The resident is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label;
   e. For a resident using a medication organizer, verifying that the resident is taking the medication in the medication organizer according to the schedule specified on the medical practitioner's order; or
   f. Observing the resident while the resident takes the medication;
3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or nurse; and
4. Assistance in the self-administration of medication provided to a resident:
   a. Is in compliance with an order, and
   b. Is documented in the resident's medical record.

D. A manager shall ensure that:
1. A current drug reference guide is available for use by personnel members, and
2. A current toxicology reference guide is available for use by personnel members.

E. A manager shall ensure that a resident's medication organizer is only filled by:
1. The resident;
2. The resident's representative;
3. A family member of the resident;
4. A personnel member of a home health agency or hospice service agency; or
5. The manager or a caregiver who has been designated and is under the direction of a medical practitioner, according to subsection (B)(2)(b).

F. When medication is stored by an assisted living facility, a manager shall ensure that:
1. Medication is stored in a separate locked room, closet, cabinet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented for:
   a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
   b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
   c. A medication recall and notification of residents who received recalled medication; and
   d. Storing, inventorying, and dispensing controlled substances.

G. A manager shall ensure that a caregiver immediately reports a medication error or a resident's unexpected reaction to a medication to the medical practitioner who ordered the medication or, if the medical practitioner who ordered the medication is not available, another medical practitioner.

H. If medication is stored by a resident in the resident's bedroom or residential unit, a manager shall ensure that:
1. The medication is stored according to the resident's service plan; or
2. If the medication is not being stored according to the resident's service plan, the resident's service plan is updated to include how the medication is being stored by the resident.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-817. Food Services

A. A manager shall ensure that:
1. A food menu:
   a. Is prepared at least one week in advance,
   b. Includes the foods to be served each day,
   c. Is conspicuously posted at least one calendar day before the first meal on the food menu is served,
   d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
   e. Is maintained for at least 60 calendar days after the last day included in the food menu;
2. Meals and snacks provided by the assisted living facility are served according to posted menus;
3. If the assisted living facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the assisted living facility, a copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the assisted living facility;
4. The assisted living facility is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
5. Meals and snacks for each day are planned using the applicable guidelines in http://www.health.gov/dietaryguidelines/2015;
6. A resident is provided a diet that meets the resident's nutritional needs as specified in the resident's service plan;
7. Water is available and accessible to residents at all times, unless otherwise stated in a medical practitioner's order; and
8. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the provision of adaptive eating equipment or utensils, such as a plate guard, rocking fork, or assistive hand device, if not provided by the resident.

B. If the assisted living facility offers therapeutic diets, a manager shall ensure that:
1. A current therapeutic diet manual is available for use by employees, and
2. The therapeutic diet is provided to a resident according to a written order from the resident's primary care provider or another medical practitioner.

C. A manager shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
2. Food is protected from potential contamination;

3. Food is prepared:
   a. Using methods that conserve nutritional value, flavor, and appearance; and
   b. In a form to meet the needs of a resident, such as cut, chopped, ground, pureed, or thickened;
4. Potentially hazardous food is maintained as follows:
   a. Foods requiring refrigeration are maintained at 41° F or below; and
   b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
      ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155 °F;
      v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
      vi. Leftovers are reheated to a temperature of at least 165° F;
5. A refrigerator used by an assisted living facility to store food or medication contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
6. Frozen foods are stored at a temperature of 0° F or below; and
7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

D. A manager of an assisted living center shall ensure that:
1. The assisted living center has a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
2. A copy of the assisted living center's food establishment license or permit is maintained.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-818. Emergency and Safety Standards

A. A manager shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to caregivers and assistant caregivers, and, if necessary, implemented that includes:
   a. When, how, and where residents will be relocated;
   b. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
   c. A plan to ensure each resident's medication will be available to administer to the resident during a disaster; and
   d. A plan for obtaining food and water for individuals present in the assisted living facility or the assisted living facility's relocation site during a disaster;
2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
3. Documentation of the disaster plan review required in subsection (A)(2) includes:
   a. The date and time of the disaster plan review;
   b. The name of each employee or volunteer participating in the disaster plan review;
   c. A critique of the disaster plan review; and
   d. If applicable, recommendations for improvement;
4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
5. An evacuation drill for employees and residents:
   a. Is conducted at least once every six months; and
   b. Includes all individuals on the premises except for:
      i. A resident whose medical record contains documentation that evacuation from the assisted living facility would cause harm to the resident, and
      ii. Sufficient caregivers to ensure the health and safety of residents not evacuated according to subsection (A)(5)(b)(i);
6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
   a. The date and time of the evacuation drill;
   b. The amount of time taken for employees and residents to evacuate the assisted living facility;
   c. If applicable:
      i. An identification of residents needing assistance for evacuation, and
      ii. An identification of residents who were not evacuated;
   d. Any problems encountered in conducting the evacuation drill; and
   e. Recommendations for improvement, if applicable; and
7. An evacuation path is conspicuously posted in each hallway of each floor of the assisted living facility.

B. A manager shall ensure that:
1. A resident receives orientation to the exits from the assisted living facility and the route to be used when evacuating the assisted living facility within 24 hours after the resident's acceptance by the assisted living facility, and
2. The resident's orientation is documented.

C. A manager shall ensure that a first-aid kit is maintained in the assisted living facility in a location accessible to caregivers and assistant caregivers.

D. When a resident has an accident, emergency, or injury that results in the resident needing medical services, a manager shall ensure that a caregiver or an assistant caregiver:
1. Immediately notifies the resident's emergency contact and primary care provider; and
2. Documents the following:
   a. The date and time of the accident, emergency, or injury;
   b. A description of the accident, emergency, or injury;
   c. The names of individuals who observed the accident, emergency, or injury;
   d. The actions taken by the caregiver or assistant caregiver;
   e. The individuals notified by the caregiver or assistant caregiver; and
   f. Any action taken to prevent the accident, emergency, or injury from occurring in the future.

E. A manager of an assisted living center shall ensure that:
1. Unless the assisted living center has documentation of having received an exception from the Department before October 1, 2013, in the areas of the assisted living center providing personal care services or directed care services:
   a. A fire alarm system is installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, and is in working order; and
   b. A sprinkler system is installed according to the National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, and is in working order;
2. For the areas of the assisted living center providing only supervisory care services:
   a. A fire alarm system and a sprinkler system meeting the requirements in subsection (E)(1) are installed and in working order, or
   b. The assisted living center complies with the requirements in subsection (F);
3. A fire inspection is conducted by a local fire department or the State Fire Marshal before licensing and according to the time-frame established by the local fire department or the State Fire Marshal;
4. Any repairs or corrections stated on the fire inspection report are made; and
5. Documentation of a current fire inspection is maintained.

F. A manager of an assisted living home shall ensure that:
1. A fire extinguisher that is labeled as rated at least 2A-10-BC by the Underwriters Laboratories is mounted and maintained in the assisted living home;
2. A disposable fire extinguisher is replaced when its indicator reaches the red zone;
3. A rechargeable fire extinguisher:
   a. Is serviced at least once every 12 months, and
   b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher;
4. Except as provided in subsection (G):
   a. A smoke detector is:
      i. Installed in each bedroom, hallway that adjoins a bedroom, storage room, laundry room, attached garage, and room or hallway adjacent to the kitchen, and other places recommended by the manufacturer;
      ii. Either battery operated or, if hard-wired into the electrical system of the assisted living home, has a back-up battery;
      iii. In working order; and
      iv. Tested at least once a month; and
   b. Documentation of the test required in subsection (F)(4)(a)(iv) is maintained for at least 12 months after the date of the test;
5. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the assisted living home; and
6. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the assisted living home.

G. A manager of an assisted living home may use a fire alarm system and a sprinkler system to ensure the safety of residents if the fire alarm system and sprinkler system:
1. Are installed and in working order, and
2. Meet the requirements in subsection (E)(1).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583,

effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-819. Environmental Standards

A. A manager shall ensure that:

1. The premises and equipment used at the assisted living facility are:
   a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
   b. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;
2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
3. Garbage and refuse are:
   a. Stored in covered containers lined with plastic bags, and
   b. Removed from the premises at least once a week;
4. Heating and cooling systems maintain the assisted living facility at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
5. Common areas:
   a. Are lighted to ensure the safety of residents, and
   b. Have lighting sufficient to allow caregivers and assistant caregivers to monitor resident activity;
6. Hot water temperatures are maintained between 95º F and 120º F in areas of an assisted living facility used by residents;
7. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
8. A resident has access to a laundry service or a washing machine and dryer in the assisted living facility;
9. Soiled linen and soiled clothing stored by the assisted living facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
10. Oxygen containers are secured in an upright position;
11. Poisonous or toxic materials stored by the assisted living facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
12. Combustible or flammable liquids and hazardous materials stored by the assisted living facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
13. Equipment used at the assisted living facility is:
    a. Maintained in working order;
    b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
    c. Used according to the manufacturer's recommendations;
14. If pets or animals are allowed in the assisted living facility, pets or animals are:
    a. Controlled to prevent endangering the residents and to maintain sanitation;
    b. Licensed consistent with local ordinances; and
    c. For a dog or cat, vaccinated against rabies;
15. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
    a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
    b. If necessary, corrective action is taken to ensure the water is safe to drink; and
    c. Documentation of testing is retained for at least 12 months after the date of the test; and
16. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

B. If a swimming pool is located on the premises, a manager shall ensure that:

1. On a day that a resident uses the swimming pool, an employee:
   a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
      i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
      ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
      iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
   b. Records the results of the water quality tests in a log that includes the date tested and test result;
2. Documentation of the water quality test is maintained for at least 12 months after the date of the test; and
3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019 (Supp. 19-1).

R9-10-820. Physical Plant Standards

A. A manager shall ensure that an assisted living center complies with the applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, that:
1. Are applicable to the level of services planned to be provided or being provided; and
2. Were in effect on the date the assisted living facility submitted architectural plans and specifications to the Department for approval, according to R9-10-104.

B. A manager shall ensure that:
1. The premises and equipment are sufficient to accommodate:
   a. The services stated in the assisted living facility's scope of services, and
   b. An individual accepted as a resident by the assisted living facility;
2. A common area for use by residents is provided that has sufficient space and furniture to accommodate the recreational and socialization needs of residents;
3. A dining area has sufficient space and tables and chairs to accommodate the needs of the residents;
4. At least one bathroom is accessible from a common area and:
   a. May be used by residents and visitors;
   b. Provides privacy when in use; and
   c. Contains the following:
      i. At least one working sink with running water,
      ii. At least one working toilet that flushes and has a seat,
      iii. Toilet tissue for each toilet,
      iv. Soap in a dispenser accessible from each sink,
      v. Paper towels in a dispenser or a mechanical air hand dryer,
      vi. Lighting, and
      vii. A window that opens or another means of ventilation;
5. An outside activity space is provided and available that:
   a. Is on the premises,
   b. Has a hard-surfaced section for wheelchairs, and
   c. Has an available shaded area;
6. Exterior doors are equipped with ramps or other devices to allow use by a resident using a wheelchair or other assistive device; and
7. The key to the door of a lockable bathroom, bedroom, or residential unit is available to a manager, caregiver, and assistant caregiver.

C. A manager shall ensure that:
1. For every eight residents there is at least one working toilet that flushes and has a seat and one sink with running water;
2. For every eight residents there is at least one working bathtub or shower; and
3. A resident bathroom provides privacy when in use and contains:
   a. A mirror;
   b. Toilet tissue for each toilet;
   c. Soap accessible from each sink;
   d. Paper towels in a dispenser or a mechanical air hand dryer for a bathroom that is not in a residential unit and used by more than one resident;
   e. A window that opens or another means of ventilation;
   f. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
   g. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers.

D. A manager shall ensure that:
1. Each resident is provided with a sleeping area in a residential unit or a bedroom;
2. For an assisted living home, a resident's sleeping area is on the ground floor of the assisted living home unless:
   a. The resident is able to direct self-care;
   b. The resident is ambulatory without assistance; and
   c. There are at least two unobstructed, usable exits to the outside from the sleeping area that the resident is capable of using;
3. Except as provided in subsection (E), no more than two individuals reside in a residential unit or bedroom;
4. A resident's sleeping area:
   a. Is not used as a common area;
   b. Is not used as a passageway to a common area, another sleeping area, or common bathroom unless the resident's sleeping area:
      i. Was used as a passageway to a common area, another sleeping area, or common bathroom before October 1, 2013; and
      ii. Written consent is obtained from the resident or the resident's representative;

c. Is constructed and furnished to provide unimpeded access to the door;
d. Has floor-to-ceiling walls with at least one door;
e. Has access to natural light through a window or a glass door to the outside; and
f. Has a window or door that can be used for direct egress to outside the building;

5. If a resident's sleeping area is in a bedroom, the bedroom has:
   a. For a private bedroom, at least 80 square feet of floor space, not including a closet or bathroom;
   b. For a shared bedroom, at least 60 square feet of floor space for each individual occupying the shared bedroom, not including a closet or bathroom; and
   c. A door that opens into a hallway, common area, or outdoors;
6. If a resident's sleeping area is in a residential unit, the residential unit has:
   a. Except as provided in subsection (E)(2), at least 220 square feet of floor space, not including a closet or bathroom, for one individual residing in the residential unit and an additional 100 square feet of floor space, not including a closet or bathroom, for each additional individual residing in the residential unit;
   b. An individually keyed entry door;
   c. A bathroom that provides privacy when in use and contains:
      i. A working toilet that flushes and has a seat;
      ii. A working sink with running water;
      iii. A working bathtub or shower;
      iv. Lighting;
      v. A mirror;
      vi. A window that opens or another means of ventilation;
      vii. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
      viii. Nonporous surfaces for shower enclosures and slip-resistant surfaces in bathtubs and showers;
   d. A resident-controlled thermostat for heating and cooling;
   e. A kitchen area equipped with:
      i. A working sink and refrigerator,
      ii. A cooking appliance that can be removed or disconnected,
      iii. Space for food preparation, and
      iv. Storage for utensils and supplies; and
   f. If not furnished by a resident:
      i. An armchair, and
      ii. A table where a resident may eat a meal; and
7. If not furnished by a resident, each sleeping area has:
   a. A bed, at least 36 inches in width and 72 inches in length, consisting of at least a frame and mattress that is clean and in good repair;
   b. Clean linen, including a mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, a bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for the resident;
   c. Sufficient light for reading;
   d. Storage space for clothing;
   e. Individual storage space for personal effects; and
   f. Adjustable window covers that provide resident privacy.

E. A manager may allow more than two individuals to reside in a residential unit or bedroom if:
1. There is at least 60 square feet for each individual living in the bedroom;
2. There is at least 100 square feet for each individual living in the residential unit; and
3. The manager has documentation that the assisted living facility has been operating since before November 1, 1998, with more than two individuals living in the residential unit or bedroom.

F. If there is a swimming pool on the premises of the assisted living facility, a manager shall ensure that:
1. Unless the assisted living facility has documentation of having received an exception from the Department before October 1, 2013, the swimming pool is enclosed by a wall or fence that:
   a. Is at least five feet in height as measured on the exterior of the wall or fence;
   b. Has no vertical openings greater that four inches across;
   c. Has no horizontal openings, except as described in subsection (F)(1)(e);
   d. Is not chain-link;
   e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
   f. Has a self-closing, self-latching gate that:
      i. Opens away from the swimming pool,
      ii. Has a latch located at least 54 inches from the ground, and
      iii. Is locked when the swimming pool is not in use;
2. A life preserver or shepherd's crook is available and accessible in the swimming pool area; and

3. Pool safety requirements are conspicuously posted in the swimming pool area.

G. A manager shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (F)(1) is covered and locked when not in use.

Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

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

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

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

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

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

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

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

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

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

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

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

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

21. License and regulate the health and safety of group homes and behavioral-supported group homes for persons with developmental disabilities. The department shall issue a license to an

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

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

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

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

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

A. The director shall:

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

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

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

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

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

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop,

tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

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

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

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

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

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

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of

performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any monies that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

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

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

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

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

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

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

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

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

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

(g) A cottage food product that is prepared in a kitchen of a private home for commercial purposes consistent with chapter 8, article 2 of this title.

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

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

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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

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

sanitary facilities to be used in identifying, storing, handling and selling all meat and meat products sold at the retail level.

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

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

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

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

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these

premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. Confidential information may not be made available for political or commercial purposes.

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

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection and chapter 8, article 2 of this title. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

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

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

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

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

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

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of

this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

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

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

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product" has the same meaning prescribed in section 36-931.

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

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room. Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

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

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

3. Prescribe the criteria for the licensure inspection process.

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

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

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

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

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

D. The director shall establish a model in rule for the department to monitor health care institutions on-site that are found to not be in substantial compliance with the applicable licensure requirements. The director shall establish on-site monitoring fees for health care institutions that are subject to the on-site monitoring requirements. The department may not charge a fee pursuant to this subsection for a complaint or compliance-related survey or inspection if a health care institution is in substantial compliance.

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

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

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

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

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

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

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

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

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

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

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

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

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

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

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

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

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

3. Beginning January 1, 2025, verify that a potential employee is not on the adult protective services registry pursuant to section 46-459. If a potential employee is found to be on the adult protective services registry, the residential care institution, nursing care institution or home health agency may not hire the potential employee.

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

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

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

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

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

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

H. For the purposes of this section:

1. "Direct supportive services":

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

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

(ii) Assistance with self-administration of medication.

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

(iv) Transportation services, including van services.

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

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

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

36-420.05. Legal action or sale; effect on licensure

A. The director may continue to pursue any court, administrative or enforcement action against a licensee even if the health care institution is in the process of being sold or transferred or has closed.

B. The department may deny an application for a health care institution license if either:

1. The applicant, the licensee or a controlling person has a health care institution license that is in an enforcement action or court action related to the health and safety of the residents or patients.

2. The department has determined for reasons other than those specified in paragraph 1 of this subsection that the issuance of a new license is likely to jeopardize resident or patient safety.

C. The department may deny the approval of a change in ownership of a currently licensed health care institution if the department determines that the transfer of ownership, whether involving a direct owner or indirect owner, may jeopardize patient safety.

36-425. Inspections; issuance of license; posting requirements; provisional license; denial of license

A. On receipt of a properly completed application for a health care institution license, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application for a license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the health care institution. Based on the results of the inspection and after the submission of the applicable licensing fee, the director shall either deny the license or issue a regular or provisional license. A license issued by the department shall be posted in a conspicuous location in the reception area of that health care institution.

B. The director shall issue a license if the director determines that an applicant and the health care institution for which the license is sought substantially comply with the requirements of this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies. The director shall not require a health care institution that was designated as a critical access hospital to make any modifications required by this chapter or rules adopted pursuant to this chapter in order to obtain an amended license with the same licensed capacity the health care institution had before it was designated as a critical access hospital if all of the following are true:

1. The health care institution has subsequently terminated its critical access hospital designation.

2. The licensed capacity of the health care institution does not exceed its licensed capacity before its designation as a critical access hospital.

3. The health care institution remains in compliance with the applicable codes and standards that were in effect at the time the facility was originally licensed with the higher licensed capacity.

C. A health care institution license does not expire and remains valid unless:

1. The department subsequently revokes or suspends the license.

2. The license is considered void because the licensee did not pay the licensing fee, civil penalties or provider agreement fees before the relevant due date or did not enter into an agreement with the department before the relevant due date to pay all outstanding fees or civil penalties.

D. Except as provided in section 36-424, subsection B and subsection E of this section, the department shall conduct a compliance inspection of a health care institution to determine compliance with this chapter and rules adopted pursuant to this chapter at least once annually.

E. If the department determines a facility, except for a residential care institution or a nursing care institution that does not have the same direct owner or indirect owner as a hospital licensed pursuant to this chapter, to be deficiency free on a compliance survey, the department shall not conduct a compliance survey of that facility for twenty-four months after the date of the deficiency free survey. This subsection does not prohibit the department from enforcing licensing requirements as authorized by section 36-424.

F. A hospital licensed as a rural general hospital may provide intensive care services.

G. The director shall issue a provisional license for a period of not more than one year if an inspection or investigation of a currently licensed health care institution or a health care institution for which an applicant is seeking a license reveals that the health care institution is not in substantial compliance with department licensure requirements and the director believes that the immediate interests of the patients and the general public are best served if the health care institution is given an opportunity to correct deficiencies. The applicant or licensee shall agree to carry out a plan to eliminate deficiencies that is acceptable to the director. The director shall not issue consecutive provisional licenses to a single health care institution. The director shall not issue a license to the current licensee or a successor applicant before the expiration of the provisional license unless the health care institution submits an application for a substantial compliance survey and is found to be in substantial compliance. The director may issue a license only if the director determines that the health care institution is in substantial compliance with the licensure requirements of the department and this chapter. This subsection does not prevent the director from taking action to protect the safety of patients pursuant to section 36-427.

H. Subject to the confidentiality requirements of articles 4 and 5 of this chapter, title 12, chapter 13, article 7.1 and section 12-2235, the licensee shall keep current department inspection reports at the health care institution. Unless federal law requires otherwise, the licensee shall post in a conspicuous location a notice that identifies the location at that health care institution where the inspection reports are available for review.

I. A health care institution shall immediately notify the department in writing when there is a change of the chief administrative officer specified in section 36-422, subsection A, paragraph 1, subdivision (g).

J. When the department issues an original license or an original provisional license to a health care institution, it shall notify the owners and lessees of any agricultural land within one-fourth mile of the health care institution. The health care institution shall provide the department with the names and addresses of owners or lessees of agricultural land within one-fourth mile of the proposed health care institution.

K. In addition to the grounds for denial of licensure prescribed pursuant to subsection A of this section, the director may deny a license because an applicant or anyone in a business relationship with the applicant, including stockholders and controlling persons, has had a license to operate a health care institution denied, revoked or suspended or a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title denied, revoked or suspended or has a licensing history of recent serious violations occurring in this state or in another state that posed a direct risk to the life, health or safety of patients or residents.

L. In addition to the requirements of this chapter, the director may prescribe by rule other licensure requirements.

36-431.01. Violations; civil penalties; enforcement

A. The director may assess a civil penalty against a person who violates this chapter or a rule adopted pursuant to this chapter in an amount of not more than $1,000 for each violation, which may be assessed for each resident or patient who the department determines was impacted by the violation. Each day that a violation occurs constitutes a separate violation.

B. The director may issue a notice of assessment that shall include the proposed amount of the assessment. A person may appeal the assessment by requesting a hearing pursuant to title 41, chapter 6, article 10. When an assessment is appealed, the director shall take no further action to enforce and collect the assessment until after the hearing.

C. In determining the amount of the civil penalty pursuant to subsection A of this section, the department shall establish a model in rule that considers the following:

1. Repeated violations of statutes or rules.

2. Patterns of noncompliance.

3. Types of violations.

4. The severity of violations.

5. The potential for and occurrences of actual harm, including to patients, staff or residents.

6. Threats to health and safety, including to patients, staff or residents.

7. The number of persons affected by the violations.

8. The number of violations.

9. The size of the facility.

10. The length of time that the violations have been occurring.

11. The type of health care institution.

12. Whether the health care institution and staff are in compliance with the reporting requirements pursuant to section 46-454.

D. Pursuant to interagency agreement specified in section 36-409, the director may assess a civil penalty, including interest, in accordance with 42 United States Code section 1396r. A person may appeal this assessment by requesting a hearing before the director in accordance with subsection B of this section. Civil penalty amounts may be established by rules adopted by the director that conform to guidelines or regulations adopted by the secretary of the United States department of health and human services pursuant to 42 United States Code section 1396r.

E. Actions to enforce the collection of penalties assessed pursuant to subsections A and D of this section shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in the county in which the violation occurred.

F. Penalties assessed under subsection D of this section are in addition to and not in limitation of other penalties imposed pursuant to this chapter. All civil penalties and interest assessed pursuant to subsection D of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the nursing care institution resident protection revolving fund established by section 36-431.02. The director shall use these monies for the purposes prescribed by 42 United States Code section 1396r, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of the deficiencies or closure and reimbursement of residents for personal monies lost.

G. The department shall deposit civil penalties assessed under subsection A of this section in the state general fund.

Senate Engrossed House Bill

long-term care; enforcement; memory care

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2764

AN ACT

AMENDING SECTION 36-405, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-405.03; AMENDING SECTION 36-411, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-420.05; AMENDING SECTIONS 36-425, 36-431.01, 36-446.02, 46-452 AND 46-454, ARIZONA REVISED STATUTES; RELATING TO HEALTH CARE INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-405, Arizona Revised Statutes, is amended to read:

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room. Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

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

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

3. Prescribe the criteria for the licensure inspection process.

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

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

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

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

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

D. THE DIRECTOR SHALL ESTABLISH A MODEL IN RULE FOR THE DEPARTMENT TO MONITOR HEALTH CARE INSTITUTIONS ON-SITE THAT ARE FOUND TO NOT BE IN SUBSTANTIAL COMPLIANCE WITH THE APPLICABLE LICENSURE REQUIREMENTS. THE DIRECTOR SHALL ESTABLISH ON-SITE MONITORING FEES FOR HEALTH CARE INSTITUTIONS THAT ARE SUBJECT TO THE ON-SITE MONITORING REQUIREMENTS. THE DEPARTMENT MAY NOT CHARGE A FEE PURSUANT TO THIS SUBSECTION FOR A COMPLAINT OR COMPLIANCE-RELATED SURVEY OR INSPECTION IF A HEALTH CARE INSTITUTION IS IN SUBSTANTIAL COMPLIANCE.

E. THE DEPARTMENT MAY PROVIDE IN-SERVICE TRAINING TO HEALTH CARE INSTITUTIONS THAT REQUEST IN-SERVICE TRAINING RELATING TO REGULATORY COMPLIANCE OUTSIDE OF THE SURVEY PROCESS. THE DIRECTOR SHALL ESTABLISH IN RULE IN-SERVICE TRAINING FEES FOR HEALTH CARE INSTITUTIONS THAT REQUEST IN-SERVICE TRAINING FROM THE DEPARTMENT.

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

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

Sec. 2. Title 36, chapter 4, article 1, Arizona Revised Statutes, is amended by adding section 36-405.03, to read:

36-405.03. Memory care services standards; rules; staff training requirements; definition

A. THE DIRECTOR SHALL ESTABLISH BY RULE STANDARDS FOR MEMORY CARE SERVICES FOR ASSISTED LIVING FACILITIES THAT ARE LICENSED TO PROVIDE DIRECTED CARE SERVICES.

B. THE DIRECTOR SHALL ESTABLISH BY RULE MINIMUM TRAINING STANDARDS FOR MEMORY CARE SERVICES FOR STAFF AND CONTRACTORS WHO WORK IN AN ASSISTED LIVING FACILITY THAT IS LICENSED TO PROVIDE DIRECTED CARE SERVICES. THE TRAINING STANDARDS SHALL INCLUDE A MINIMUM OF EIGHT HOURS OF INITIAL MEMORY CARE SERVICES TRAINING AND FOUR HOURS OF ANNUAL CONTINUING EDUCATION. IN ADDITION TO THE EIGHT HOURS OF INITIAL TRAINING, THE TRAINING STANDARDS FOR ASSISTED LIVING FACILITY MANAGERS SHALL INCLUDE A MINIMUM OF FOUR HOURS OF MEMORY CARE SERVICES TRAINING THAT IS SPECIFICALLY FOR ASSISTED LIVING FACILITY MANAGERS. THE DEPARTMENT SHALL APPROVE THE MEMORY CARE SERVICES TRAINING PROGRAMS, AND THE TRAINING

PROGRAMS SHALL PROVIDE STAFF AND CONTRACTORS WHO COMPLETE THE TRAINING A CERTIFICATE OF COMPLETION THAT MAY BE USED TO WORK AT ANY ASSISTED LIVING FACILITY THAT IS LICENSED TO PROVIDE DIRECTED CARE SERVICES. IF A STAFF MEMBER OR CONTRACTOR HAS NOT WORKED AT AN ASSISTED LIVING FACILITY THAT IS LICENSED TO PROVIDE DIRECTED CARE SERVICES FOR A PERIOD OF TWELVE MONTHS, THE PERSON IS REQUIRED TO COMPLETE THE INITIAL TRAINING WITHIN THIRTY DAYS AFTER THE DATE OF HIRE, REHIRE OR RETURNING TO WORK.

C. AN ASSISTED LIVING FACILITY THAT IS LICENSED TO PROVIDE DIRECTED CARE SERVICES IS REQUIRED TO PROVIDE TO THE DEPARTMENT DURING AN INVESTIGATION OR COMPLIANCE SURVEY DOCUMENTATION OF STAFF TRAINING AS PRESCRIBED IN SUBSECTION B OF THIS SECTION. FAILURE TO PROVIDE COMPLETE STAFF TRAINING DOCUMENTATION SHALL BE CITED AS A DEFICIENCY.

D. FOR THE PURPOSES OF THIS SECTION, "MEMORY CARE SERVICES" MEANS SERVICES THAT SUPPORT INDIVIDUALS WITH DEMENTIA AND OTHER PROGRESSIVE AND NEURODEGENERATIVE BRAIN DISORDERS, INCLUDING SPECIALIZED ENVIRONMENTAL FEATURES, CARE PLANNING, DIRECTED CARE SERVICES, MEDICATION ADMINISTRATION SERVICES, SPECIALIZED ACCOMMODATIONS, ACTIVITY PROGRAMMING OR OTHER SERVICES REQUIRED BY THE DEPARTMENT IN RULE.

Sec. 3. Section 36-411, Arizona Revised Statutes, is amended to read:

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

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

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

C. ~~Owners~~ EACH RESIDENTIAL CARE INSTITUTION, NURSING CARE INSTITUTION AND HOME HEALTH AGENCY shall make documented, good faith efforts to:

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

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

3. BEGINNING JANUARY 1, 2025, VERIFY THAT A POTENTIAL EMPLOYEE IS NOT ON THE ADULT PROTECTIVE SERVICES REGISTRY PURSUANT TO SECTION 46-459. IF A POTENTIAL EMPLOYEE IS FOUND TO BE ON THE ADULT PROTECTIVE SERVICES REGISTRY, THE RESIDENTIAL CARE INSTITUTION, NURSING CARE INSTITUTION OR HOME HEALTH AGENCY MAY NOT HIRE THE POTENTIAL EMPLOYEE.

4. ON OR BEFORE MARCH 31, 2025, VERIFY THAT EACH EMPLOYEE IS NOT ON THE ADULT PROTECTIVE SERVICES REGISTRY PURSUANT TO SECTION 46-459. IF AN EMPLOYEE IS FOUND TO BE ON THE ADULT PROTECTIVE SERVICES REGISTRY, THE RESIDENTIAL CARE INSTITUTION, NURSING CARE INSTITUTION OR HOME HEALTH AGENCY SHALL TAKE ACTION TO TERMINATE THE EMPLOYMENT OF THAT EMPLOYEE.

5. BEGINNING MARCH 31, 2025, ANNUALLY REVERIFY THAT EACH EMPLOYEE IS NOT ON THE ADULT PROTECTIVE SERVICES REGISTRY PURSUANT TO SECTION 46-459.

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

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

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

services to residents or patients while under the direct visual supervision of an owner or employee who has a valid fingerprint clearance card.

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

H. For the purposes of this section:

1. "Direct supportive services":

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

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

(ii) Assistance with self-administration of medication.

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

(iv) Transportation services, including van services.

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

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

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

Sec. 4. Title 36, chapter 4, article 1, Arizona Revised Statutes, is amended by adding section 36-420.05, to read:

36-420.05. Legal action or sale; effect on licensure

A. THE DIRECTOR MAY CONTINUE TO PURSUE ANY COURT, ADMINISTRATIVE OR ENFORCEMENT ACTION AGAINST A LICENSEE EVEN IF THE HEALTH CARE INSTITUTION IS IN THE PROCESS OF BEING SOLD OR TRANSFERRED OR HAS CLOSED.

B. THE DEPARTMENT MAY DENY AN APPLICATION FOR A HEALTH CARE INSTITUTION LICENSE IF EITHER:

1. THE APPLICANT, THE LICENSEE OR A CONTROLLING PERSON HAS A HEALTH CARE INSTITUTION LICENSE THAT IS IN AN ENFORCEMENT ACTION OR COURT ACTION RELATED TO THE HEALTH AND SAFETY OF THE RESIDENTS OR PATIENTS.

2. THE DEPARTMENT HAS DETERMINED FOR REASONS OTHER THAN THOSE SPECIFIED IN PARAGRAPH 1 OF THIS SUBSECTION THAT THE ISSUANCE OF A NEW LICENSE IS LIKELY TO JEOPARDIZE RESIDENT OR PATIENT SAFETY.

C. THE DEPARTMENT MAY DENY THE APPROVAL OF A CHANGE IN OWNERSHIP OF A CURRENTLY LICENSED HEALTH CARE INSTITUTION IF THE DEPARTMENT DETERMINES THAT THE TRANSFER OF OWNERSHIP, WHETHER INVOLVING A DIRECT OWNER OR INDIRECT OWNER, MAY JEOPARDIZE PATIENT SAFETY.

Sec. 5. Section 36-425, Arizona Revised Statutes, is amended to read:

36-425. Inspections; issuance of license; posting requirements; provisional license; denial of license

A. On receipt of a properly completed application for a health care institution license, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application for a license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the health care institution. Based on the results of the inspection and after the submission of the applicable licensing fee, the director shall either deny the license or issue a regular or provisional license. A license issued by the department shall be posted in a conspicuous location in the reception area of that HEALTH CARE institution.

B. The director shall issue a license if the director determines that an applicant and the health care institution for which the license is sought substantially comply with the requirements of this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies. The director shall not require a health care institution that was designated as a critical access hospital to make any modifications required by this chapter or rules adopted pursuant to this chapter in order to obtain an amended license with the same licensed capacity the health care institution had before it was designated as a critical access hospital if all of the following are true:

1. The health care institution has subsequently terminated its critical access hospital designation.

2. The licensed capacity of the health care institution does not exceed its licensed capacity before its designation as a critical access hospital.

3. The health care institution remains in compliance with the applicable codes and standards that were in effect at the time the facility was originally licensed with the higher licensed capacity.

C. A health care institution license does not expire and remains valid unless:

1. The department subsequently revokes or suspends the license.

2. The license is considered void because the licensee did not pay the licensing fee, CIVIL PENALTIES OR PROVIDER AGREEMENT FEES before the ~~licensing fee~~ RELEVANT due date OR DID NOT ENTER INTO AN AGREEMENT WITH THE DEPARTMENT BEFORE THE RELEVANT DUE DATE TO PAY ALL OUTSTANDING FEES OR CIVIL PENALTIES.

D. Except as provided in section 36-424, subsection B and subsection E of this section, the department shall conduct a compliance

inspection of a health care institution to determine compliance with this chapter and rules adopted pursuant to this chapter at least once annually.

E. If the department determines a facility, EXCEPT FOR A RESIDENTIAL CARE INSTITUTION OR A NURSING CARE INSTITUTION THAT DOES NOT HAVE THE SAME DIRECT OWNER OR INDIRECT OWNER AS A HOSPITAL LICENSED PURSUANT TO THIS CHAPTER, to be deficiency free on a compliance survey, the department shall not conduct a compliance survey of that facility for twenty-four months after the date of the deficiency free survey. This subsection does not prohibit the department from enforcing licensing requirements as authorized by section 36-424.

F. A hospital licensed as a rural general hospital may provide intensive care services.

G. The director shall issue a provisional license for a period of not more than one year if an inspection or investigation of a currently licensed health care institution or a health care institution for which an applicant is seeking a license reveals that the HEALTH CARE institution is not in substantial compliance with department licensure requirements and the director believes that the immediate interests of the patients and the general public are best served if the HEALTH CARE institution is given an opportunity to correct deficiencies. The applicant or licensee shall agree to carry out a plan to eliminate deficiencies that is acceptable to the director. The director shall not issue consecutive provisional licenses to a single health care institution. The director shall not issue a license to the current licensee or a successor applicant before the expiration of the provisional license unless the health care institution submits an application for a substantial compliance survey and is found to be in substantial compliance. The director may issue a license only if the director determines that the HEALTH CARE institution is in substantial compliance with the licensure requirements of the department and this chapter. This subsection does not prevent the director from taking action to protect the safety of patients pursuant to section 36-427.

H. Subject to the confidentiality requirements of articles 4 and 5 of this chapter, title 12, chapter 13, article 7.1 and section 12-2235, the licensee shall keep current department inspection reports at the health care institution. Unless federal law requires otherwise, the licensee shall post in a conspicuous location a notice that identifies the location at that HEALTH CARE institution where the inspection reports are available for review.

I. A health care institution shall immediately notify the department in writing when there is a change of the chief administrative officer specified in section 36-422, subsection A, paragraph 1, subdivision (g).

J. When the department issues an original license or an original provisional license to a health care institution, it shall notify the

owners and lessees of any agricultural land within one-fourth mile of the health care institution. The health care institution shall provide the department with the names and addresses of owners or lessees of agricultural land within one-fourth mile of the proposed health care institution.

K. In addition to the grounds for denial of licensure prescribed pursuant to subsection A of this section, the director may deny a license because an applicant or anyone in a business relationship with the applicant, including stockholders and controlling persons, has had a license to operate a health care institution denied, revoked or suspended or a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title denied, revoked or suspended or has a licensing history of recent serious violations occurring in this state or in another state that posed a direct risk to the life, health or safety of patients or residents.

L. In addition to the requirements of this chapter, the director may prescribe by rule other licensure requirements.

Sec. 6. Section 36-431.01, Arizona Revised Statutes, is amended to read:

36-431.01. Violations; civil penalties; enforcement

A. The director may assess a civil penalty against a person who violates this chapter or a rule adopted pursuant to this chapter in an amount of not ~~to exceed five hundred dollars~~ MORE THAN $1,000 for each violation, WHICH MAY BE ASSESSED FOR EACH RESIDENT OR PATIENT WHO THE DEPARTMENT DETERMINES WAS IMPACTED BY THE VIOLATION. Each day that a violation occurs constitutes a separate violation.

B. The director may issue a notice of assessment that shall include the proposed amount of the assessment. A person may appeal the assessment by requesting a hearing pursuant to title 41, chapter 6, article 10. When an assessment is appealed, the director shall take no further action to enforce and collect the assessment until after the hearing.

C. In determining the AMOUNT OF THE civil penalty pursuant to subsection A of this section, the department shall ~~consider~~ ESTABLISH A MODEL IN RULE THAT CONSIDERS the following:

1. Repeated violations of statutes or rules.
2. Patterns of noncompliance.
3. Types of violations.
4. THE severity of violations.
5. THE potential for and occurrences of actual harm, INCLUDING TO PATIENTS, STAFF OR RESIDENTS.
6. Threats to health and safety, INCLUDING TO PATIENTS, STAFF OR RESIDENTS.
7. THE number of persons affected by the violations.
8. THE number of violations.

9. THE size of the facility.

10. THE length of time that the violations have been occurring.

11. THE TYPE OF HEALTH CARE INSTITUTION.

12. WHETHER THE HEALTH CARE INSTITUTION AND STAFF ARE IN COMPLIANCE WITH THE REPORTING REQUIREMENTS PURSUANT TO SECTION 46-454.

D. Pursuant to interagency agreement specified in section 36-409, the director may assess a civil penalty, including interest, in accordance with 42 United States Code section 1396r. A person may appeal this assessment by requesting a hearing before the director in accordance with subsection B of this section. Civil penalty amounts may be established by rules adopted by the director that conform to guidelines or regulations adopted by the secretary of the United States department of health and human services pursuant to 42 United States Code section 1396r.

E. Actions to enforce the collection of penalties assessed pursuant to subsections A and D of this section shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in the county in which the violation occurred.

F. Penalties assessed under subsection D of this section are in addition to and not in limitation of other penalties imposed pursuant to this chapter. All civil penalties and interest assessed pursuant to subsection D of this section shall be deposited, PURSUANT TO SECTIONS 35-146 AND 35-147, in the nursing care institution resident protection revolving fund established by section 36-431.02. The director shall use these monies for the purposes prescribed by 42 United States Code section 1396r, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of the deficiencies or closure and reimbursement of residents for personal monies lost.

G. The department shall ~~transmit~~ DEPOSIT CIVIL penalties assessed under subsection A of this section ~~to~~ IN the state general fund.

Sec. 7. Section 36-446.02, Arizona Revised Statutes, is amended to read:

36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of eleven members appointed by the governor.

B. The board shall include:

1. One administrator who holds an active license issued pursuant to this article OR WHO IS RETIRED.

2. One ASSISTED LIVING FACILITY manager who holds an active license issued pursuant to this article OR WHO IS RETIRED.

3. One administrator of a nonprofit or faith-based skilled nursing facility WHO EITHER HOLDS AN ACTIVE LICENSE ISSUED PURSUANT TO THIS ARTICLE OR WHO IS RETIRED.

4. One administrator of a proprietary skilled nursing facility WHO EITHER HOLDS AN ACTIVE LICENSE ISSUED PURSUANT TO THIS ARTICLE OR WHO IS RETIRED.

5. Two managers of an assisted living center ~~as defined in section 36-401~~ WHO EITHER HOLD AN ACTIVE LICENSE ISSUED PURSUANT TO THIS ARTICLE OR WHO ARE RETIRED.

6. One manager of an assisted living home ~~as defined in section 36-401~~ WHO EITHER HOLDS AN ACTIVE LICENSE ISSUED PURSUANT TO THIS ARTICLE OR WHO IS RETIRED.

~~7. Two public members who are not affiliated with a nursing care institution or an assisted living facility.~~

~~8.~~ 7. One public member who represents an organization that advocates for the elderly.

~~9.~~ 8. One person who is a family member of a resident OR A PERSON WHO WAS A RESIDENT IN THE PREVIOUS THREE YEARS in either a skilled nursing facility or an assisted living facility at the time the person is appointed to the board.

9. ONE PERSON WHO IS A CURRENT OR FORMER RESIDENT OF A SKILLED NURSING FACILITY OR AN ASSISTED LIVING FACILITY.

10. ONE PUBLIC MEMBER WHO REPRESENTS AN ORGANIZATION THAT ADVOCATES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE, DEMENTIA OR OTHER RELATED NEUROCOGNITIVE DISEASES OR DISORDERS.

C. THE BOARD MAY NOT HAVE MORE THAN THREE BOARD MEMBERS WHO ARE APPOINTED PURSUANT TO SUBSECTION B, PARAGRAPHS 1 THROUGH 6 OF THIS SECTION AND WHO ARE RETIRED. EACH BOARD MEMBER SPECIFIED IN SUBSECTION B, PARAGRAPHS 1 THROUGH 6 OF THIS SECTION WHO IS RETIRED MUST HAVE HAD AN ACTIVE LICENSE ISSUED PURSUANT TO THIS ARTICLE WITHIN THE PREVIOUS TWO YEARS AT THE TIME OF APPOINTMENT TO THE BOARD AND MAY NOT HAVE HAD ANY DISCIPLINARY ACTION TAKEN AGAINST THE PERSON'S LICENSE OR HAD A LICENSE ISSUED PURSUANT TO THIS ARTICLE REVOKED.

~~C.~~ D. Board members who are not affiliated with a nursing care institution or an assisted living facility shall not have a direct financial interest in nursing care institutions or assisted living facilities.

~~D.~~ E. A board member shall not serve on any other board relating to long-term care during the member's term with the board.

~~E.~~ F. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.

~~F.~~ G. Board members who are not affiliated with a nursing care institution or an assisted living facility shall be appointed for two-year terms. Board members who are the administrator of a nursing care institution or the manager of an assisted living facility shall be appointed for three-year terms.

~~G.~~ H. A board member shall not serve for more than two consecutive terms.

~~H.~~ I. The board shall meet at least twice a year.

~~I.~~ J. A majority of the board members constitutes a quorum.

~~J.~~ K. Board members are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.

~~K.~~ L. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty percent of board meetings over the course of one calendar year vacates the board member's position. The board shall notify the governor of the vacancy.

Sec. 8. Section 46-452, Arizona Revised Statutes, is amended to read:

46-452. Protective services workers; powers and duties; immunity; communications; access to records

A. ~~A~~ EACH protective services worker shall:

1. Receive reports of abused, exploited or neglected vulnerable adults.

2. Receive from any source oral or written information regarding an adult who may be in need of protective services.

3. On receipt of such information make an evaluation to determine if the adult is in need of protective services and what services, if any, are needed.

4. Offer an adult in need of protective services or ~~his~~ THE ADULT'S guardian whatever services appear appropriate in view of the evaluation.

5. File petitions as necessary for the appointment of a guardian or conservator or the appointment of a temporary guardian or temporary conservator or make application for a special visitation warrant as provided for in title 14, chapter 5.

6. FILE FOR AN ORDER OF PROTECTION PURSUANT TO SECTION 13-3602 OR AN INJUNCTION AGAINST HARASSMENT PURSUANT TO SECTION 12-1809 AS A THIRD PARTY ON BEHALF OF THE VULNERABLE ADULT TO PREVENT AN ALLEGED PERPETRATOR FROM HAVING ACCESS TO THE VULNERABLE ADULT.

B. The department or a protective services worker employed by the department may not be appointed as guardian, conservator or temporary guardian.

C. An adult protective services worker is immune from civil liability for applying for a special visitation warrant or for filing a petition for guardianship or conservatorship unless the application or filing is done in bad faith.

D. For the purposes of this chapter, communications concerning a person who is incarcerated in any jail, prison, detention center or correctional facility or concerning a patient in the Arizona state hospital are not reports that require evaluation by a protective services worker.

E. THE DEPARTMENT OR A PROTECTIVE SERVICES WORKER, IN PERFORMING OFFICIAL DUTIES, MAY ACCESS LAW ENFORCEMENT RECORDS RELATED TO AN ADULT PROTECTIVE SERVICES CASE. A LAW ENFORCEMENT ENTITY SHALL FURNISH RELEVANT RECORDS TO ADULT PROTECTIVE SERVICES ON REQUEST.

Sec. 9. Section 46-454, Arizona Revised Statutes, is amended to read:

46-454. Duty to report abuse, neglect and exploitation of vulnerable adults; duty to make medical records available; violation; classification

A. A health professional, emergency medical technician, home health provider, hospital intern or resident, speech, physical or occupational therapist, long-term care provider, social worker, peace officer, medical examiner, guardian, conservator, fire protection personnel, developmental disabilities provider, employee of the department of economic security or other person who has responsibility for the care of a vulnerable adult and who has a reasonable basis to believe that abuse, neglect or exploitation of the VULNERABLE adult has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to the adult protective services central intake unit. The guardian or conservator of a vulnerable adult shall immediately report or cause reports to be made of such reasonable basis to the superior court and the adult protective services central intake unit. ~~All of~~ The ~~above~~ reports REQUIRED BY THIS SUBSECTION shall be made immediately by telephone or online.

B. If an individual listed in subsection A of this section is an employee or agent of a health care institution as defined in section 36-401 and the health care institution's procedures require that all suspected abuse, neglect and exploitation be reported to adult protective services as required by law, the individual is deemed to have complied with the requirements of subsection A of this section by reporting or causing a report to be made to the health care institution in accordance with the health care institution's procedures.

C. An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of a vulnerable adult or a person who has responsibility for any other action concerning the use or preservation of the vulnerable adult's property and who, in the course of fulfilling that responsibility, discovers a reasonable basis to believe that abuse, neglect or exploitation of the VULNERABLE adult has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to the adult protective services central intake unit. ~~All of~~ The ~~above~~ reports REQUIRED BY THIS SUBSECTION shall be made immediately by telephone or online.

D. Reports pursuant to subsections A and C of this section shall contain:

1. The names and addresses of the VULNERABLE adult and any persons having control or custody of the VULNERABLE adult, if known.

2. The VULNERABLE adult's age and the nature and extent of the VULNERABLE adult's vulnerability.

3. The nature and extent of the abuse, neglect or exploitation.

4. Any other information that the person reporting believes might be helpful in establishing the cause of the abuse, neglect or exploitation.

E. Any person other than one required to report or cause reports to be made ~~in~~ PURSUANT TO subsection A or C of this section who has a reasonable basis to believe that abuse, neglect or exploitation of a vulnerable adult has occurred may report the information to a peace officer or to the adult protective services central intake unit.

F. A person having custody or control of medical or financial records of a vulnerable adult for whom a report is required or authorized under this section shall make those records, or a copy of those records, available to a peace officer or adult protective services worker investigating the vulnerable adult's abuse, neglect or exploitation on written request for the records signed by the peace officer or adult protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.

G. If reports pursuant to this section are received by a peace officer, the peace officer shall notify the adult protective services central intake unit as soon as possible and make that information available to them, INCLUDING ALL RELATED POLICE RECORDS. A PEACE OFFICER SHALL PROVIDE THE INFORMATION TO ADULT PROTECTIVE SERVICES AS SOON AS POSSIBLE.

H. A person required to receive reports pursuant to subsection A, C or E of this section may take or cause to be taken photographs of the abused VULNERABLE adult and the vicinity involved. Medical examinations, including radiological examinations of the involved VULNERABLE adult, may be performed. Accounts, inventories or audits of the exploited VULNERABLE adult's property may be performed. The person, department, agency or court that initiates the photographs, examinations, accounts, inventories or audits shall pay the associated costs in accordance with existing statutes and rules. If any person is found to be responsible for the abuse, neglect or exploitation of a vulnerable adult in a criminal or civil action, the court may order the person to make restitution as the court deems appropriate.

I. If psychiatric records are requested pursuant to subsection F of this section, the custodian of the records shall notify the attending

psychiatrist, who may excise from the records, before they are made available:

1. Personal information about individuals other than the patient.

2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.

J. If any portion of a psychiatric record is excised pursuant to subsection I of this section, a court, on application of a peace officer or adult protective services worker, may order that the entire record or any portion of the record containing information relevant to the reported abuse, neglect or exploitation be made available to the peace officer or adult protective services worker investigating the abuse, neglect or exploitation.

K. A licensing agency shall not find that a reported incidence of abuse at a care facility by itself is sufficient grounds to allow the agency to close the facility or to find that all residents are in imminent danger.

L. Retaliation against a person who in good faith reports abuse, neglect or exploitation is prohibited. Retaliation against a vulnerable adult who is the subject of a report is prohibited. Any adverse action taken against a person who reports abuse, neglect or exploitation or a vulnerable adult who is the subject of the report within ninety days after the report is filed is presumed to be retaliation.

M. A person who violates this section is guilty of a class 1 misdemeanor, except THAT if the failure to report involves an offense listed in title 13, chapter 14, the person is guilty of a class 6 felony.

Sec. 10. Vulnerable adult system study committee; membership; duties; report; delayed repeal

A. The vulnerable adult system study committee is established consisting of the following members:

1. Two members of the house of representatives who are appointed by the speaker of the house of representatives and who are members of different political parties. The speaker of the house of representatives shall designate one of these members to serve as cochairperson of the committee.

2. Two members of the senate who are appointed by the president of the senate and who are members of different political parties. The president of the senate shall designate one of these members to serve as cochairperson of the committee.

3. The director of the department of health services or the director's designee.

4. The director of the department of economic security or the director's designee.

5. The director of the Arizona health care cost containment system or the director's designee.

6. One member who represents the governor's office and who is appointed by the governor.

7. One member who represents the attorney general's office and who is appointed by the attorney general.

8. One member who currently serves as the department of economic security's long-term care ombudsman or the ombudsman's designee.

9. One member who currently serves as a public fiduciary and who is appointed by the governor.

10. Two members who are employed by a local law enforcement agency or who are employed by a statewide organization that represents law enforcement and who are appointed by the governor.

11. The executive director of the Navajo area agency on aging or the executive director's designee.

12. The executive director of the intertribal council of Arizona or the executive director's designee.

13. Two members who represent assisted living facilities and who are appointed by the speaker of the house of representatives.

14. Two members who represent nursing care institutions and who are appointed by the governor.

15. One member who represents a statewide organization that advocates for elderly vulnerable adults and who is appointed by the president of the senate.

16. One member who represents a statewide organization that advocates on behalf of persons affected by Alzheimer's disease and who is appointed by the president of the senate.

17. One member who represents a statewide association that advocates on behalf of persons who provide services to persons with developmental disabilities and who is appointed by the speaker of the house of representatives.

18. One health care professional who is appointed by the speaker of the house of representatives and who both:

(a) Is licensed pursuant to title 32, Arizona Revised Statutes.

(b) Provides health care services to elderly vulnerable adults.

19. One member who is on the governor's advisory council on aging and who is appointed by the governor.

20. One member who represents a statewide association representing firefighters in this state and who is appointed by the president of the senate.

B. The vulnerable adult system study committee shall:

1. Develop and implement a coordinated vulnerable adult delivery system that ensures the health and safety of vulnerable adults.

2. Recommend best practices relating to responding to and investigating complaints.

3. Research best practices related to adult protective services at the state, municipality and community levels.

4. Research and make recommendations on how the vulnerable adult system can ensure that vulnerable adults receive services they require after the vulnerable adult system completes its investigatory duties, including assigning a specific agency with the responsibility to provide or coordinate case management.

5. Research and identify common statewide outcomes.

6. Identify best practices for data collection and data sharing by various entities involved in providing vulnerable adult services.

7. Review and recommend changes to the statutes and rules that govern vulnerable adult services.

C. The cochairpersons may designate work groups to research, study and make recommendations to the study committee. At least two work groups shall be established to separately address the needs of persons with developmental disabilities and persons who are elderly or who have a physical disability, including the training requirements for persons who are caring for these populations.

D. Once a strategic direction is established, the department of economic security, in conjunction with the work groups, shall develop an action plan for implementation.

E. Public members are eligible to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2, Arizona Revised Statutes.

F. On or before December 31, 2024, the study committee shall provide a status update of its progress, including any recommended statutory changes, to the members of the health and human services committees of the house of representatives and the senate, or their successor committees. On or before October 1, 2025, the study committee shall submit a report of its findings and recommendations to the governor, the president of the senate and the speaker of the house of representatives and shall provide a copy of this report to the secretary of state.

G. This section is repealed from and after December 31, 2025.

Sec. 11. Rulemaking

The department of health services shall adopt rules to implement this act.

Sec. 12. Effective date

Section 36-405.03, Arizona Revised Statutes, as added by this act, is effective from and after June 30, 2025.

E-1.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 13, Articles 2-5, 7-8, 11-14, 16, 19- 22

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 13, 2025

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 13, Articles 2-5, 7-8, 11-14, 16, 19- 22

Summary

This Five-Year Review Report (5YRR) from the Department of Environmental Quality (Department) relates to ninety-eight (98) rules in Title 18, Chapter 13 regarding Solid Waste Management. Specifically, the report covers the following Articles:

- Article 2 - Solid Waste Definitions; Exemptions
- Article 3 - Refuse and Other Objectionable Wastes
- Article 4 - Solid Waste Facilities Subject to Best Management Practices
- Article 5 - Requirements for Solid Waste Facilities Subject To Self-Certification
- Article 7 - Solid Waste Facility Plan Review Fees
- Article 8 - General Permits
- Article 11 - Collection, Transportation and Disposal of Human Excreta
- Article 12 - Waste Tires, Used Tires
- Article 13 - Special Waste And Best Management Practices For Shredder Residue
- Article 14 - Biohazardous Medical Waste and Discarded Drugs
- Article 16 - Best Management Practices for Petroleum Contaminated Soil
- Article 19 - Lead Acid Battery Recycling
- Article 20 - Used Oil
- Article 21 - Solid Waste Landfill Registration Fees

- Article 22 - New Tire Sellers

In the prior 5YRR for these rules, which was approved by the Council in March 2020, the Department proposed to amend numerous rules as outlined in Section 10 of the current report. The Department indicates it completed all proposed changes to the rules except for amendments to rules in Article 3 related to Refuse and Other Objectional Wastes. The Department indicates as it conducted initial evaluations of Article 3 and conducted a more limited update of the frequency of collection requirement in R18-13-308, it became apparent that a broader rulemaking to update and modernize the entirety of the now 50-year-old rules would require substantial resources and time commitments in order to properly evaluate potential impacts on stakeholders and local authorities who have developed decades of policies and procedures based on the requirements of the Article. The Department states, at the same time, the potential benefits and impacts of such an undertaking remain unclear. Weighing the costs of such a rulemaking against the uncertain impacts, the Department indicates it prioritized other rulemakings it determined to have greater impact on public health and the environment. The Department states it plans to convene cities, counties, and stakeholders in early 2025 to assess potential updates or modifications to Article 3 and whether a single rulemaking or multiple rulemakings would be appropriate.

Proposed Action

In the current report, the Department indicates it will begin work on an expedited rulemaking for Chapter 13 to incorporate recommendations made in Sections 4 and 6 of the report. Specifically, the Department indicates it will update the incorporations by reference outlined in Section 4 of this report to incorporate the listed EPA rulemakings, and any subsequent EPA rulemakings, and will incorporate the changes listed in Section 6 of this report to improve clarity of the rules. The Department anticipates conducting this expedited rulemaking in the middle of 2025, to be completed by the end of that year. Additionally, following this 5YRR, the Department states it plans to convene cities, counties, and stakeholders after this to assess potential updates or modifications to Article 3 and whether a single rulemaking or multiple rulemakings would be appropriate, as described in Section 10 of the report.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states that due to increasing costs resulting primarily from population growth and inflation, the Solid Waste Program fees were no longer sufficient to cover critical regulatory functions, resulting in budgetary shortfall. The Department indicates that the Arizona Legislature recognized the need to remedy those shortfalls, and passed HB 2367 in 2024, which granted the Department the authority to adjust existing fees and establish new fees in order to

maintain self-sufficiency within the Solid Waste Program. The Department outlined the economic impacts as follows:

- The Department believes the impact of the exemptions in Article 2 is deregulatory and continues to result in less regulatory costs.
- The Department believes the economic impacts of Article 3 today are no greater than those when the Article was created in relation to the day to day and month to month expenses at that time.
- The Department believes the probable economic impacts of Article 4, Article 5, Article 7, Article 8, Article 11, Article 12, Article 13, Article 14, Article 16, Article 19, Article 20, Article 21, and Article 22 on the state's economy, small business and consumers described in the 2024 Economic Impact Statement (EIS) remain accurate and have not changed since the effective date.

According to the Department, stakeholders directly affected by the rules include all 15 counties within the state, local municipalities, and the approximately 2,000 solid waste facilities and entities with different media types subject to Department regulatory compliance and oversight under Solid Waste Management, as well as the general public.

3. <u>Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?</u>

The Department has provided the following information regarding the probable benefits and probable costs of the rules:

- The Department believes the benefits clearly outweigh the costs given the negligible costs of Article 2's rules.
- The Department believes the benefits of the rules in Article 3 outweigh the costs because it is a priority of the state to ensure refuse and other objectionable waste do not pose hazards to public health and do not create environmental nuisances.
- The Department has determined that the costs of Article 4 and Article 5 rules are outweighed by their benefits because it is a priority of the State to maintain a self-sufficient fee-based Solid Waste Program.
- The Department has determined that Article 7 benefits outweigh the costs because it is a priority of the state to ensure solid waste facilities meet standards necessary to protect public health.
- The Department has determined that the costs of Article 8 are outweighed by its benefits, particularly given the reduced regulatory burden associated with general permits, because it is a priority of the State to monitor waste generated from landfills at mining operations.
- The Department has determined the costs of Article 11's rules are outweighed by their benefits because it is a priority to ensure sewage and human excreta collection, transport, and disposal does not cause hazards to public health nor create environmental nuisances.
- The Department has determined the costs of Article 12 are outweighed by their benefits because it is a priority of the State to ensure waste tires are properly handled and disposed of and do not create hazards to the public health.

- The Department has determined that the costs of Article 13 are outweighed by their benefits because it is a priority of the State to monitor these special wastes to protect public health.
- The Department has determined that the costs of Article 14 are outweighed by their benefits because it is a priority of the State to prevent biohazardous medical wastes from becoming hazards to public health.
- The Department has determined that the costs of Article 16 are outweighed by their benefits because it is a priority of the State to prevent Petroleum Contaminated Soil (PCS) from posing a hazard to public health.
- The Department has determined that the costs of Article 19, Article 20, Article 21, and Article 22 are outweighed by their benefits because it is a priority of the State to maintain a self-sufficient fee-based Solid Waste Program.

4. Has the agency received any written criticisms of the rules over the last five years?

While the Department indicates it has engaged in significant stakeholder engagement, including public meetings, sharing informational documents, and public comment, related to rulemakings in 2021, 2022, and 2024 involving Title 18, Chapter 13 rules, it received no written criticisms during either the informal or formal comment periods for these rulemakings, and has not received any other written criticisms of the rules within the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are mostly clear, concise, and understandable except for the following rules for which minor clarifications could be made:

- **R18-13-1301**
  - The definition of "Off-site" in this section refers to the definition of "On site" in A.R.S. § 49-851(3). However the definition for "On site" in A.R.S. § 49-851 is under subsection A(2). This reference should be updated for clarity and accuracy.
  - The definition of "Recycling" in this section refers to the definition of recycling in A.R.S. § 49-831(21). However, recycling is defined in A.R.S. § 49-831(15). This reference should be updated for clarity and accuracy.
- **R18-13-1401**
  - The incorporations by reference in the definition of "dedicated vehicle", and in the definition of "universal biohazardous symbol" can be updated to the most recent version of the CFR. As of the date of this report, referenced sections of the CFR have not been changed since the last update to Chapter 13's incorporation by reference, so updating the references will not alter the substance of the rule.
- **R18-13-1406**
  - The reference to 49 CFR 172.201 in Section B can be updated to the most recent version of the CFR. As of the date of this report, the referenced section of the CFR has not been changed since the last update Chapter 13 incorporations by reference, so updating the reference will not alter the substance of the rule.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates that certain references to federal rules in Chapter 13 are outdated and do not account for rulemakings promulgated by the U.S. Department of Transportation (USDOT). The Department indicates it conducts rule updates periodically in order to ensure consistency with state and federal rules and statutes. However, since the last such rulemaking was conducted in 2020, the USDOT has promulgated several rulemakings altering portions of the CFR referenced in rule R18-13-1406(B)(2). The Department indicates it will update the incorporations by reference impacted by these USDOT rulemakings in order to maintain consistency with federal law. Specifically, the following rules are not consistent with other rules or statute as described above:

- **R18-13-501**
  - Pursuant to A.R.S. § 49-761, ADEQ has an unfulfilled statutory mandate to enact regulations for measured, enforceable, and effective design and operation and financial responsibility standards and requirements for solid waste transfer facilities.
- **R18-13-1406**
  - Subsection B(2) references 49 CFR 172.300 through 172.338, revised as of October 1, 2020. The references in this rule are not consistent with the current version of the CFR as updated by the USDOT regulations referenced above.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are currently enforced as written.

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

The Department indicates the following Articles contain rules with corresponding federal law, but states the rules are not more stringent than that corresponding federal law:

- **Article 8:**
  - The provisions of the general permit in R18-13-802 apply the solid waste standards of 40 CFR 257 and may not be more stringent, per A.R.S. § 49-761(C). They are thus equivalent to federal law.
- **Article 14:**
  - Article 14 corresponds in part with 29 CFR 1910.1030, Bloodborne pathogens; 49 CFR 173.197, Regulated Medical Waste; and 40 CFR 266.505, Prohibition on Sewering Hazardous Pharmaceuticals. The rules in Article 14 are not more stringent than corresponding federal law.

- **Article 20:**
    - Article 20 corresponds in part with 42 USC 6935, Restrictions on Recycled Oil, as amended on January 1,1997 and 40 CFR 279, Standards for the Management of USed Oil. The rules in Article 20 are not more stringent than corresponding federal law.

10. <u>For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?</u>

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

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

The Department indicates the following rules require the issuance of a permit, license, or agency authorization:

- **Article 8:**
    - The rules in Article 8 were adopted after July 29, 2010. R18-13-801establishes fees for operation under general permit as established in R18-13-802. R18-13-802 establishes a general permit in compliance with A.R.S. § 41-1037.
- **Article 11:**
    - All of the rules in Article 11 were adopted before July 29, 2010 except for R18-13-1103, General Requirements; License Fees. A general permit would not be technically feasible, per A.R.S. § 41-1037(A)(3), for the licensing of septage hauling vehicles subject to R18-13-1103 because the authorizing statute, A.R.S. § 49- 104(B)(14), provides for the inspection of each vehicle. Whereas a general permit would list elements necessary and conditions prohibited for a vehicle transporting medical waste and allow the vehicle to be licensed upon the owner's statement that the vehicle qualified, the inspection by ADEQ personnel results in an approve or deny decision based on the presentation of that specific vehicle. Vehicle inspections require what is essentially an individual permit.
- **Article 12:**
    - All of the rules in Article 12 were adopted before July 29, 2010 except R18-13-1211, R18-13-1212, and R18-13-213. R18-13-1211 and R18-13-1212 result in "issuance" of an agency authorization. Pursuant to A.R.S. § 41-1037(A)(2), the registration before operation required by these rules is an alternative type of authorization specifically authorized by state statute (A.R.S. §

44-1303(B) in the case of R18-13-1211 and A.R.S. § 44-1304.01 in the case of R18-13-1212).

- **Article 14:**
  - R18-13-1405, R18-13-1416, and R18-13-1420 were adopted before July 29, 2010. R18-13-1401, R18-13-1402, R18-13-1403, R18-13-1406, R18-13-1407, R18-13-1408, R18-13-1418, and R18-13-1419 were amended after July 29, 2010, but do not require issuance of an agency permit, license, or authorization. R18-13-1409 was amended after July 29, 2010, and requires issuance of an agency authorization. Pursuant to A.R.S. § 41-1037(A)(3), the use of a general permit is technically infeasible in R18-13-1409 because transporters meet the requirements for licensing through criteria and information specific to their vehicles. Therefore, individual processing is required in order to issue licenses and conduct inspections. The transporters pay fees according to that processing, capped at a maximum fee. R18-13-1410 contains a license to which the requirements of R18-13-1411, R18-13-1412, R18-13-1413, and R18-13-1417 apply, and to which R18-13-1414 and R18-13-1415 provide alternatives to. However, A.R.S. § 49-762(A)(3) requires individual solid waste facility plans for medical waste facilities. Therefore, it is not possible to utilize a general permit for a license under R18-13-1410 or its associate rules.
- **Article 16:**
  - R18-13-1601, R18-13-1605, R18-13-1609, R18-13-1611, R18-13-1612, R18-13-1614 were adopted before July 29, 2010. R18-13-1602, R18-13-1603, R18-13-1604, R18-13-1608, R18-13-1613 were amended after July 29, 2010, but do not require issuance of an agency permit, license, or authorization. R18-13-1607 and R18-13-1610 were amended after July 29, 2010 and require a permit. A.R.S. § 41-1037 does not apply to these permits (special waste treatment, storage or disposal facility plan approvals) because the facilities are not substantially similar in nature. See also A.R.S. § 49-706(A)(1)(b). This conclusion is supported by the fact that the legislature specifically authorized an alternative type of license for these facilities in A.R.S. §§ 49-762(A)(4) and 49-858, which makes a general permit not applicable under A.R.S. § 41-1037(A)(2).

Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Department relates to ninety-eight (98) rules in Title 18, Chapter 13 regarding Solid Waste Management. The Department indicates it will begin work on an expedited rulemaking for Chapter 13 to incorporate recommendations made in Sections 4 and 6 of the report. Specifically, the Department indicates it will update the incorporations by reference outlined in Section 4 of this report to incorporate the listed EPA rulemakings, and any subsequent EPA rulemakings, and will incorporate the changes listed in Section 6 of this report to improve clarity of the rules. The Department anticipates conducting this expedited rulemaking in the middle of 2025, to be completed by the end of that year. Additionally,

following this 5YRR, the Department states it plans to convene cities, counties, and stakeholders after this to assess potential updates or modifications to Article 3 and whether a single rulemaking or multiple rulemakings would be appropriate, as described in Section 10 of the report.

Council staff recommends approval of this report.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

December 24, 2024

SENT VIA EMAIL ONLY

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., #302
Phoenix, AZ 85007
grrc@azdoa.gov

Re: Submittal of Five-Year Review Report for A.A.C. Title 18, Chapter 13, Articles 2, 3, 4, 5, 7, 8, 11, 12, 13, 14, 16, 19, 20, 21, and 22

Dear Chair Klein:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's Five-Year Review Report for A.A.C. Title 18, Chapter 13, Articles 2: Solid Waste Definitions; Exemptions, 3: Refuse and Other Objectionable Wastes, 4: Solid Waste Facilities Subject to Best Management Practices, 5: Solid Waste Facilities Subject to Self-Certification, 7: Solid Waste Facility Plan Review Fees, 8: General Permits, 11: Collection, Transportation and Disposal of Human Excreta, 12: Waste Tires, Used Tires, 13: Special Waste and Best Management Practices for Shredder Residue, 14: Biohazardous Medical Waste and Discarded Drugs, 16; Best Management Practices for Petroleum Contaminated Soil, 19: Lead Acid Battery Recycling, 20: Used Oil, 21: Solid Waste Landfill Registration Fees, and 22: New Tire Sellers.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact John MacBain, Waste Programs Division at 602-771-0101 or macbain.john@azdeq.gov, if you have any questions.

Sincerely,

DocuSigned by:
Karen Peters
72DC0E312D584BF...

Karen Peters
Deputy Director

Enclosure

Arizona Department of Environmental Quality

Five-Year Review Report

Title 18. Environmental Quality

Chapter 13. Department of Environmental Quality – Solid Waste Management

Article 2: Solid Waste Definitions; Exemptions

Article 3: Refuse and Other Objectionable Wastes

Article 4: Solid Waste Facilities Subject to Best Management Practices

Article 5: Requirements for Solid Waste Facilities Subject To Self-Certification

Article 7: Solid Waste Facility Plan Review Fees

Article 8: General Permits

Article 11: Collection, Transportation and Disposal of Human Excreta

Article 12: Waste Tires, Used Tires

Article 13: Special Waste And Best Management Practices For Shredder Residue

Article 14: Biohazardous Medical Waste and Discarded Drugs

Article 16: Best Management Practices for Petroleum Contaminated Soil

Article 19: Lead Acid Battery Recycling

Article 20: Used Oil

Article 21: Solid Waste Landfill Registration Fees

Article 22: New Tire Sellers

December 27, 2024

1. Authorization of the rule by existing statutes:

Article 2

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. § 49-701.01(C)

Article 4

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. § 49-761(H)

Article 3

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. § 49-761(I)

Article 5

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. § 49-762.05

Article 7

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. §§ 49-762.03(F) and 49-857(C)

Article 8

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. § 49-706

Article 11

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. §§ 49-104(B)(14) and 49-104(B)(17)

Article 12

General Statutory Authority: A.R.S. §§ 41-1003, 49-705, and 49-761(A)

Specific Statutory Authority: is A.R.S. §§ 44-1304(A), (B), (C) and (F), 44-1306(A), and 49-104(B)(17)

Article 13

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. §§ 49-762, and 49-851·through 49-868

Article 14

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. § 49-761(D)

Article 16

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. §§ 49-762, and 49-851 through 49-868

Article 19

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. § 49-1322(D)

Article 20

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. § 49-802(B)

Article 21

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. § 49-747

Article 22

General Statutory Authority: A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A)

Specific Statutory Authority: A.R.S. § 44-1302(N)

2. The objective of each rule:

Rule	Objective
R18-13-201	The rule exempts biosolids originating from domestic sewage from the definition of solid waste when the biosolids are applied according to state rules governing the land application of biosolids. The exemption was based on a 1997 petition from Pima County Wastewater Management Department and avoids unnecessary overlapping environmental regulation under water quality and waste statutory authority.
R18-13-202	The rule establishes an exemption from the definition of solid waste for certain accidental releases of coal slurry from pipeline leaks. Black Mesa Pipeline, Inc. petitioned the Department in 1999, to approve a statewide exemption for certain coal slurry discharges from pipelines. The Director determined that the discharges, under the conditions described in the rule, were unlikely to cause or substantially contribute to a threat to public health or the environment.
R18-13-302	The rule's objective is to provide definitions necessary to administer 18 A.A.C 13, Article 3.
R18-13-303	The rule establishes responsibilities of owners, agents or occupants of premises for unsanitary or dangerous conditions related to onsite refuse or other objectionable waste.
R18-13-304	The rule establishes authority to inspect all buildings or structures, processes, equipment or vehicles used for the storage, collection, transportation, disposal, or reclamation of refuse.
R18-13-305	The rule establishes what refuse is required to be accepted and what may be accepted at the discretion of the collection agency.
R18-13-306	The rule requires that collection agencies notify their customers about the requirements governing the storage and collection of refuse.
R18-13-307	The rule establishes minimum requirements for the storage of refuse.
R18-13-308	The rule establishes minimum requirements for the frequency of the collection of refuse and other objectionable wastes, and establishes conditions under which ADEQ may grant a variance from the twice weekly frequency requirement for the collection of garbage.
R18-13-309	The rule establishes minimum requirements for the placement of refuse on a property for collection.
R18-13-310	The rule establishes minimum requirements for the construction, maintenance, and sanitary requirements of vehicles used for collection and transportation of garbage or refuse.
R18-13-311	The rule establishes general minimum requirements for disposal of refuse.
R18-13-312	The rule establishes requirements further regulating specific methods of refuse disposal. The methods addressed include sanitary landfill, incineration, composting, garbage grinding, and manure disposal.
R18-13-401	The rule's objective is to set forth definitions of terms used in this Article.
R18-13-402	This rule's objective is to establish registration and fee requirements for facilities subject to best management practices under A.R.S. § 49-762.02. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-501	The rule establishes a registration process for solid waste facilities subject to self-certification, with timelines and fees. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-701	The rule's objective is to provide definitions necessary for the administration of the Article.
R18-13-702	The rule's objective is to provide plan review fee schedules and other provisions necessary for the administration and collection of plan review fees. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
Fee Tables	The objective of the Fee Table is to list the fee levels for New Solid Waste Facilities, fee for Modifications to Solid Waste Facility Plans, and fees for Review of Financial Responsibility Plans for Solid Waste Facilities. This rule includes a budgetary objective to maintain a fully

	sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-703	The rule's objective is to provide a process for informal review of a disputed bill for plan review fees.
R18-13-801	This rule set up fees for solid waste general permits before any were specifically identified in order to avoid any extra steps involved in fee approval each time a solid waste general permit is established. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
Table	The objective of this table is to list the fees for Solid Waste General Permits. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-802	The rule establishes a solid waste general permit under A.R.S. § 49-706 for a class of solid waste land disposal facilities that would otherwise need a solid waste facility plan under A.R.S. § 49-762.
R18-13-1102	The rule establishes the definitions necessary to administer A.R.S. § 49-104(B)(14) and Article 11.
R18-13-1103	The rule establishes the general requirements for vehicles and related equipment used to handle sewage or human excreta removed from septic tanks and other containers. The rule establishes requirements for a vehicle owner, including the procedure for obtaining a license, the terms of the license, and details regarding payment of a license fee. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-1106	The rule establishes authority for ADEQ to inspect vehicles and related equipment used to handle sewage or human excreta removed from septic tanks and other containers to assure compliance with the Article.
R18-13-1112	The rule establishes basic sanitary requirements for vehicles and related equipment used to handle sewage or human excreta removed from septic tanks and other containers.
R18-13-1116	The rule establishes a process for suspending or revoking septage vehicle licenses.
R18-13-1117	The rule establishes a process for ADEQ to reinstate a suspended or revoked license for a vehicle or related equipment used to handle sewage or human excreta removed from septic tanks and other containers.
R18-13-1201	The rule establishes the definitions necessary to administer A.R.S. §§ 44- 1301 through 1307 and Article 12.
R18-13-1202	The rule requires a one-time notification to ADEQ prior to burial of mining waste tires. The rule also prescribes the circumstances under which the burial of mining waste tires may take place.
R18-13-1203	The rule establishes the requirements for covering mining waste tires that are buried.
R18-13-1204	The rule requires that an operator of a mining facility file an annual report with the Department that provides information about each burial cell of mining waste tires that was established during the preceding year.
R18-13-1205	The rule establishes a requirement that a mining facility operator file a certification with the Department within 30 days after placement of a final cover on a burial cell.
R18-13-1206	The rule establishes a prohibition against a mining facility storing more than 500 mining waste tires without having first obtained Department approval to operate as a waste tire collection facility.
R18-13-1207	The rule establishes a requirement that an operator maintain records indicating how many mining waste tires are buried in each burial cell for three years.
R18-13-1208	The rule establishes authority for the Department to inspect mining facilities to determine compliance with Article 12.
R18-13-1210	The rule establishes a requirement that the use of waste tires as daily cover at a solid waste landfill is subject to the solid waste facility plan required under A.R.S. § 49-762 for that landfill. The rule further prohibits mining waste tires from being used as daily cover for more than two consecutive days.

R18-13-1211	The rule requires registration and basic operating procedures for new waste tire collection sites. It also defines terms used in the section and establishes an initial ($500) and annual ($75) fee for registration. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-1212	The rule requires registration and basic operating procedures for certain outdoor used tire sites. It also defines terms used in the section and establishes an initial ($500) and annual ($75) fee for registration. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-1212.01	This rule's objective is to establish registration and fee requirements for waste tire collection sites subject to plan approval under A.R.S. § 49-762(A)(7). This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-1213	The rule ensures that tire sites that may be classified and required to pay a fee under more than one of 3 different rules, need only pay the highest fee. One site may otherwise be required to pay more than one fee under rules authorized by A.R.S. §§ 44-1303(B), 44-1304.01(A)(8) and 49-762.05(H). This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-1301	The rule's objective is to set forth definitions of terms used in this Article.
R18-13-1302	Manifests are multi-copy tracking documents that accompany the waste from generation to its final determination. Copies are sent to ADEQ and provide the agency with notice of the location, nature and quantity of special waste generated and its movement thereafter. The rule's objective is to set forth special waste generator identification number and manifesting requirements.
R18-13-1303	The rule's objective is to set forth special waste shipper and manifesting requirements for this Article and Article 16.
R18-13-1304	The rule's objective is to set forth special waste receiving facility manifesting requirements.
R18-13-1305	The rule's objective is to set forth record retention requirements for special waste handlers.
R18-13-1307	The rule's objective is to set forth best management practices, including sampling protocols and fees, for waste from shredding motor vehicles. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
Table A	Table A's objective is to list the constituents sought and the frequency of sampling when testing shredder residue piles as provided in R18-13-1307. Table A is referenced in R18-13-1307(A)(1)(a)(ii).
Exhibit 1	The rule's objective is to provide a visual aid for the selection of sample points in a shredder residue pile as described in R18-13-1307.
Appendix A	The rule's objective is to provide the form for applying for the Arizona special waste identification number required by R18-13-1302.
Appendix B	The rule's objective is to provide a special waste manifest form.
R18-13-1401	The rule defines terms used in Article 14.
R18-13-1402	The rule's objective is to describe the extent to which the article is applicable.
R18-13-1403	The rule's objective is to set forth exemptions and partial exemptions from this Article.
R18-13-1404	The rule's objective is to set forth transition provisions and compliance dates for the application of this Article.
R18-13-1405	The rule's objective is to set forth treatment standards and other requirements for generators who treat biohazardous medical waste on site.
R18-13-1406	The rule's objective is to set forth practices, including tracking document requirements, to be followed by generators of biohazardous medical waste when the waste is transported off site for treatment.

R18-13-1407	The rule's objective is to set forth packaging requirements for generators who set out biohazardous medical waste for collection for off-site treatment or disposal.
R18-13-1408	The rule's objective is to set forth storage practices required of generators of biohazardous medical waste.
R18-13-1409	The rule sets forth: 1) vehicle requirements and other procedures to be followed for the transportation of biohazardous medical waste, 2) the requirements for and procedure involved in obtaining a transporter license, and 3) the fees related to the license. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
Table 1	The objective of this table is to list Transporter License Fees. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
Table 2	The objective of this table is to list Transporter Annual Fees. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-1410	The rule's objective is to set forth requirements, including facility plan approval, for persons who store, transfer, treat, or dispose of biohazardous medical waste.
R18-13-1411	The rule's objective is to prescribe design and operation standards for storage and transfer facilities.
R18-13-1412	The rule's objective is to prescribe design and operation standards for treatment facilities.
R18-13-1413	The rule's objective is to prescribe requirements to be met in the event that a treatment facility owner or operator intends to change an approved medical waste facility plan.
R18-13-1414	The rule's objective is to specify registration requirements for manufacturers of alternative medical waste treatment methods who wish to sell their methods to potential treatment facilities in Arizona.
R18-13-1415	The rule's objective is to prescribe treatment standards to be achieved by alternative medical waste treatment methods.
R18-13-1416	The rule's objective is to prescribe requirements for recovering recyclable materials from biohazardous medical waste.
R18-13-1417	The rule's objective is to prescribe design and operational standards for municipal solid waste landfills that accept untreated medical waste.
R18-13-1418	The rule's objective is to prescribe requirements for generators of discarded drugs.
R18-13-1419	The rule's objective is to prescribe handling requirements for generators and treaters of medical sharps.
R18-13-1420	The rule's objective is to prescribe additional requirements for handling and treating certain wastes.
R18-13-1601	The rule sets forth definitions for terms used in Article 16.
R18-13-1602	The rule's objective is to explain the applicability of the Article.
R18-13-1603	The rule's objective is to set forth exemptions pertinent to this Article.
R18-13-1604	The rule's objective is to set forth procedures and requirements for determining the regulatory status of excavated soil contaminated with petroleum.
R18-13-1605	The rule's objective is to set forth the requirements applicable to transportation of Petroleum Contaminated Soil (PCS).
R18-13-1606	The rule's objective is to set forth: a) A per ton fee for PCS received in this state, and. b) A maximum fee per generator site per year. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-1607	The rule's objective is to set forth solid waste facility plan application and approval requirements for PCS treatment, storage and disposal facilities.
R18-13-1608	The rule's objective is to set forth general design and performance standards for facilities that treat, store or dispose of PCS.

R18-13-1609	The rule's objective is to set forth requirements for PCS treatment facilities.
R18-13-1610	The rule's objective is to set forth requirements for temporary PCS treatment facilities.
R18-13-1611	The rule's objective is to set forth requirements for PCS storage facilities.
R18-13-1612	The rule's objective is to set forth requirements for PCS accumulation sites.
R18-13-1613	The rule sets forth specific requirements for PCS disposal facilities in addition to the general requirements in R18-13-1608.
R18-13-1614	The rule's objective is to set forth requirements for records retention by owners of PCS facilities.
R18-13-1901	This rule's objective is to establish registration and fee requirements for collection or recycling facilities that accept lead acid batteries. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-2001	The rule's objective is to set forth definitions of terms used in this Article.
R18-13-2002	This rule's objective is to establish registration and fee requirements for used oil handlers that have received or are required to obtain an EPA identification number pursuant to 40 CFR 279.
R18-13-2003	This rule establishes requirements for used oil collection centers to request and submit a used oil collection identification number to the Department.
R18-13-2101	The rule's objective is to set forth definitions of terms used in this Article.
R18-13-2102	The rule's objective is to set forth annual registration fees for existing municipal solid waste landfills of different sizes and types. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-2103	The rule's objective is to establish annual registration fees for landfill closure and post-closure care. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-2104	This rule's objective is to establish landfill disposal fees for solid waste landfills. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.
R18-13-2201	The rule's objective is to set forth definitions of terms used in this Article.
R18-13-2204	This rule's objective is to establish fees for the sale of new motor vehicle tires. This rule includes a budgetary objective to maintain a fully sustained fee-based program that is fairly assessed against all regulated parties, in order to fund associated regulatory costs.

3. Are the rules effective in achieving their objectives? **Yes _X_ No __**

ADEQ recently concluded a rulemaking raising Solid Waste Program fees, following legislative authorization, in order to address rising costs and budget shortfalls since the fees were last set in 2012. The recently established Solid Waste Program fees are anticipated to improve the effectiveness of Chapter 13's rules in achieving their budgetary objectives. The rulemaking was submitted to the Secretary of State's office on December 24, 2024 with an immediate effective date. ADEQ has determined that Chapter 13's rules are otherwise effective at achieving their objectives.

4. Are the rules consistent with other rules and statutes? **Yes __ No _X_**

Certain references to federal rules in Chapter 13 are outdated and do not account for rulemakings promulgated by the US Department of Transportation. ADEQ conducts rule updates periodically in order to ensure consistency with state and federal rules and statutes. Since the last such rulemaking was conducted in 2020, the U.S.

Department of Transportation (USDOT) has promulgated several rulemakings altering portions of the CFR referenced in R18-13-1406(B)(2). Those USDOT promulgated rules are as follows:

1. Hazardous Materials: Adoption of Miscellaneous Petitions to Reduce Regulatory Burdens, 85 FR 75712, Nov 25, 2020.

2. Hazardous Materials: Editorial Corrections and Clarifications, 85 FR 83380, Dec. 21, 2020.

3. Hazardous Materials: Harmonization with International Standards, 87 FR 44990, July 26, 2022.

4. Hazardous Materials: Editorial Corrections and Clarifications, 87 FR 79772, Dec. 27, 2022.

ADEQ will update the incorporations by reference impacted by these EPA rulemakings in order to maintain consistency with federal law. The table below outlines the Chapter 13 rules that are not consistent with other rules or statute as described above.

Rule	Explanation
R18-13-501	Pursuant to A.R.S. § 49-761, ADEQ has an unfulfilled statutory mandate to enact regulations for measured, enforceable, and effective design and operation and financial responsibility standards and requirements for solid waste transfer facilities.
R18-13-1406	Subsection B(2) references 49 CFR 172.300 through 172.338, revised as of October 1, 2020. The references in this rule are not consistent with the current version of the CFR as updated by the EPA regulations listed above.

5. Are the rules enforced as written? **Yes _X_ No __**

The rules are enforced as written.

6. Are the rules clear, concise, and understandable? **Yes _X__ No __**

The rules are clear, concise, and understandable. Minor clarifications can be made as described in the table below.

Rule	Explanation
R18-13-1301	The definition of "Off-site" in this section refers to the definition of "On site" in A.R.S. § 49-851(3). However the definition for "On site" in A.R.S. § 49-851 is under subsection A(2). This reference should be updated for clarity and accuracy. The definition of "Recycling" in this section refers to the definition of recycling in A.R.S. § 49-831(21). However, recycling is defined in A.R.S. § 49-831(15). This reference should be updated for clarity and accuracy.
R18-13-1401	The incorporations by reference in the definition of "dedicated vehicle", and in the definition of "universal biohazardous symbol" can be updated to the most recent version of the CFR. As of the date of this report, referenced sections of the CFR have not been changed since the last update to Chapter 13's incorporation by reference, so updating the references will not alter the substance of the rule.
R18-13-1406	The reference to 49 CFR 172.201 in Section B can be updated to the most recent version of the CFR. As of the date of this report, the referenced section of the CFR has not been changed since the last update Chapter 13 incorporations by reference, so updating the reference will not alter the substance of the rule.

7. Has the agency received written criticisms of the rules within the last five years? Yes ___ No _X_

ADEQ has completed three rulemakings involving Chapter 13 since the last five-year review was conducted. In January of 2021, ADEQ completed an expedited rulemaking to make technical corrections, correct citations, and clarify language based on the recommended courses of action outlined in the prior five-year review. ADEQ did not receive public or stakeholder comments or objections during the expedited rulemaking. In January of 2022 ADEQ conducted a rulemaking to amend the state's Biohazardous Medical Waste rules within Chapter 13 to improve clarity, bring the standards up to date, correct references and citations, and ensure adequate protection of human health and the environment. ADEQ also conducted a rulemaking in December of 2024 overhauling fees throughout Chapter 13 following a new legislative mandate and to ensure self-sufficiency of the Solid Waste Program. The rulemaking process in each of these formal rulemakings involved significant stakeholder engagement, including public meetings, sharing informational documents, and public comment. ADEQ received no written criticisms regarding the Chapter 13 rules during either the informal or formal comment periods for these rulemakings, and has not received any other written criticisms of the rules within the last five years.

8. Economic, small business, and consumer impact comparison:

The previous five-year review report submitted for Chapter 13 emphasized that the fees as implemented in 2012 had allowed ADEQ to transition the Solid Waste Program toward self-sufficiency, thereby replacing prior General Fund support. Due to increasing costs resulting primarily from population growth and inflation 2012, the Solid Waste Program fees were no longer fully sufficient to cover critical regulatory functions, resulting in budgetary shortfalls. Recognizing the need to remedy those budget shortfalls, the Arizona Legislature passed HB 2367 in 2024, which granted ADEQ the authority to adjust existing fees and establish new fees in order to maintain self-sufficiency within the Solid Waste Program. ADEQ conducted a rulemaking, submitted to the Secretary of State on December 24, 2024 to implement necessary fee adjustments. The economic impacts outlined in that EIS for impacted Chapter 13 articles is described below.

Article 2: Solid Waste Definitions; Exemptions

ADEQ believes that Article 2 does not have a substantial economic impact on the State's economy, small businesses, or consumers. The rules in Article 2 did not require a cost benefit determination or an economic impact statement when promulgated because they were exempt from the requirements of Title 41, Chapter 6. Article 2 contains an exemption from the definition of solid waste for biosolids applied according to state rules governing the land application of biosolids. This exemption avoids dual regulation of the land application of biosolids and therefore reduces unnecessary regulatory burdens. Article 2 also contains an exemption for small accidental releases of coal slurry from pipeline leaks. The impact of the exemptions in Article 2 is deregulatory, and continues to result in less regulatory cost.

Article 3: Refuse And Other Objectionable Waste

Article 3, Refuse and Other Objectionable Wastes, dates back to 1964 and has not been changed since. It was transferred to ADEQ in 1987. It is probable that none of the rules in this Article had such a statement prepared for

them when they were adopted. If such a statement was prepared, it is unavailable. ADEQ enforces Article 3 throughout the state directly with its own employees and through delegation agreements between ADEQ and 13 of Arizona's 15 counties. ADEQ believes the economic impacts of Article 3 today are no greater than those when the Article was created in relation to the day to day and month to month expenses at that time.

Article 4: Solid Waste Facilities Subject To Best Management Practices

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes initial and annual registration fees for solid waste facilities subject to best management practices. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 5: Requirements For Solid Waste Facilities Subject To Self-Certification

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes initial and annual registration fees for transfer facilities, waste tire site, and waste tire shredding and processing facilities subject to self-certification. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 7: Solid Waste Facility Plan Review

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes increasing the maximum fee amounts for fees related to plan review. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 8: General Permits

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes increases to all general permit fees. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 11: Collection Transportation, And Disposal Of Human Excreta

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $1.8 million in increased fees will

be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes new initial and annual license fees for septage haulers. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 12: Waste Tires; Used Tires

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes increases to initial and annual registration fees for waste tire collection sites and outdoor used tire sites, and a new registration fee for waste tire collect sites that are required to obtain plan approval. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 13: Special Waste and Best Management Practices For Shredder Residue

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes a new initial and annual registration fees for generators and shippers of waste tire residue, and increased tonnage fees for shredder residue transported to a facility regulated by ADEQ for treatment, storage, or disposal. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 14: Biohazardous Medical Waste And Discarded Drugs

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes a new initial license and annual renewal fees for biohazardous medical waste transporters, and new annual registration fees for biohazardous medical waste treatment, disposal, storage, and transfer facilities. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 16: Best Management Practices For Petroleum Contaminated Soil

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes increased tonnage fees for the treatment, storage disposal of PCS, and new initial and annual registration fees for PCS generators. . Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 19: Lead Acid Battery Recycling

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes new initial and annual registration fees for collection or recycling facilities that accept lead acid batteries. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 20: Used Oil

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. The EIS estimated the total impact for the rulemaking to be $12 million, which is the approximate total amount of increased fees across all programs. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees throughout Chapter 13, which includes a new initial and annual registration fees for used oil processors, burners, transporters, and marketers. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 21: Solid Waste Landfill Registration Fees

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $3.5 million in increased fees will be collected pursuant to landfill disposal fees for municipal and non-municipal solid waste landfills in this article. These funds are to be deposited in the Recycling Fund so that it may be utilized more fully for its intended purpose, i.e. the issuance of grants and contracts for "research, demonstration projects, new technologies, market development and source reduction studies, and implementation of the recommendations or reports prepared." Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

Article 22: New Tire Sellers

ADEQ described the probable economic impacts in qualitative and quantitative terms in the EIS (attached) prepared in 2024 when the rules were most recently amended. Approximately $6.7 million in increased fees will be collected through the fee on the sale of new tires in this article. Of this, 3.5% (approximately $237,000) will be deposited to the Solid Waste Fee Fund, with the remaining revenue apportioned to the counties as provided by law. Given the recent nature of the rulemaking, ADEQ believes the probable economic impacts on the state's economy, small business and consumers described in the 2024 EIS remain accurate and have not changed since the effective date.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

ADEQ has not received a business competitiveness analysis of the rules in this Chapter.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

In the five-year review report submitted in 2019, ADEQ proposed several courses of action, which are outlined below with their status. Each proposed course of action was completed with the exception of the proposal to review, update, and modernize Article 3, Refuse and Other Objectionable Wastes. Article 3 dates back to 1964 and has not been changed since. As ADEQ conducted initial evaluations of Article 3 and conducted a more limited update of the frequency of collection requirement in R18-13-308, it became apparent that a broader rulemaking to update and modernize the entirety of the now 50-year-old rules would require substantial resources and time commitments in order to properly evaluate potential impacts on stakeholders and local authorities who have developed decades of policies and procedures based on the requirements of the article. At the same time, the potential benefits and impacts of such an undertaking remain unclear. Weighing the costs of such a rulemaking against the uncertain impacts, ADEQ prioritized other rulemakings it determined to have greater impact on public health and the environment. ADEQ plans to convene cities, counties, and stakeholders in early 2025 to assess potential updates or modifications to Article 3 and whether a single rulemaking or multiple rulemakings would be appropriate.

A summary of the all of the proposed courses of action from the previous five-year review and their status can be found in the table below:

Rule	2019 Proposed Course of Action	Status	Explanation
R18-13-201	Update citations	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)
18 A.A.C. 13, Article 3	Update Article	Incomplete	See explanation above.
R18-13-703(B)	Correct appeal citation	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)
R18-13-1301, 1302, 1303, 1304	Fix incorrect references	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)
R18-13-1401	Substantive policy statement to clarify biohazardous medical waste excludes hair, fingernails and teeth	Complete	Completed via rulemaking (27 A.A.R. 2801)
R18-13-1405(C)(4), 1409(M)(3), 1420(A)(3)(b)(i)	Clarify apparent prohibition on shipment of medical waste out of state	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)
R18-13-1409(H)	Correct appeal citation	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)
R18-13-1412	Add clean facility requirement	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)
R18-13-1417	Coordinate title and text	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)

R18-13-1418	Clarify subsection (B) for consistency with federal rule	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)
R18-13-1601, 1603, 1604	Correct issues related to definition of PCS	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)
R18-13-1607(A)	Clarify in state vs out of state	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)
R18-13-1608, 1610, 1613	Correct citations, labeling of standard	Complete	Completed via expedited rulemaking. (27 A.A.R. 57)

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

Rule	Explanation
Article 2: Solid Waste Definitions; Exemptions	There are no costs associated with Article 2 as the exemptions in Article 2 are deregulatory, reducing the applicability of Chapter 13's rules in certain circumstances. The benefits of the rules are narrow, applying to the waste management departments by exempting biosolids originating from domestic waste from the definition of solid waste, voiding unnecessary overlapping environmental regulations under water quality and waste statutory authority. ADEQ believes the benefits clearly outweigh the costs given the negligible costs of Article 2's rules.
Article 3: Refuse And Other Objectionable Waste	The costs of the rules in Article 3 apply primarily to local city and county governments' collection agencies, including the requirements for collection of refuse, required notice to customers, required frequency of collection, and requirements for disposal of refuse. Article 3 provides benefits to public health by establishing standards for sanitary conditions at premises, business establishments and industries, storage of refuse, collection of refuse and standards for waste collection vehicles. ADEQ believes that the benefits of these rules outweigh the costs because it is a priority of the state to ensure refuse and other objectionable waste do not pose hazards to public health and do not create environmental nuisances.
Article 4: Solid Waste Facilities Subject To Best Management Practices	The costs of Article 4's rules apply to solid waste facilities subject to best management practices under A.R.S. § 49-762.02, including transfer facilities, by requiring annual facility registration and imposing related fees. The rules provide benefits by allowing ADEQ to collect data on solid waste facilities operating in Arizona, allowing the agency to conduct more regular inspections of regulated facilities and entities resulting in greater minimization of public health risks from solid waste activities through greater oversight, identification of violations, and initiation of corrective actions. The rules also provide benefits by generating funds to fully cover the technical, administrative, and managerial costs of maintaining the Solid Waste Program, providing compliance assistance and ensuring a more level playing field between regulated businesses and entities by mitigating harm to those facilities and entities that must compete with and operate in the same regulatory space as those facilities and entities that may fail to adhere to minimum standards. ADEQ has determined the costs of Article 4's rules are outweighed by their benefits because it is a priority of the State to maintain a self-sufficient fee-based Solid Waste Program.
Article 5: Requirements For Solid Waste Facilities Subject	The costs of the rules of Article 5 are imposed primarily on solid waste transfer facilities, facilities storing 5,000 or more waste tires, waste tire shredding and processing facilities in the form of paperwork and fees associated with self-certification. The rule provides useful benefits by allowing ADEQ to perform regular inspections of these facilities to

To Self-Certification	ensure compliance with standards that safeguard public health and aids in the management of the overall program. The fees collected allow the Solid Waste Program to fund the administrative costs of processing the collected information and maintain the program. ADEQ has determined these benefits outweigh the costs of Article 5's rules because it is a priority of the state to maintain a self-sufficient fee-based Solid Waste Program.
Article 7: Solid Waste Facility Plan Review Fees	The costs of the rules of Article 7 are primarily to owners and operators of new solid waste facilities in the form of paperwork and regulatory burdens associated with the submission of solid waste facility plan review applications and related fees. The benefits of the plan review process include ensuring new solid waste facilities in Arizona meet standards to safeguard public health, and the fees in Article 7 allow the Solid Waste Program to fund the administrative costs of processing, reviewing, and approving these plan review applications and maintain the program. ADEQ has determined these benefits outweigh the costs of Article 5's rules because it is a priority of the state to ensure solid waste facilities meet standards necessary to protect public health.
Article 8: General Permits	The costs of Article 8 are borne primarily by non-municipal solid waste landfills at mining operations in the form of paperwork and regulatory burdens associated with the general permit process and related fees outlined in the Article. The general permit requirements of Article 8 provide benefits to public health by ensuring appropriate environmental and safety standards are met at these facilities, while the fees provide the Agency with sufficient resources for the processing, reviewing, and approving of these permit applications. Article 8 also provides benefits in the form of the reduction of regulatory burden on these facilities as the mining landfills would otherwise require the costlier plan approval process under A.R.S. 49-762. ADEQ has determined the costs of Article 8 are outweighed by its benefits, particularly given the reduced regulatory burden associated with general permits, because it is a priority of the State to monitor waste generated from landfills at mining operations.
Article 11: Collection, Transportation, And Disposal Of Human Excreta	The costs of Article 11 apply primarily to septage haulers and other owners or operators of vehicles used to store, collect, transport, or dispose of sewage or excreta by establishing standards, procedures, and fees necessary to obtain license for those vehicles to operate. Article 11's rules provide benefits by ensuring such vehicles meet standards to ensure they do not endanger public health or cause environmental nuisance and ensuring human excreta is properly collected, transported, and disposed of. The fees in Article11 allows the Solid Waste Program to fund the administrative costs of processing these license applications, conducting vehicle inspections, and maintaining the program. ADEQ has determined the costs of Article 11's rules are outweighed by their benefits because it is a priority to ensure sewage and human excreta collection, transport, and disposal does not cause hazards to public health nor creates environmental nuisances.
Article 12: Waste Tires; Used Tires	The costs of Article 12 apply to waste tire collection and outdoor used tire collection sites by establishing standards for the handling and disposal of waste tires, and implementing registration and fee requirements. These rules provide benefits by allowing ADEQ to ensure that waste tires are stored and disposed of in a manner that is not hazardous to public health and does not create an environmental nuisance. The fees in Article12 allows the Solid Waste Program to fund the administrative costs of processing waste tire facility registrations, conducting inspections, and maintaining the program. ADEQ has determined the costs of Article 12 are outweighed by their benefits because it is a priority of the State to ensure waste tires are properly handled and disposed of and do not create hazards to public health.
Article 13: Special Waste And Best Management Practices For Shredder Residue	The costs of Article 13's apply to generators and transporters of special waste, which includes PCS and waste from shredding motor vehicles, by establishing registration requirements and associated fees, special waste tonnage fees, and manifest and record retention requirements. These rules provide useful benefits by allowing ADEQ to collect

	information and conduct inspections at special waste facilities engaged in generation, transportation, and disposal to ensure compliance with standards necessary to protect public health. The rules also provide a benefit in establishing best management practices for shredded vehicle residue. ADEQ has determined the costs of Article 13 are outweighed by their benefits because it is a priority of the State to monitor these special wastes to protect public health.
Article 14: Biohazardous Medical Waste And Discarded Drugs	The costs of Article 14's rules apply to persons who generate, transport, treat, store, or dispose of biohazardous medical waste and discarded drugs of biohazardous medical waste, exempting household generators, by establishing standards and processes for operation approval. The costs also include fees associated with facility registration and vehicle inspection and licensure**.** The rules provide benefits by establishing standards that ensure facilities and vehicles generating, transporting, and disposing of biohazardous medical waste are built and designed correctly and follow proper standards to protect public health. The fees in Article 14 allow ADEQ to fund the administrative costs of processing vehicle license applications and inspections. ADEQ has determined the costs of Chapter 14's rules are outweighed by their benefits because it is a priority of the state to prevent biohazardous medical wastes from becoming hazards to public health.
Article 16: Best Management Practices For Petroleum Contaminated Soil	The costs of Article 16's rules apply to generators and transporters of PCS and to facilities that treat, store, or dispose of PCS, by establishing appropriate standards, manifesting and reporting requirements, and a facility approval process for PCS treatment, storage, or disposal facilities, and also establishing initial and annual registration fees and tonnage fees for such facilities. The rules provide benefits by allowing ADEQ to monitor PCS that is generated in Arizona and ensure that it is managed according to standards that prevent it from becoming a hazard to public health. ADEQ has determined that the costs of Article 16's rule are outweighed by their benefits because it is a priority of the State to prevent PCS from posing a hazard to public health.
Article 19: Lead Acid Battery Recycling	The costs of Article 19's rules apply to collection or recycling facilities that accept lead acid batteries by requiring annual facility registration and imposing related fees. The rules provide benefits by allowing ADEQ to collect data and conduct oversight for facilities receiving lead acid batteries in Arizona and by generating funds to cover the technical, administrative, and managerial costs of maintaining the Solid Waste Program. ADEQ has determined the costs of Article 19's rules are outweighed by their benefits because it is a priority of the State to maintain a self-sufficient fee-based Solid Waste Program.
Article 20: Used Oil	The costs of Article 20's rules apply to used oil handlers by requiring annual facility registration and imposing related fees. The rules provide benefits by allowing ADEQ to collect data and conduct oversight for used oil handlers operating in Arizona and by generating funds to cover the technical, administrative, and managerial costs of maintaining the Solid Waste Program. ADEQ has determined the costs of Article 20's rules are outweighed by their benefits because it is a priority of the State to maintain a self-sufficient fee-based Solid Waste Program.
Article 21: Solid Waste Landfill Registration Fees	The costs of Article 21's rules apply to solid waste landfill facilities by requiring annual facility registration and imposing related fees, and establishing waste disposal tonnage fees. The annual registration fees provide benefits by generating funds to cover the technical, administrative, and managerial costs of maintaining the Solid Waste Program. The waste disposal tonnage fee provides benefits by funding and supporting Arizona's recycling program, which include grants for recycling and enabling ADEQ to fully administer the program. ADEQ has determined the costs of Article 21's rules are outweighed by their benefits because it is a priority of the State to maintain a self-sufficient fee-based Solid Waste Program.
Article 22: New Tire Sellers	The costs of Article 22's rules apply to sellers and purchasers of new tires by establishing fees on the retail sale price of new tires. The rules provide benefits by generating greater funds for the Waste Tire Program under A.R.S. 44-1305, which ensures waste tires do not

	pose a hazard to public health or cause an environmental nuisance. ADEQ has determined the costs of Article 22's rules are outweighed by their benefits because it is a priority of the State to maintain a self-sufficient fee-based Solid Waste Program.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Article 2: There is no corresponding federal law for Article 2, Definitions; Exemptions.

Article 3: There is no corresponding federal law for Article 3, Refuse and Other Objectionable Wastes.

Article 4: There is no corresponding federal law for Article 4, Solid Waste Facilities Subject to Best Management Practices.

Article 5: There is no corresponding federal law for Article 5, Requirements for Solid Waste Facilities Subject to Self-Certification.

Article 7: There is no corresponding federal law for Article 7, Solid Waste Facility Review Fees.

Article 8: The provisions of the general permit in R18-13-802 apply the solid waste standards of 40 CFR 257 and may not be more stringent, per A.R.S. § 49-761(C). They are thus equivalent to federal law.

Article 11: There is no corresponding federal law for Article 11, Collection, Transportation, and Disposal of Human Excreta.

Article 12: There is no corresponding federal law for Article 12, Waste Tires, Used Tires.

Article 13: There is no corresponding federal law for Article 13, Special Waste and Best Management Practices for Shredder Residue.

Article 14: Article 14 corresponds in part with 29 CFR 1910.1030, Bloodborne pathogens; 49 CFR 173.197, Regulated Medical Waste; and 40 CFR 266.505, Prohibition on Sewering Hazardous Pharmaceuticals. The rules in Article 14 are not more stringent than corresponding federal law.

Article 16: There is no corresponding federal law for Article 16, Best Management Practices for Petroleum Contaminated Soil.

Article 19: There is no corresponding federal law for Article 19, Lead Acid Battery Recycling.

Article 20: Article 20 corresponds in part with 42 USC 6935, Restrictions on Recycled Oil, as amended on January 1,1997 and 40 CFR 279, Standards for the Management of USed Oil. The rules in Article 20 are not more stringent than corresponding federal law.

Article 21: There is no corresponding federal law for Article 21, Municipal Solid Waste Landfills.

Article 22: There is no corresponding federal law for Article 22, New Tire Sellers.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Article 2: The Rules in Article 2 were adopted before July 29, 2010. However, R18-13-201 was amended January 5, 2021, but does not require issuance of a regulatory permit, license, or agency authorization.

Article 3: The Rules in Article 3 were adopted before July 29, 2010.

Article 4: The rules in Article 4 were adopted after July 29, 2010, but do not require issuance of a regulatory permit, license, or agency authorization.

Article 5: R18-13-501 was adopted after July 29, 2010, but does not require issuance of a regulatory permit, license, or agency authorization.

Article 7: The rules in Article 7 were adopted after July 29, 2010, but do not require issuance of a regulatory permit, license, or agency authorization.

Article 8: The rules in Article 8 were adopted after July 29, 2010. R18-13-801establishes fees for operation under general permit as established in R18-13-802. R18-13-802 establishes a general permit in compliance with A.R.S. § 41-1037.

Article 11: All of the rules in Article 11 were adopted before July 29, 2010 except for R18-13-1103, General Requirements; License Fees. A general permit would not be technically feasible, per A.R.S. § 41-1037(A)(3), for the licensing of septage hauling vehicles subject to R18-13-1103 because the authorizing statute, A.R.S. § 49-104(B)(14), provides for the inspection of each vehicle. Whereas a general permit would list elements necessary and conditions prohibited for a vehicle transporting medical waste and allow the vehicle to be licensed upon the owner's statement that the vehicle qualified, the inspection by ADEQ personnel results in an approve or deny decision based on the presentation of that specific vehicle. Vehicle inspections require what is essentially an individual permit.

Article 12: All of the rules in Article 12 were adopted before July 29, 2010 except R18-13-1211, R18-13-1212, and R18-13-213. R18-13-1211 and R18-13-1212 result in "issuance" of an agency authorization. Pursuant to A.R.S. § 41-1037(A)(2), the registration before operation required by these rules is an alternative type of authorization specifically authorized by state statute (A.R.S. § 44-1303(B) in the case of R18-13-1211 and A.R.S. § 44-1304.01 in the case of R18-13-1212).

Article 13: All of the rules in Article 13 were adopted before July 29, 2010. R18-13-1301, R18-13-1302, R18-13-1303, R18-13-1304, R18-13-1307 have since been amended, but do not require issuance of an agency permit, license, or authorization.

Article 14: R18-13-1405, R18-13-1416, and R18-13-1420 were adopted before July 29, 2010. R18-13-1401, R18-13-1402, R18-13-1403, R18-13-1406, R18-13-1407, R18-13-1408, R18-13-1418, and R18-13-1419 were amended after July 29, 2010, but do not require issuance of an agency permit, license, or authorization. R18-13-1409 was amended after July 29, 2010, and requires issuance of an agency authorization. Pursuant to A.R.S. § 41-1037(A)(3), the use of a general permit is technically infeasible in R18-13-1409 because transporters meet the requirements for licensing through criteria and information specific to their vehicles. Therefore, individual processing is required in order to issue licenses and conduct inspections. The transporters pay fees according to that processing, capped at a maximum fee. R18-13-1410 contains a license to which the requirements of R18-13-1411, R18-13-1412, R18-13-1413, and R18-13-1417 apply, and to which R18-13-1414 and R18-13-1415 provide alternatives to. However, A.R.S. § 49-762(A)(3) requires individual solid waste facility plans for medical waste

facilities. Therefore, it is not possible to utilize a general permit for a license under R18-13-1410 or its associate rules.

Article 16: R18-13-1601, R18-13-1605, R18-13-1609, R18-13-1611, R18-13-1612, R18-13-1614 were adopted before July 29, 2010. R18-13-1602, R18-13-1603, R18-13-1604, R18-13-1608, R18-13-1613 were amended after July 29, 2010, but do not require issuance of an agency permit, license, or authorization. R18-13-1607 and R18-13-1610 were amended after July 29, 2010 and require a permit. A.R.S. § 41-1037 does not apply to these permits (special waste treatment, storage or disposal facility plan approvals) because the facilities are not substantially similar in nature. See also A.R.S. § 49-706(A)(1)(b). This conclusion is supported by the fact that the legislature specifically authorized an alternative type of license for these facilities in A.R.S. §§ 49-762(A)(4) and 49-858, which makes a general permit not applicable under A.R.S. § 41-1037(A)(2).

Article 19: The rules in Article 19 were adopted after July 29, 2010, but do not require issuance of a regulatory permit, license, or agency authorization.

Article 20: The rules in Article 20 were adopted after July 29, 2010, but do not require issuance of a regulatory permit, license, or agency authorization.

Article 21: R18-13-2101, R18-13-2102, and R18-13-2103 were amended after July 29, 2010, but do not require issuance of an agency permit, license, or authorization.

Article 22: The rules in Article 22 were adopted after July 29, 2010, but do not require issuance of a regulatory permit, license, or agency authorization.

14. <u>Proposed course of action:</u>

ADEQ prioritizes rulemakings in terms of the greatest impact on public health and the environment. Rulemakings often require significant stakeholder input and public comment, and therefore ADEQ also prioritizes rulemakings to reduce confusion and maximize input. ADEQ's Waste Programs division is currently engaged in several rulemakings (outlined below) which it has determined are necessary based on their impacts to public health and the environment.

Coal Combustion Residuals	High Priority	Will establish an Arizona coal combustion residuals (CCR) permit program that would be approved by the U.S. Environmental Protection Agency (EPA) to implement the federal regulations in Arizona in lieu of the federal government. Rule returned by GRRC December 3, 2024, ADEQ anticipates resubmitting rule in early 2025.
Transfer Stations	High Priority	Will amend A.A.C. Title 18, Chapter 13 to add and amend articles as necessary to implement design and operation rules and corresponding financial assurance mechanism rules for solid waste transfer facilities. Active rulemaking, anticipate final to GRRC June, 2025.
Tier II Fees	High Priority	Will amend A.A.C. Title 18, Chapter 18 to update the Emergency Planning and Community Right to Know program rules and the Tier II Emergency and Hazardous Chemical Inventory Reporting fee structure. Pending rulemaking, submitting to the Governor for approval January 2025.
Ch. 7 Technical Updates	Medium Priority	Implements technical fixes as part of five-year review commitments to GRRC. Active rulemaking, anticipate Final to GRRC January 2025.
Ch. 18 Technical Updates	Medium Priority	Implements technical fixes as part of five-year review commitments to GRRC. Active rulemaking, anticipate Final to GRRC January 2025.

In addition to the active rulemakings outlined above, Waste Programs Division has a docket of several pending rulemakings necessary to implement various unfulfilled statutory mandates. The chart below outlines those pending rulemakings and their associated statutory mandates, as well as ADEQs projected timeline for conducting the rulemakings, subject to the Division's rulemaking capacity.

Rulemaking	Timeframe
Solid Waste Non-Landfill Disposal/Treatment Requirements A.R.S. 49-761(G), (H) A.R.S. 49-761(G) and (H) require the Department to adopt design & operation rules, and best management practices for solid waste facilities. ADEQ intends to address this requirement over the course of rulemakings, each handling a different class of solid waste facilities, to be conducted in tandem with the financial assurance requirements in A.R.S. 49-761(J).	Ongoing pursuant to adoption of design and operation standards for each solid waste facility category, beginning with transfer facilities in 2025.
Financial Assurance Requirements for Solid Waste Facilities A.R.S. 49-761(J) A.R.S. §49-761(J) requires the Department to adopt various rules establishing financial assurance requirements for solid waste facilities. ADEQ intends to address this requirement over the course of multiple rulemakings, each handling a different class of solid waste facilities, to be conducted in tandem with the design and operating requirements in A.R.S. 49-761(G) and (H).	Ongoing pursuant to adoption of design and operation standards for each solid waste facility category, beginning with transfer facilities in 2025.
Recycling Facility Standards & Recycling Program A.R.S. 49-761(K); A.R.S. 49-832(B)(8). A.R.S. 49-761(K) requires the department to adopt rules establishing design and operating standards for self-certification recycling facilities. A.R.S. 49-832(B)(8) requires the Department to adopt rules for the administration of Title 49, Chapter 4, Article 8 (Arizona Recycling Program). ADEQ intends to address these requirements over the course of multiple rulemakings projected to begin in the fall of 2025.	Recycling rule(s) projected start fall 2025, to be completed fall 2026.
Solid Waste Land Disposal Facilities Non-Municipal [Landfills] A.R.S. 49-761(C) A.R.S. 49-761(C) requires the Department to establish design and operating rules for non-municipal landfills pursuant to 40 CFR part 257. ADEQ intends to address this requirement in a rulemaking projected to begin in the fall of 2026.	Rulemaking projected to begin fall 2026 to be completed fall 2027.
Criteria for determining the category type of a proposed change to solid waste facility A.R.S. 49-762.06(A) A.R.S. 49-762.06(A) requires the Department to establish criteria for solid waste facility plan amendment category types as identified in	Rulemaking projected to begin summer 2027 to be completed summer 2028.

Rulemaking	Timeframe
A.R.S. 49-762.06. ADEQ intends to address this requirement in a rulemaking projected to begin in the fall of 2027.	
Composting A.R.S. 49-761(M) A.R.S. 49-761(M) requires the Department to adopt facility design, construction, operation, closure and post closure maintenance rules for biosolids processing facilities and waste composting facilities that must obtain plan approval pursuant to A.R.S. 49-762. This rulemaking is contingent on a change to the definition of "solid waste facility" under A.R.S. 49-701(45). Currently, a "site that stores, treats or processes" vegetative waste is exempted from the definition of a solid waste facility. Vegetative waste is a major component of composting activities. Thus, removing the vegetative waste exemption would be required to ensure any related composting facility rulemaking applies to all composting facilities. ADEQ will proceed with a rulemaking to address the requirements of A.R.S. 49-761(M) once the necessary changes to the definition of "solid waste facility" are adopted.	Rulemaking will require statutory changes to definition of 'vegetative waste', ADEQ will proceed with rulemaking once necessary changes are adopted.

As the Division completes its current slate of active rulemakings, it will begin work on an expedited rulemaking for Chapter 13 to incorporate recommendations made in section 4 and 6 of this report. Specifically, ADEQ will update the incorporations by reference outlined in section 4 of this report to incorporate the listed EPA rulemakings, and any subsequent EPA rulemakings, and will incorporate the changes listed in part 6 of this report to improve clarity of the rules. ADEQ anticipates conducting this expedited rulemaking in the middle of 2025, to be completed by the end of that year. Additionally, following this five-year review report, ADEQ plans to convene cities, counties, and stakeholders after this five-year review to assess potential updates or modifications to Article 3 and whether a single rulemaking or multiple rulemakings would be appropriate, as described in section 10 of this report.

APPENDIX A

A Summary of the Economic, Small Business, and Consumer Impact of the Solid Waste Program's Fee Rulemaking; Submitted to the Secretary of State December 24, 2024

The following discussion addresses each of the elements required for an economic, small business and consumer impact statement under A.R.S. § 41-1055.

Identification of the rulemaking: This rulemaking makes a number of changes to 18 A.A.C. 13, Solid Waste Management, including amendments to Articles 5, 7, 8, 11, 12, 13, 14, 16, and 21; amending Sections R18-13-501, R18-13-702, R18-13-801, R18-13-1103, R18-13-1211, R18-13-1212, R18-13-1307, R18-13-1409, R18-13-1410, R18-13-1606, R18-13-2102, and R18-13-2103, and their respective tables. Additionally, this rulemaking establishes new articles and sections, including Articles 4, 19, 20, and 22 and their respective sections, and new sections in existing Articles, including R18-13-1212.01, R18-13-1306, and R18-13-2104. The purpose of these changes is to both adjust existing fees and establish new fees throughout Solid Waste Management. This rulemaking also establishes in rule fees that currently only exist in statute.

Fees under this rulemaking can be categorized into two broad groups. One group being current fees paid by waste facilities and licensees that would be subject to an adjustment under this rulemaking. These facilities and licensees include publicly and privately-owned landfills, used and waste tire facilities, self-certification transfer facilities, biohazardous medical waste transporters, septage haulers, and special waste facilities that receive shredder residue and petroleum contaminated soil (PCS). The second group of fees are those established under this rulemaking for the first time. Facilities and entities subject to a new fee include transfer facilities subject to best management practices, used oil handlers, medical waste facilities that are permitted for storage or treatment, facilities generating or transporting special waste, landfills that enter into post-closure care, and collection and recycling facilities accepting lead acid batteries.

These rule changes are intended to collect fees to ensure the financial stability of Solid Waste Management programs, not to change the conduct of any regulated facilities or entities. The last time ADEQ undertook any substantive review and adjustments of fees within Solid Waste Management was in 2012. While fees established in 2012 represented a critical step towards the goal of full program sufficiency and stability, further work is necessary to realize this goal. Indeed, to date only half of all regulated facilities under Solid Waste Management are subject to fees for registration, inspection, and oversight notwithstanding ongoing statutory mandates.

Experience over the last several years has demonstrated the need for a comprehensive approach to fees throughout Solid Waste Management, one that promotes equal cost distribution amongst all regulated facilities and entities and ensures the financial health of Solid Waste Management as a whole for the effective and efficient carrying out of the Program's mission.

ADEQ's goal in this rulemaking is to adjust and establish fees throughout Solid Waste Management that will sustain critical programs while avoiding disproportionate impact on any one group of stakeholders or regulated entities. Currently, ADEQ's annual costs to administer all solid waste programs are estimated to total $3.5 million per year. However, current annual registration fee revenue is estimated at roughly $500,000. Other revenue sources include the 3.5% of the Waste Tire Fund allocated to the Solid Waste Fee Fund based upon the number of tires sold and the special waste tonnage tipping fee based upon the amount of special waste disposed within the state. While variable, these other revenue sources are critical, representing approximately half of revenues into the Solid Waste Fee Fund. ADEQ continues to operate with total revenues that are insufficient to cover costs. The increases in existing fees and newly established fees in this rulemaking are now projected to contribute and ultimately result in approximately $2.1 million in additional fee revenue for the Solid Waste Fee Fund.

Regulatory Objective: The Waste Program Division within ADEQ preserves and protects public health and the environment by reducing the risk associated with waste management, contaminated sites, and regulated substances. To fulfill this objective, ADEQ carries out a number of Agency functions corresponding to regulatory and oversight

activities for the approximately 2,000 different facilities and entities that fall under Solid Waste Program (SWP) regulation, including: administrative operations; inspections, including pre- and post-inspection activity encompassing historic data and permit review, case closure, and necessary filing; permitting and licensing; public records management; complaint response; and compliance assistance. It is critical that ADEQ has the ability to fully perform all necessary Agency functions to continue to carry out its mission to ensure the continued health of our solid waste ecosystem to preserve and promote public health and the environment.

Least Burden and Cost: A.R.S. § 41-1052(D)(3) requires ADEQ to demonstrate it has selected the alternative with the least burden and cost necessary to achieve the underlying regulatory objective. Similarly, pursuant to A.R.S. § 49-104(B)(17), ADEQ is charged with ensuring all fees "be fairly assessed and impose the least burden and cost to the parties subject to the fees" based upon an evaluation of "the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses." This statutory mandate is reinforced by HB2367, which states in Section 17, Legislative Intent, that fees established pursuant to the bill be based upon "direct and indirect costs associated with the type of activity or facility that is assessed a fee."

In the context of this solid waste fees rule, ADEQ has interpreted this requirement to mean collecting fee amounts necessary to ensure a self-funded and sustainable SWP to satisfy ADEQ's detailed requirements to protect and enhance public health and the environment as specified in A.R.S. Title 49, Chapter 4, Solid Waste Management.

Based on ADEQ's interpretation of the statutory mandate that the rule impose the least burden and cost, ADEQ evaluated costs for regulating each type of facility and entity and set fees accordingly. ADEQ continued throughout the rulemaking process to adjust the fee proposal to impose the least burden and cost while still ensuring overall fee levels necessary to ensure a self-funded and sustainable SWP. Examples include:

- Establishing separate registration fee amounts in R18-13-1103 for septage haulers based on whether ADEQ is tasked with conducting annual inspections or such inspections are handled by counties to be reflective of actual costs to ADEQ.
- Setting an annual registration fee in R18-13-1410 specifically for biohazardous medical waste transfer facilities to ensure fees are commensurate with ADEQ's related regulatory costs and corresponds to other transfer facility fees.
- Leaving initial fees for solid waste plan review at their current levels in R18-13-702 to improve clarity and ease of initial application for facilities subject to plan review while still ensuring necessary cash flow to ADEQ to facilitate commencing facility plan reviews.
- Adjusting the annual registration fee for the largest class of landfills, those that annually receive 225,000 or more tons of waste, by the regional CPI instead of the initial, higher annual registration fee proposed in the NPRM.
- Changing the first annual registration fee of increased fees so that payment of the fee will occur over two invoices as well as delaying payment of new annual registration fees and first quarter landfill disposal and special waste tonnage until July 2025 to correspond with the fiscal year. Following any initial invoicing or other change for the first year of implementation, billing for facilities and entities will return to a single invoice for all new and adjusted annual registration fees for the calendar year billing cycle in January 2026.

Fairly Assessed: To ensure the fees adjusted and established under this rulemaking be fairly assessed against each member of the regulated community subject to them, ADEQ conducted extensive stakeholder engagement, including three rounds of stakeholder meetings to present all proposed fee levels, explain the basis for the fees, provide detail on the need for and methodology of the annual CPI adjustments, and present rule language. ADEQ was able to solicit productive feedback from the regulated community. This feedback guided ADEQ in assessing and adjusting proposed fee levels and implementation to impose the least burden on members of the regulated community to the fullest extent possible.

In addition to engagement with and feedback from the regulated community, ADEQ reviewed costs associated with Agency functions in carrying out regulated activities, with costs identified and distinguished by facility type. Based upon these costs, ADEQ employed the fee methodology discussed in Part 7 of the Preamble, "Explanation of Fee Methodology", that set fees for each class of facility or entity.

Implementation Schedule: In furtherance of ADEQ's goal to ensure the proposed fees impose the least burden and cost, ADEQ evaluated the feasibility of an implementation schedule that balances the fiscal health of SWP and the budget constraints of the regulated community subject to the fees. Currently, ADEQ sends out invoices for registration fees to correspond with the calendar year. However, a recurring point of discussion throughout the rulemaking process was the concern of implementing a new fee or fee increase in the middle of the fiscal year for many counties, municipalities, and other political subdivisions. As such, while the rule and fees would become effective as of January 2025, fees will be implemented pursuant to a schedule for CY2025 to accommodate the fiscal needs of counties, municipalities, and other political sub-divisions.

This implementation schedule is discussed in greater detail and presented in a series of tables in Part 7 of the Preamble, "Implementation Schedule".

Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking: Stakeholders directly affected by this rulemaking include all 15 counties within the state, local municipalities, and the approximately 2,000 solid waste facilities and entities with different media types subject to ADEQ regulatory compliance and oversight under Solid Waste Management, as well as the general public. These facilities may be categorized as government and privately owned. Approximately 13% of all solid waste facilities and entities are owned by a political subdivision of the state, with the remaining being privately owned and operated, ranging from individual licensees to large, multistate businesses. These facilities and entities include solid waste transfer facilities of varying size and sophistication, from rural drop-site locations to city facilities, septage hauler licensees, waste tire sites, off-site facilities registered for the treatment, storage, or disposal of auto-shredder residue, special waste transporters and generators, biohazardous medical waste transport companies, used oil handlers and collectors, facilities accepting lead acid batteries for collection or recycling, and both public and privately-owned landfills.

These facilities and entities are discussed in greater detail in the "Cost/Benefit Analysis" to follow.

Cost/Benefit Analysis: The estimated total impact for this rule is $12 million, which is the approximate total amount of increased fees across all programs. This estimated impact is subject to annual adjustment pursuant to the regional CPI adjustment. Approximately $1.8 million in increased fees will be collected pursuant to the proposed new and adjusted fees, including the special waste tonnage tipping fee, for regulated facilities and entities to be deposited into the Solid Waste Fee Fund. $6.7 million of increased fees will be collected through the fee on the sale of new tires as incorporated, with this cost borne by sellers and purchasers of new tires throughout the state. Of this $6.7 million, 3.5% or approximately $237,000 will be deposited to the Solid Waste Fee Fund pursuant to A.R.S. § 44-1305(B)(1), resulting in the total increased revenues to the Solid Waste Fee Fund of approximately $2.1 million. The remaining revenues from the fee on the sale of new tires are apportioned to the counties as provided in law. Finally, approximately $3.5 million in increased fees will be collected pursuant to the landfill disposal fee as incorporated to be deposited into the Recycling Fund pursuant to A.R.S. § 49-836.

ADEQ finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs, as discussed in further detail below.

Probable benefits include:

- Allow the Recycling Fund to be more fully utilized for its intended purpose. Since the loss of General Fund revenues and the establishment of the fee-based program model in 2012, it has been necessary to expend from the Recycling Fund to cover management of solid waste regulatory programs. By ensuring full cost-recovery and program funding through this proposed rulemaking, expenditures from the Recycling Fund to cover solid waste management may be addressed, allowing appropriations under the Recycling Fund to be used for the stated purpose of that fund. ADEQ is committed to expenditures from the Recycling Fund being used for the stated purpose of grants and contracts for "research, demonstration projects, new technologies, market development and source reduction studies and implementation of the recommendations or reports prepared." *See* A.R.S. § 49-837(B)(1).

- Minimize public health risks from solid waste activities. Fee levels ensuring full cost-recovery to ADEQ for regulatory activities and program stability are critical to allow ADEQ to adequately perform all its duties relating to its mission to enhance public health and the environment, including inspections, monitoring, public education, compliance, and permitting.
- Ability to address the obligations cited in the 2021 Auditor General's Report. The Auditor General's September 2021 Performance Audit and Sunset Review Report noted ADEQ has not yet adopted all statutorily required rules. Specifically, the Report notes A.R.S. § 49-761 requires the Department to adopt various rules for solid waste facilities, such as requirements for storing, processing, treating, and disposing of solid waste; best management practices for these facilities; and financial assurance requirements for facility closure. The Report ultimately recommends such rules should be adopted as required by statute. By ensuring appropriate funding levels and future programs security, ADEQ will be better positioned to undertake further rulemakings to address this recommendation of the Auditor General.
- Ability to address regulatory vacuum to protect public health and the environment as well as promote business development. With adequate and sustainable funding, SWP may increase inspection and enforcement activities to address and mitigate any regulatory vacuum within the solid waste universe. A greater ability to engage in regulatory activities provides a stronger deterrence to behavior that is harmful to the environment and public health, mitigates any unlevel playing field between competing facilities, and provides certainty for current and prospective businesses in estimating and planning for standards and operation requirements that must be adhered to.
- Ensure fee revenues continue to match increasing costs to ADEQ through annual regional CPI adjustments. The annual adjustments in the proposed rule will allow SWP to maintain fee levels commensurate with rising costs due to inflation to facilitate cost-recovery year over year and continued program stability.

This cost/benefit analysis includes an analysis of the following elements pursuant to A.R.S. § 41-1055(B)(3):

- Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking: probable benefits to ADEQ by the implementation of this rule include ensuring that SWP becomes sustainable, secure, and self-sufficient as a fully fee-based program. Additionally, benefits include allowing the Recycling Fund to be more fully utilized for its intended purpose, minimizing public health risks from solid waste activities, allowing ADEQ to address obligations cited in the 2021 Auditor General's Report, and to maintain fee levels commensurate with rising costs due to inflation to facilitate cost-recovery year on year and continued program stability. Probable benefits to ADEQ are discussed in greater detail in Part 7 of the Preamble. A probable cost to ADEQ in the implementation of this rulemaking is the administrative costs associated with administering these fees, including in accordance with the proposed implementation schedule and updating the fees annually pursuant to the regional CPI adjustment. No new full-time employees are necessary to implement or enforce this rule.

  The Arizona Department of Revenue is charged with the collection of the new tire sales fee, 2% of the sale price of a new tire capped at $2.00, pursuant to A.R.S. § 44-1302. This rulemaking incorporates this existing fee into rule at R18-13-2202, with an adjustment to the fee cap based upon CPI as well as a continuing annual regional CPI adjustment to the cap. As such, it will be necessary for the Department of Revenue to update each year the quarterly Motor Vehicle Waste Tire Fee return form to reflect the new fee cap. This will present a new administrative cost to the Department of Revenue in the timely updating and dissemination of the return form.

- Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking: probable benefits to political subdivisions by the implementation of this rule include the increased fee revenues of approximately $6.5 million apportioned to the counties based on registered motor vehicles for the administration of each county's waste tire program pursuant to the incorporation and adjustment of the new tire sales fee. ADEQ has heard that costs for running these waste tire programs have increased, creating additional strains on counties attempting to fully administer their respective programs as required by A.R.S. § 44-1305. Increased fee revenues to be apportioned to the county waste tire programs will provide more money for each county to administer its required waste tire program. Additionally, increased fee revenues ensuring overall program health and self-sufficiency for SWP will strengthen the capacity for ADEQ to

partner with counties and other political subdivisions to address key waste issues, such as wildcat, or illegal, dumping of waste, including increased enforcement activity and clean-up efforts.

Probable costs to political subdivisions from the implementation of this rule are the increased and new fees each political subdivision will be subject to for their county and municipal solid waste facilities and entities, as well as the increased landfill tonnage fees. Of the total approximately 2,000 solid waste facilities and entities regulated by ADEQ, the Agency estimates 13% are owned and operated by political subdivisions. This total includes approximately 26 active municipal landfills as well as 19 landfills currently in post-closure care.

Other facilities owned and operated by political subdivisions include:

- Used and waste tire sites. These include sites storing 100 or more used tires outdoors, as well as waste tire sites subject to self-certification and best management practices. Used and waste tire sites are often operated by and for counties under county waste tire collection programs. There are approximately 30 publicly operated used and waste tire sites.
- Transfer facilities subject to both self-certification and best management practices. To note, exempted from the definition of transfer facilities for purposes of registration fees are material recovery facilities where the incoming materials are primarily source separated recyclables and community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, or governmental recyclable solid waste. There are approximately 80 publicly operated transfer facilities maintained by counties and municipalities throughout the state.
- Septage haulers. While the majority of licensed septage hauler vehicles are privately owned and operated, some political subdivisions maintain licensed septage vehicles for purposes of sanitation and public departments. There are approximately 40 septage hauler licensed vehicles maintained by political subdivisions.
- Collection or recycling facility that accepts lead-acid batteries. Counties and municipalities often maintain registered household hazardous waste sites that accept lead-acid batteries. There are approximately 30 such registered facilities throughout the state.

- Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking: With fees resulting in a fully-funded SWP, ADEQ may engage in greater compliance assistance for regulated facilities and entities. Further, ADEQ will have more resources to facilitate more expeditious permit review, both for new permits and renewals. This will allow permit applicants to begin facility operations sooner, mitigating administrative burdens associated with permit review time and allowing for faster business development, while still maintaining high regulatory standards for facilities and solid waste operations to ensure the protection of human health and the environment.

  Further, a fully-funded SWP will provide ADEQ with the resources needed to engage in greater oversight and compliance, ensuring a more level playing field between regulated businesses and entities. With greater enforcement and oversight, ADEQ may better identify and address pollution, spills, and failures to meet regulatory requirements. This further promotes adherence to regulation amongst all facilities, mitigating the harm to those facilities and entities that must compete with and operate in the same regulatory space as those facilities and entities that may fail to adhere to minimum standards. Additionally, SWP may engage in more robust partnership with the regulated community through activities and programs designed to promote compliance and assistance. Increased program funding and stability can result in greater collaboration with the regulated community, including greater engagement by SWP sections in outreach that help facilities understand and comply with applicable regulations.

  Probable costs to businesses directly affected by the rulemaking include the new or increased fees privately-owned solid waste facilities and entities will be subject to, as well as increased landfill tonnage and special waste tonnage fees.

  There are approximately 27 active landfills and 7 landfills in post-closure care that are privately owned and operated subject to regulation by ADEQ.

Privately-owned regulated facilities and entities also include those described below:

- Transfer facilities subject to self-certification or best management practices. These facilities are located throughout the state and range in size and sophistication. Self-certification transfer facilities are those that handle a daily throughput of more than 180 cubic yards of solid waste, while transfer facilities subject to best management practices are those that handle a daily throughput of 180 cubic yards or less of solid waste. To note, mirroring public transfer facilities, exempted from the definition of transfer facilities for purposes of registration fees are material recovery facilities where the incoming materials are primarily source separated recyclables and community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, or governmental recyclable solid waste. There are approximately 80 privately-owned transfer facilities throughout the state.
- Used oil handlers. Used oil handlers are defined as used oil processors, burners, transporters, and marketers required to obtain an EPA identification number pursuant to 40 CFR 279. The majority of the used oil handlers are transporters and marketers, representing 85% of registered used oil handlers. Used oil transporters are anyone that collects or accepts used oil from regulated handlers and transports that used oil to another facility while used oil marketers are anyone who markets used oil or first claims that used oil meets the used oil fuel specifications. There are approximately 230 used oil handlers throughout the state.
- Biohazardous medical waste (BMW) facilities and entities. BMW facilities and entities include BMW transporters, BMW treatment facilities, and BMW storage facilities. There are approximately 50 BMW transporters engaged in moving biohazardous medical waste, as defined in R18-13-1401(4), to an approved disposal facility. There are approximately 20 BMW treatment and storage facilities accepting biohazardous medical waste for proper treatment, storage, and disposal pursuant to regulation.
- Septage haulers. There are over 500 registered privately owned and operated septage hauler licenses throughout the state engaged in the transportation of sewage or human waste that is removed from septic tanks or other onsite wastewater treatment facilities.
- Special waste facilities. Special waste facilities include generators, transporters, and receiving facilities of special waste, defined as solid waste other than hazardous waste requiring special handling and management. Currently petroleum contaminated soils and auto-shredder fluff from shredding motor vehicles are designated special wastes in Arizona. There are approximately 80 special waste transporters, 70 special waste generators, and 16 special waste receiving facilities throughout the state engaged in the transportation, treatment, storage and disposal of special waste.
- Collection or recycling facility that accepts lead-acid batteries. There are approximately 200 registered facilities with ADEQ authorized for the collection and recycling of lead-acid batteries throughout the state.

For the reasons discussed above, ADEQ finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs.

General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking: ADEQ estimates this rulemaking will not have an impact on public or private employment.

Probable impact of the proposed rulemaking on small businesses: Arizona law defines "small business" for the purpose of this analysis as a "concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." *See* A.R.S. § 41-1001(23). The probable impact on small businesses includes an analysis of the following elements pursuant to A.R.S. § 41-1055(B)(5):

Identification of the small businesses subject to the rulemaking: ADEQ has reviewed its records of solid waste facilities subject to new or adjusted fees affected by this rule to determine which ones are small businesses. An important criterion is that the business must be independently owned and operated. Based on this review and applicable definition, it appears likely that many septage haulers are independently owned and operated and not likely to exceed the revenue and employee limits in the statutory definition of small business. Additionally, it appears likely that a number of used outdoor tire sites storing more than 100 used tires, biohazardous medical waste transporters,

certain transfer facilities subject to best management practices, as well as certain used oil handlers would qualify as small businesses for purposes of this rulemaking and collection and recycling facilities accepting lead acid batteries.

Administrative and other costs required for compliance with the proposed rulemaking: ADEQ does not anticipate appreciable administrative or other costs associated with compliance with the rulemaking. While this rule imposes a financial obligation corresponding with registration of certain facility types, compliance with the requirements of registration has long been a component of SWP. Registration under this rulemaking is administrative, with no additional substantive licensing or approval procedures or requirements compared to those that may already exist for regulated facilities.

Reduction of Impact on Small Businesses: A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if any of the following methods are legal and feasible in meeting the statutory objectives which are the basis of the rule making:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

The listed methods are not generally relevant to a rule establishing fees. *See* A.R.S. § 49-104(B)(17). However, in developing fee amounts for different categories of facilities and entities, ADEQ was guided by its statutory mandate that all fees be fairly assessed and impose the least burden and cost to the parties subject to the fees. Further, the implementation schedule discussed in greater detail in Part 7 of the Preamble was designed to impose the least burden possible on all facilities and entities subject to fees under this rule, including small businesses.

Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking: Adequate and sustainable funding for SWP further enables ADEQ to more fully perform its duties relating to its mission to enhance public health and the environment. Benefits to private persons and consumers includes greater enforcement and compliance activities that can be carried out by ADEQ. With adequate funding levels, SWP may conduct more regular inspections of regulated facilities and entities, leading to greater oversight, identification of violations, and corrective actions, resulting in greater minimization of public health risks from solid waste activities. Additionally, adequate funding for SWP will result in sustained and improved Agency response to citizen complaints. Robust engagement with the public is a critical component of ADEQ's mission. SWP receives approximately 80 solid waste complaints from the public annually. The ability to ensure that each complaint is efficiently and effectively fielded, managed, and resolved will be strengthened through adequate funding for SWP.

Further benefits include greater public outreach and education efforts. For example, the Recycling Program educates and encourages Arizonans to reduce, reuse, recycle, and buy recycled products as an alternative to solid waste disposal in landfills. The program assists communities and organizations in developing recycling programs, accessing markets for recycled materials, and educating people about the benefits of recycling. Providing information to the public regarding proper residential and commercial disposal of solid waste is another important component of ADEQ's mission.

Probable costs to private persons and consumers include the increase in the fee cap on the sale of new tires. This rulemaking incorporates into rule the statutory new tire sale fee under A.R.S. § 44-1302 of 2% on the purchase price of each tire sold and raises the per tire cap from $2.00 to $4.66. This is anticipated to result in increased revenues of $6.7 million. This fee is to be collected by the seller of tires and vehicles and often operates as a passthrough fee to

be borne by the consumer. The maximum increased cost an individual consumer may be subject to is $10.64 per vehicle purchase or $2.66 per tire replacement, assuming the purchase is of a four-wheel vehicle.

An additional probable cost to private persons and consumers is the potential for increased solid waste disposal costs due to the increase to the landfill disposal fee. The landfill disposal tonnage fee is often a passthrough to residential customers. With the landfill disposal fee being increased based on a CPI adjustment, landfills, both public and privately-owned, may elect to raise rates for residents and customers to offset this increase.

Probable effect on state revenues: ADEQ estimates that fees from this rulemaking will directly affect state revenues by increasing overall annual fee revenue generated across programs and funds by approximately $12 million.

Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking: This rulemaking is the least intrusive and costly means possible to achieve the same objectives. ADEQ engaged with stakeholders to explore methods to reduce the impact of new or increased fees, including among other outreach efforts three stakeholder meetings, and established an implementation schedule for the first calendar year of the fees to impose the least burden and cost, as discussed in detail in Part 7 of the Preamble.

Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data: Any data or reasoning which this rulemaking is based on is identified in the "Rule Scope and Explanation" portion of the Notice of Final Rulemaking located in Part 7. Generally, no new data was introduced or reviewed to make these rule changes.

Based on the foregoing, ADEQ finds that the benefits associated with this rule change outweigh any foreseen or anticipated costs.

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ADMINISTRATIVE RULES DIVISION

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2024 through December 31, 2024

Sections amended in this Chapter are too numerous to list on the cover page. Refer to the historical notes for Sections made and amended in Supp. 24-4.

Questions about these rules? Contact:

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The release of this Chapter in Supp. 24-4 replaces Supp. 21-4, 1-42 pages.
Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

Authority: A.R.S. §§ 41-1003 and 49-104

Supp. 24-4

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Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).

Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Department was not required to hold public hearings on these rules.

ARTICLE 12. WASTE TIRES; USED TIRES

Title 18, Chapter 13, Article 12, consisting of Sections R18-13-1201 through R18-13-1210, recodified from Title 18, Chapter 8, Article 7, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 13. SPECIAL WASTE AND BEST MANAGEMENT PRACTICES FOR SHREDDER RESIDUE

Title 18, Chapter 13, Article 13, consisting of Sections R18-13-1301 through R18-13-307, Table A, Exhibit 1, and Appendices A and B, recodified from Title 18, Chapter 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

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Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

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Article 25, consisting of Section R18-13-2501, expired at 23 A.A.R. 3429, effective October 10, 2017 (Supp. 17-4).

Article 25, consisting of Section R18-13-2501, adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4).

ARTICLE 26. EXPIRED

Article 26, consisting of Sections R18-13-2601 through R18-13-2604, expired at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

Article 26, consisting of Sections R18-13-2601 through R18-13-2604, made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4).

ARTICLE 27. EXPIRED

Article 27 consisting of Sections R18-13-2701 through R18-13-2703, expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

Article 27 consisting of Sections R18-13-2701 through R18-13-2703, made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2).

ARTICLE 1. RESERVED

Editor's Note: Article 2, consisting of Section R18-13-201, was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit the rules to the Governor's Regulatory Review Council for review; and the Department was not required to hold public hearings on this Section (Supp. 98-3).

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules (Supp. 98-3).

R18-13-201. Land Application of Biosolids Exemption

A. This Section applies only to biosolids as defined in R18-9-1001. The land application of biosolids, when placed on or applied to the land in full conformity with 18 A.A.C. 9, Article 10 and A.R.S. § 49-761(F), and if the site of land application has ceased to receive application of biosolids and all applicable site restrictions set by A.A.C. Title 18 Environmental Quality have been satisfied, is exempt statewide from the definition of solid waste found at A.R.S. § 49-701.01(A). This exemption applies only when the biosolids and the soil to which it has been applied remain at the site of the application.

B. This exemption does not alter or set any new standard for the soil remediation standards found at 18 A.A.C. 7, Article 2.

Historical Note

Adopted under and exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2), effective July 27, 1998 (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption

This Section applies only to coal slurry discharges onto the ground from pipeline leaks. Coal slurry discharges onto the ground from pipeline leaks are exempt statewide from the definition of solid waste prescribed in A.R.S. § 49-701.01(A) if both of the following conditions are met:

1. The discharge was the result of an accidental pipeline leak.
2. The thickness of the layer of coal slurry on the ground that resulted from the discharge is 3 inches or less.

Historical Note

New Section adopted by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES

R18-13-301. Reserved

R18-13-302. Definitions

A. "Approved" means acceptable to the Department.

B. "Ashes" means residue from the burning of any combustible material.

C. "Department" means the Department of Environmental Quality or a local health department designated by the Department of Environmental Quality.

D. "Garbage" means all animal and vegetable wastes resulting from the processing, handling, preparation, cooking, and serving of food or food materials.

E. "Manure" means animal excreta, including cleanings from barns, stables, corrals, pens, or conveyances used for stabling, transporting, or penning of animals or fowls.

F. "Person" means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership or individual.

G. "Refuse" means all putrescible and nonputrescible solid and semisolid wastes, except human excreta, but including garbage, rubbish, ashes, manure, street cleanings, dead animals, abandoned automobiles, and industrial wastes.

H. "Rubbish" means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, waste metal, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

Historical Note

Section recodified from A.A.C. R18-8-502, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-303. Responsibility

A. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the sanitary condition of said premises, business establishment, or industry. No person shall place, deposit, or allow to be placed or deposited on his premises or on any public street, road, or alley any refuse or other objectionable waste, except in a manner described in these rules.

B. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the storage and disposal of all refuse accumulated, by a method or methods described in these rules.

C. The collection and disposal of all refuse not acceptable for collection by a collection agency is the responsibility of each occupant, business establishment, or industry where such refuse accumulates, and all such refuse shall be stored, collected, and disposed of in a manner approved by the Department.

D. All dangerous materials and substances shall, where necessary, be rendered harmless prior to collection and disposal.

Historical Note

Section recodified from A.A.C. R18-8-503, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-304. Inspection

Representatives of the Department shall make such inspections of any premises, container, process, equipment, or vehicle used for collection, storage, transportation, disposal, or reclamation or refuse as are necessary to ensure compliance with these rules.

Historical Note

Section recodified from A.A.C. R18-8-504, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-305. Collection Required

A. Where refuse collection service is available, the following refuse shall be required to be collected: Garbage, ashes, rub-

bish, and small dead animals which do not exceed 75 pounds in weight.

B. The following refuse is not considered acceptable for collection but may be collected at the discretion of the collection agency where special facilities or equipment required for the collection and disposal of such wastes are provided:

1. Dangerous materials or substances, such as poisons, acids, caustics, infected materials, radioactive materials, and explosives.
2. Materials resulting from the repair, excavation, or construction of buildings and structures.
3. Solid wastes resulting from industrial processes.
4. Animals exceeding 75 pounds in weight, condemned animals, animals from a slaughterhouse, or other animals normally considered industrial waste.
5. Manure.

Historical Note

Section recodified from A.A.C. R18-8-505, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-306. Notices

A. All collection agencies shall provide each householder, or business establishment served, with a copy of the requirements governing the storage and collection of refuse which shall cover at least the following items:

1. Definitions.
2. Places to be served.
3. Places not to be served.
4. Scheduled day or days of collection.
5. Materials acceptable for collection.
6. Materials not acceptable for collection.
7. Preparation of refuse for collection.
8. Types and size of containers permitted.
9. Points from which collections will be made.
10. Necessary safeguards for collectors.

B. All such notices governing storage and collection shall conform to these rules.

Historical Note

Section recodified from A.A.C. R18-8-506, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-307. Storage

A. All refuse shall be stored in accordance with the requirements of this Section. The owner, agent, or occupant of every dwelling, business establishment, or other premises where refuse accumulates shall provide a sufficient number of suitable and approved containers for receiving and storing of refuse, and shall keep all refuse therein, except as otherwise provided by this Chapter.

B. Garbage shall be stored in durable, rust resistant, nonabsorbent, watertight, and easily cleanable containers, with close fitting covers and having adequate handles or bails to facilitate handling. The size of the container shall be determined by the collection agency.

C. Rubbish and ashes shall be stored in durable containers. Bulky rubbish such as tree trimmings, newspapers, weeds, and large cardboard boxes shall be handled as directed by the collection agency. Where garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified in subsection (B).

D. Containers for the storage of refuse shall be maintained in such a manner as to prevent the creation of a nuisance or a menace to public health. Containers that are broken or otherwise fail to meet the requirements of the rules shall be replaced, by the owner of said containers, with approved containers.

E. Manure and droppings shall be removed from pens, stables, yards, cages, conveyances, and other enclosures as often as necessary to prevent a health hazard or the creation of a nuisance. All material removed shall be handled and stored in a manner that will maintain the premises nuisance free.

Historical Note

Section recodified from A.A.C. R18-8-507, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-308. Frequency of Collection; Variance

A. The collection of garbage, refuse, rubbish, and ashes shall be in accordance with rules of the collection agency except that the frequency of collection shall not be less than once per week.

B. A variance from the required frequency of collection in subsection (A) may be granted by the county department designated by the county to approve variances to allow for collection less than once weekly. The variance may be granted upon submission of an acceptable plan by the collection agency to the designated county department demonstrating that no public health hazards or nuisances will exist and that fly breeding will be controlled by either biological, chemical, or mechanical means. The variance may be revoked whenever the designated county department determines that the circumstances warranting the variance no longer exist.

C. A county may request the Department of Environmental Quality to assume the functions of granting and revoking variances under this Section.

D. For the purposes of this Section, "collection agency" means a city, town, person, or commercial service that offers collection or transportation of garbage, refuse, rubbish, and ashes as a service.

Historical Note

Section recodified from A.A.C. R18-8-508, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section amended by final rulemaking at 30 A.A.R. 3900 (December 27, 2024), effective February 4, 2025 (Supp. 24-4).

R18-13-309. Place of Collection

A. All refuse shall be properly placed on the premises for convenient collection as designated by the collection agency.

B. Where alleys are provided, collection shall be made on the alley side of the premises.

Historical Note

Section recodified from A.A.C. R18-8-509, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-310. Vehicles

A. Vehicles used for collection and transportation of garbage, or refuse containing garbage, shall have covered, watertight, metal bodies of easily cleanable construction, shall be cleaned frequently to prevent a nuisance or insect breeding, and shall be maintained in good repair.

B. Vehicles used for collection and transportation of refuse shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak, or spill therefrom. Where spillage does occur, it shall be picked up immediately by the collector and returned to the vehicle or container.

C. Vehicles used for collection and transportation of rubbish or manure shall be of such construction as to prevent leakage or spillage, and shall provide a cover to prevent blowing of materials or creating a nuisance.

Historical Note
Section recodified from A.A.C. R18-8-510, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-311. Disposal; General

A. All refuse shall be disposed of by a method or methods included in these rules and shall include rodent, insect, and nuisance control at the place or places of disposal. Approval must be obtained from the Department for all new disposal sites and may change in the method of disposal prior to use.

B. Carcasses of large dead animals shall be buried or cremated, unless satisfactory arrangements have been made for disposal by rendering or other approved methods.

C. All public "dumping grounds", provided in compliance with A.R.S. § 9-441, shall be maintained and operated in accordance with the requirements of these rules.

D. Manure shall be disposed of by sanitary landfill, composting, incineration, or used as fertilizer in such a manner as not to create insect breeding or a nuisance.

Historical Note
Section recodified from A.A.C. R18-8-511, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-312. Methods of Disposal

Approval must be obtained from the Department for any method or methods used for the disposal of refuse prior to the start of operations, and shall be accomplished by one or more of the methods listed below:

1. Sanitary landfill -- Consists of the disposal of refuse on land and the daily compaction and covering of the refuse with 6 to 12 inches of earth so as to prevent a health hazard or nuisance. The final compacted earth cover shall be a minimum of 2 feet in depth. Where sanitary landfill operations are proposed, the Department will require the following:
   a. The landfill shall be located so that seepage will not create a health hazard, nuisance, or cause pollution of any watercourse or water bearing strata.
   b. Adequate and proper surface drainage shall be provided to prevent ponding or erosion by rainwater of the finished fill.
   c. Provision shall be made for the control of insects, rodents, wind blown refuse, and accidental fire.
   d. Burning of refuse is prohibited.
   e. An all weather access road is required.
   f. Suitable equipment and operating personnel shall be provided.
   g. Salvaging, if permitted, shall be rigidly controlled.
   h. A variance from the daily compaction and covering requirement may be granted for sites serving less than 2,000 people by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist. The variance will allow for compaction and cover every two weeks at sites serving less than 500 people; weekly compaction and cover for sites serving from 500 to 1,000 people; and twice weekly compaction and cover for sites serving from 1,000 to 2,000 people. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.
2. Incineration -- Where incineration is to be employed, the plans and specifications, along with any other information necessary to evaluate the project, shall be submitted to the Department and approval received prior to construction. In addition, an approved method for the disposal of non-combustible refuse is required. Where incineration is proposed, the following items shall be provided.
   a. The capacity of the incinerator shall be sufficient for the maximum production of refuse expected.
   b. Noncombustible refuse shall be disposed of by methods approved by the Department.
   c. Skilled personnel to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
3. Composting -- This method of disposal is acceptable to the Department under the following conditions:
   a. That plans and specifications and other information necessary to evaluate the project are submitted to the Department and approval received prior to start of construction.
   b. That provisions are made for the proper disposal of all refuse not considered suitable for composting.
   c. Skilled personnel shall be provided to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
4. Garbage grinding -- This method, involving the separate collection and disposal of garbage into a community sewerage system through commercial type grinders or mandatory community-wide installation of individual household grinders, will be acceptable to the Department provided that suitable means shall be provided for the disposal of all remaining refuse.
5. Hog feeding -- This method of disposal will only be approved under the following conditions:
   a. The garbage is collected and stored in suitable containers.
   b. Only approved type vehicles are used for collection.
   c. All garbage is effectively heat-treated in accordance with Title 24, Chapter 7, Article 3 (A.R.S. §§ 24-941 through 24-949).
   d. All remaining refuse, including nonedible garbage, is collected and disposed of separately by methods approved by the Department.
6. Manure disposal -- Manure shall be disposed of by sanitary landfill, composting, incinerating, or used as a fertilizer in such a manner as not to create insect breeding or a nuisance.

Historical Note
Section recodified from A.A.C. R18-8-512, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 4. SOLID WASTE FACILITIES SUBJECT TO BEST MANAGEMENT PRACTICES

R18-13-401. Definitions

A. "Department" means the Arizona Department of Environmental Quality.

B. "Material recovery facility" means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated offsite for the purpose of recycling and transport, or where source separated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.

C. "Recyclable solid waste" means a product or material described in subsection (C)(1) or (2), and for which subsection (C)(3) is true:

1. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
2. A material that is a result of a process or activity whose purpose was to produce something else.
3. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

Historical Note

New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-402. Solid Waste Facilities Subject to Best Management Practices; Fees

A. The following solid waste facilities subject to best management practices under A.R.S. § 49-762.02 shall register with the Department and pay registration fees as provided in this Section:

1. A transfer facility, as defined in A.R.S. § 49-701, with a daily throughput of 180 cubic yards or less, but not including:
   a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
   b. Community or neighborhood recycling bins including drop boxes, roll off containers, and plastic containers used to collect residential, business, or governmental recyclable solid waste.
2. A site at which more than 500 and fewer than 5,000 waste tires are stored on any day that is not required to obtain plan approval pursuant to A.R.S. § 49-762.

B. Initial registration. A new solid waste facility listed in subsection (A) shall not begin operation until the owner or operator registers with the Department on a form approved by the Department. The owner or operator of a new solid waste facility listed in subsection (A) shall submit an initial registration fee of $1,800 at the time of registration under this subsection.

C. Annual registration fee. The Department shall bill an annual registration fee of $1,500 to a registered solid waste facility listed in subsection (A) that has not filed a notice of termination of registration with the Department. The owner or operator of a registered solid waste facility listed in subsection (A) shall pay the annual registration fee within 30 days of invoice receipt.

D. Registration as a waste tire collection site under R18-13-1211 shall satisfy registration and fee requirements pursuant to this Section for a site under subsection (A)(2) of this Section.

E. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (B) and (C) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (E)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note

New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

ARTICLE 5. REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION

R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees

A. The following solid waste facilities requiring self-certification under A.R.S. § 49-762.01 shall register with the Department and pay annual registration fees as provided in this Section:

1. A transfer facility, as defined in A.R.S. § 49-701, with a daily throughput of more than 180 cubic yards, including a material recovery facility, but not including:
   a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
   b. Community or neighborhood recycling bins including drop boxes, roll off containers, and plastic containers used to collect residential, business, or governmental recyclable solid waste.
2. A facility storing 5,000 or more waste tires on any one day and not required to obtain plan approval.
3. A waste tire shredding and processing facility.

B. Initial registration for a new facility. The owner or operator of a planned new facility identified in subsection (A) of this Section shall submit the following information to the Department before beginning construction:

1. The name of the solid waste facility.
2. The name, mailing address and telephone number of each owner and operator of the solid waste facility.
3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
5. A diagram of the property showing its approximate size and the planned location of the solid waste facility or facilities.
6. Documentation that the facility will comply with local zoning laws or, if the owner is an agency or political subdivision of this state, with A.R.S. § 49-767.
7. Documentation that the facility has any other environmental permit that is required by statute.
8. A copy of the public notice in a newspaper of general circulation in the area where the facility will be located stat-

ing the intent to construct and operate a new solid waste facility pursuant to A.R.S. § 49-762.05.

C. Initial and annual registration for an existing facility. The owner or operator of an existing facility identified in subsection (A) of this Section shall submit the following information to the Department annually on a form approved by the Department and note any changes since the last registration:
1. The name of the solid waste facility.
2. The name, address and telephone number of each owner and operator of the solid waste facility.
3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
5. A diagram of the property showing its approximate size and the location of the solid waste facility or facilities.
6. Documentation that the facility remains in compliance with the most current local zoning laws or with A.R.S. § 49-767, as applicable.
7. Documentation that the facility continues to hold any other environmental permit that is required by statute.

D. Self-certification. With each registration under subsection (B) or (C) of this Section, the owner or operator shall certify that the information submitted is true, accurate, and complete to the best of the person's knowledge and belief.

E. Registration fees. The owner or operator of a solid waste facility under subsection (A) shall pay the Department $3,600 for the initial registration of a new facility, and $3,000 for each annual registration thereafter. The Department shall bill the annual registration fee to a solid waste facility under subsection (A) that has not filed a notice of termination of registration with the Department and the solid waste facility shall pay within 30 days of invoice receipt.

F. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (E) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:
1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (F)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

G. As used in this Section:
1. "Department" means the Arizona Department of Environmental Quality.
2. "Material recovery facility" means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated offsite for the purpose of recycling and transport, or where source separated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.
3. "Recyclable solid waste" means a product or material described in subsection (G)(3)(a) or (b), and for which subsection (G)(3)(c) is true:
   a. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
   b. A material that is a result of a process or activity whose purpose was to produce something else.
   c. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

ARTICLE 6. RESERVED

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

R18-13-701. Definitions
In addition to the definitions provided in A.R.S. §§ 49-701, 49-701.01, and 49-851, and 18 A.A.C. 13, the following definitions apply in this Article:
1. "Aquifer Protection Permit" or "APP" means the permit that is required pursuant to A.R.S. § 49-241.
2. "MSWLF" means a municipal solid waste landfill as defined in A.R.S. § 49-701.
3. "Non-APP requirements for Non-MSWLFs" means 40 CFR 257 requirements and the restrictive covenant and location restrictions required in A.R.S. Title 49, Chapter 4.
4. "Non-MSWLF" means a landfill that is not a municipal solid waste landfill as defined in A.R.S. § 49-701.
5. "RD&D" means research, development, and demonstration.
6. "Review hours" means the hours or portions of hours that the Department's staff spends on a request for a plan review. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
7. "Review-related costs" means any of the following costs applicable to a specific plan review:
   a. Presiding officer services for public hearings on a plan review decision,
   b. Court reporter services for public hearings on a plan review decision,
   c. Facility rentals for public hearings on a plan review decision,
   d. Charges for laboratory analyses performed during the plan review,
   e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
8. "Solid waste facility plan" means a plan or the individual components of a plan, such as the design, operational, closure, or post-closure plan, or the demonstration of financial responsibility as required by A.R.S. § 49-770,

submitted to the Department for review and plan approval.

Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended effective May 15, 1997 (Supp. 97-2). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-702. Solid Waste Facility Plan Review Fees

A. With each application submitted for approval pursuant to A.R.S. § 49-762.03, the applicant shall remit an initial fee in accordance with one of the fee tables in this subsection, unless otherwise provided in subsection (B) of this Section. This subsection also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

Fee Tables

Fees for Plan Review of New Solid Waste Facilities

	Initial	Maximum
Solid Waste Landfills	$20,000	$297,047
Non-APP requirements for Non-MSWLFs operating under an APP	$2,000	$74,262
Other Solid Waste Facilities Subject to Plan Approval	$10,000	$148,524

Fees for Modifications to Solid Waste Facility Plans

	Initial	Maximum
Solid Waste Landfills – Type IV	$1,500	$222,786
Solid Waste Landfills – Type III	$750	$111,393
Other Solid Waste Facilities Subject to Plan Approval - Type IV	$750	$111,393
Other Solid Waste Facilities Subject to Plan Approval - Type III	$500	$74,262

Fees for Review of Financial Responsibility Plans for Solid Waste Facilities

	Initial	Maximum
Annual Review for Solid Waste Landfills	$891 Flat Fee	N/A
Other Solid Waste Facilities	$200	$7,426

B. The Department shall bill an applicant for plan review services, subject to an hourly rate, no more than monthly, but at least semi-annually. The following information shall be included in each bill:

1. The dates of the billing period;
2. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
   a. Each review task performed,
   b. The facility and operational unit involved, and
   c. The hourly rate;
3. A description and amount of any other reasonable review-related cost; and
4. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.

C. Within 30 days after the Department makes a final determination whether to approve or disapprove of the facility plan, or when an applicant withdraws or closes the application for review, the Department shall prepare and issue a final itemized bill of its review. If the Department determines that the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the Department shall refund the difference to the applicant within 30 days after the issuance of the approval or disapproval of the application. If the Department determines that the actual cost of plan review is greater than the corresponding amount listed, the Department shall list the amount that the applicant owes on the final itemized bill, except that the final itemized bill shall not exceed the applicable maximum fee specified in subsection (A). The applicant shall pay in full the amount due within 30 days of receipt of the final itemized bill.

D. If the final bill is not paid within the 30 days, the Department shall mail a second notice to the applicant. Failure to pay the amount due within 60 days of receipt of the notice shall result in the Department initiation of proceedings for suspension of the approval, in accordance with A.R.S. § 49-782. The suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § 49-782. The Department shall not review any further plans for an entity which has not paid all fees due for a previous review of a solid waste facility plan.

F. The hourly rate is $181.

G. Beginning July 1, 2026, the Director shall adjust the fee amounts in the columns of the Fee Tables titled "Maximum", the annual review for solid waste landfills flat fee in the Fee Table - Fees for Review of Financial Responsibility Plans for Solid Waste Facilities, and the hourly rate amount in subsection (F) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (G)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Corrected typographical error "facilities" in Schedules A, B, and C, to reflect Section filed in the Office of the Secretary of State December 1, 1995. Section amended effective May 15, 1997; except for special waste management plan component fees listed in Schedules A, B, and C, which become effective July 1, 1997 (Supp. 97-2). Amended by exempt rulemaking at 5 A.A.R. 3869, effective October 1, 1999 (Supp. 99-3). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January

24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-703. Review of Bill

A. An applicant who disagrees with the final bill received from the Department for plan review and issuance or denial of a solid waste facility plan approval under this Article may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.

B. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. §§ 41-1092 through 1092.12.

Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-704. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-705. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-706. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 8. GENERAL PERMITS

R18-13-801. General Permit Fees

A. The Department shall assess annual fees for operation under a general permit established in rule as described in the Table below. Beginning July 1, 2026, the Director shall adjust the fee amounts in the Table below annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (A)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

B. In addition to the technical requirements proposed for any general permit to be included in this Article, the Department shall propose the category to be assigned to the permit according to the Table below.

C. An applicant shall pay the initial fee when approval to operate is requested. The Department shall bill an annual fee to facilities that have not notified the Department that they are no longer operating and have met the closure requirements of this Chapter.

D. For the purpose of this Article, "complex" has the meaning in A.A.C. R18-1-501. "Standard" is any facility that is not complex.

Table. Solid Waste General Permits

Category	Initial Fee	Annual Fee
Collection, Storage and Transfer-Standard	$1,114	$149
Collection, Storage and Transfer-Complex	$11,139	$1,485
Treatment-Standard	$1,485	$149
Treatment-Complex	$14,852	$1,485
Disposal	$22,279	N/A

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations

A. This general permit is adopted pursuant to A.R.S. § 49-706 as an alternative to plan approvals for facilities identified in A.R.S. § 49-762(A)(1). This general permit authorizes disposal of solid waste in a landfill at a mining operation if the landfill meets one of the following criteria:

1. The landfill is identified as a discharging facility in an area-wide aquifer protection permit and is located within the pollutant management area developed for that permit; or
2. The landfill is located within the pollutant management area of an area-wide aquifer protection permit but is exempt from the permit requirement because it contains only inert material as defined in A.R.S. § 49-201; or
3. The landfill is located at a site qualifying as a groundwater protection permit facility as defined in A.R.S. § 49-241.01(C) and the site has submitted an administratively complete application for an aquifer protection permit that has not been denied. Landfills that are located at mining operations and that are subject to best management practices under A.R.S. § 49-762.02(6) are required to comply with those practices and do not require coverage under this general permit.

B. Authorized and prohibited materials.

1. Disposal of the following is allowed under this general permit:
   a. Solid waste generated at the mining operation where the landfill is located; and
   b. Incidental amounts of putrescible waste generated at the mining operation where the landfill is located. For the purposes of this Section, "putrescible waste"

means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.

2. Disposal of the following is prohibited under this general permit:
   a. Used oil as defined in A.R.S. § 49-801(3).
   b. Human excreta as defined in R18-13-1102.
   c. Special waste as defined in A.R.S. § 49-851(A)(5).
   d. Biohazardous medical waste as defined in R18-13-1401.
   e. Radioactive waste material regulated for disposal pursuant to Title 12, Chapter 1 of the Arizona Administrative Code.
   f. Hazardous waste as defined in A.R.S. § 49-921(5), including hazardous waste generated by a conditionally exempt small quantity generator.
   g. Bulk or noncontainerized liquid waste.
   h. Waste containing polychlorinated biphenyls regulated for disposal pursuant to 40 CFR 761.

C. A person may operate a landfill at a mining operation under this general permit if:
1. Operation of the landfill complies with the requirements of this Section;
2. The person files a Notice of Intent to Operate that complies with subsections (D) and (E);
3. The person satisfies any requests for additional information from the Department regarding the Notice of Intent to Operate landfill operation and receives a written Authorization to Operate from the Director; and
4. The person submits the applicable fee established in R18-13-801 for the Disposal category.

D. Notice of Intent to Operate. An applicant shall submit to the Department a Notice of Intent to Operate under this general permit. The Notice shall contain:
1. The name, address, and telephone number of the applicant;
2. The name, address, and telephone number of a contact person familiar with the operation of the facility;
3. The legal description of the landfill area, latitude and longitude coordinates, a detailed figure(s) showing both the existing landfill boundary and the anticipated future waste footprint of the landfill at the time of closure, and a map showing the location of the landfill within the mining operation;
4. A description of how the applicant will meet the public access restrictions in subsection (H)(3);
5. A description of how the applicant will meet the cover requirements in subsection (H)(4);
6. A description of how the applicant will meet the methane requirements in subsection (H)(5). For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring sampling results from either:
   a. One (1) measurement per acre of landfill waste footprint; or
   b. A minimum of four (4) monitoring probes installed to the depth of refuse around the perimeter of the landfill and measured quarterly for the presence of methane gas for a period of one (1) year;
7. A narrative description of the landfill, including whether the landfill is existing or planned, the acreage of the current and planned waste footprint, estimated disposal capacity in cubic yards, expected lifespan, projected rate of waste disposal in tons per day or per week, and sources of solid waste generation;
8. A listing of any other federal or state environmental permits issued for or needed by the landfill, including any individual plan approval, APP, Groundwater Quality Protection Permit, or Notice of Disposal; and
9. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with all terms of this general permit.

E. Existing facility application deadline. Existing facilities that qualify for coverage under subsections (A)(1), (A)(2), or (A)(3) on the effective date of this rule shall submit a Notice of Intent to Operate within 2 years of the effective date of this rule to obtain coverage. The Director may extend this date in individual cases if the facility could not have submitted an administratively complete Notice in time with reasonable diligence.

F. Authorization review.
1. Inspection. The Department may inspect the facility to determine that the applicable terms of this general permit are being met.
2. Authority to Operate issuance.
   a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of this general permit, the Director shall issue an Authority to Operate.
   b. The Authority to Operate authorizes the person to operate the landfill under the terms of this general permit.
3. Authority to Operate denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of this general permit, the Director shall notify the person of the decision not to issue the Authority to Operate and the person shall not operate the landfill under this general permit. The notification shall inform the person of:
   a. The reason for the denial with reference to the statute or rule on which the denial is based;
   b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
   c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

G. Statutory requirements. The landfill shall be:
1. Located according to the applicable location restrictions in A.R.S. § 49-772; and
2. Subject to a restrictive covenant recorded pursuant to A.R.S. § 49-771.

H. Operational requirements.
1. Inspect the landfill at least quarterly and after large storm events for overall integrity and condition of the facility, including stormwater diversions, and conduct maintenance and repairs as needed. For the purposes of this Section, a "large storm event" is defined as one-half inch of precipitation in any 24-hour period.
2. Direct storm water runoff from surrounding areas away from the landfill.
3. Restrict public access to the landfill or to the mining operation site by signs or physical barriers, including natural barriers.

4. Apply cover at such frequencies and in such a manner as to control windblown dispersion of waste, reduce the risk of fire and impede disease vectors' access to the waste, taking into account the types and volumes of waste placed in the landfill, the frequency of disposal, and other relevant considerations. The Department may allow other techniques that are demonstrated to be equally protective as applying cover material.
5. Concentrations of methane gas shall not exceed 25% of the lower explosive limit in facility structures within 100 feet of the landfill boundary and shall not exceed the lower explosive limit beyond the landfill boundary.
6. Methane monitoring.
   a. For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring data as described in subsection (D)(6) with the Notice of Intent to Operate.
      i. If the data demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit, then no methane monitoring is required in order to operate under this permit.
      ii. If the data demonstrate that concentrations of methane gas exceed 25% of the lower explosive limit, then annual methane monitoring using one of the data gathering methods described in subsection (D)(6) is required in order to operate under this permit. Results of such annual methane monitoring shall be submitted to the Department.
         (1) A person operating a landfill subject to annual methane monitoring may reduce monitoring to once every five years if the results of three consecutive annual sampling events demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit.
         (2) A person operating a landfill subject to annual methane monitoring may request the Department to reduce or eliminate such monitoring based on any other methods approved by the Department, including consideration of the potential for methane gas to be present in facility structures within 100 feet of the landfill boundary at concentrations exceeding 25% of the lower explosive limit.
   b. For landfills that have not accepted waste prior to the effective date of this Section, no methane monitoring is required in order to obtain coverage or operate under this permit.
7. Maintain an operating record that documents compliance with the conditions in this permit.

I. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Landfill construction drawings and as-built plans, if available;
2. The operating record required by subsection (H)(7); and
3. Methane monitoring results, if any, obtained under subsection (H)(6).

J. Reporting requirements. A permittee shall report the following to the Department:
1. Methane monitoring concentrations that exceed those listed in subsection (H)(5) within 7 days of the determination.
2. A change in ownership or expansion of the planned waste footprint as soon as practicable. These events shall require the filing of a new Notice of Intent to Operate.

K. General applicability. Landfills covered under this general permit:
1. Are not subject to rules adopted by the Department under A.R.S. § 49-761.
2. Are exempt from the solid waste facility plan requirements in A.R.S. §§ 49-762.03 and 49-762.04 as provided in A.R.S. § 49-762(B).

L. For the purposes of this Section, "mining" has the definition at A.R.S. § 27-301.

Historical Note
New Section made by final rulemaking at 20 A.A.R. 2679, effective November 9, 2014 (Supp. 14-3).

ARTICLE 9. SOLID WASTE MANAGEMENT PLANNING

R18-13-901. Reserved

R18-13-902. Expired

Historical Note
Section recodified from A.A.C. R18-8-402, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2983, effective September 15, 2016 (Supp. 16-3).

ARTICLE 10. RESERVED

ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA

Article 11 recodified from existing Sections in 18 A.A.C. 8, Article 6 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1101. Reserved

R18-13-1102. Definitions

A. "Chemical toilet" means a toilet with a watertight, impervious pail or tank that contains a chemical solution placed directly under the seat and a pipe or conduit that connects the riser to the tank.

B. "Department" means the Department of Environmental Quality or a local health department designated by the Department.

C. "Earth-pit privy" means a device for disposal of human excreta in a pit in the earth.

D. "Human excreta" means human fecal and urinary discharges and includes any waste that contains this material.

E. "License" means a stamp, seal, or numbered certificate issued by the Department.

F. "Pail or can type privy" means a privy equipped with a watertight container, located directly under the seat for receiving deposits of human excreta, that provides for removal of a waste receptacle that can be emptied and cleaned.

G. "Person" means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, or individual.

H. "Sewage" means the waste from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in residences, institutions, public and business buildings, mobile homes, and other places of human habitation, employment, or recreation.

Historical Note
Recodified from R18-8-602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1103. General Requirements; License Fees

A. Any person owning or operating a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage or human excreta that is removed from a septic tank or other onsite wastewater treatment facility; earth pit privy, pail or can type privy, or other type of privy; sewage vault; or fixed or transportable chemical toilet shall obtain a license for each vehicle from the Department. The person shall apply on a form approved by the Department and shall demonstrate that each vehicle is designed and constructed to meet the requirements of this Article.

B. A person shall operate and maintain the vehicle and equipment so that a health hazard, environmental nuisance, or violation of a water quality standard established under 18 A.A.C. 11 is not created.

C. License terms.

1. For each newly licensed vehicle:
   a. Subject to inspection conducted by the Department pursuant to this Article, the initial license fee shall be $660, to be submitted with the license application, and the annual license fee shall be $550; or
   b. Subject to inspection conducted by a county pursuant to a delegation agreement with the Department, the initial license fee shall be $270, to be submitted with the license application, and the annual license fee shall be $225.
2. After initial licensure of a vehicle, the Department will renew the license annually after payment of the annual fee according to subsection (C)(3). The licensee shall renew by completing a renewal form approved by the Department and submitting the annual license fee to the Department no later than 30 days before expiration.
3. Each vehicle license may be renewed if:
   a. The annual license fee is paid,
   b. The owner or operator is in compliance with subsection (D) of this Section,
   c. The vehicle is operated by the same person for the same purpose,
   d. The vehicle has been inspected within the last 12 months pursuant to any inspection required under this Article and found in compliance with this Article, and
   e. The vehicle is maintained according to this Article.

D. Any person owning or operating a vehicle or appurtenant equipment used to collect, store, transport, or dispose of sewage or human excreta shall obtain any required permit from the local county authority in each county in which the person proposes to operate.

E. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (C) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (E)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note
Recodified from R18-8-603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-1104. Repealed

Historical Note
Recodified from R18-8-604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1105. Reserved

R18-13-1106. Inspection

The Department may inspect vehicles and appurtenant equipment used to collect, store, transport, or dispose sewage or human excreta as necessary to assure compliance with this Article.

Historical Note
Recodified from R18-8-606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1107. Reserved

R18-13-1108. Repealed

Historical Note
Recodified from R18-8-608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1109. Reserved

R18-13-1110. Reserved

R18-13-1111. Reserved

R18-13-1112. Sanitary Requirements

A. A person owning or operating a vehicle or appurtenant equipment to collect, store, transport, or dispose of sewage or human excreta shall ensure that:

1. Sewage and human excreta is collected, stored, transported, and disposed of in a sanitary manner and does not endanger the public health or create an environmental nuisance;
2. The vehicle is equipped with a leak-proof and fly-tight container that has a capacity of at least 750 gallons and all portable containers, pumps, hoses, tools, and other implements are stored within a covered and fly-tight enclosure when not in use;
3. Contents intended for removal are transferred as quickly as possible by means of a portable fly-tight container or suction pump and hose to the transportation container.

4. The transportation container is tightly closed and made fly-tight immediately after the contents have been transferred,
5. Portable containers are kept fly-tight while being transported to and from the vehicle,
6. Any waste dropped or spilled in the process of collection is cleaned up immediately and the area disinfected;
7. The vehicle, tools, and equipment are maintained in good repair at all times and, at the end of each day's work, all portable containers, transportation containers, suction pumps, hose, and other tools are cleaned and disinfected; and
8. All wastes collected are disposed of according to the recommendations of the local county health department and that no change in the recommended method of disposal is made without its prior approval. The local county health department shall recommend disposal by one of the following methods:
   a. At a designated point into a sewage treatment facility or sewage collection system with the approval of the owner or operator of the facility or system,
   b. By burying all wastes from chemical toilets in an area approved by the local county health department, or
   c. Into a sanitary landfill with approval of the owner or operator of the landfill and following any precautions designated by the owner and operator to protect the health of the workers and the public.

B. Open dumping is prohibited except in designated areas approved by the local county health department.

Historical Note
Recodified from R18-8-612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1113. Repealed

Historical Note
Recodified from R18-8-613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1114. Repealed

Historical Note
Recodified from R18-8-614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1115. Repealed

Historical Note
Recodified from R18-8-615 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1116. Suspension and Revocation

A. If a Department inspection indicates that a licensed vehicle is not maintained and operated or work cannot be performed according to this Article, the Department shall notify the owner in writing of all violations noted.

B. The Department shall give the owner a reasonable period of time to correct the violations and comply with the provisions of this Article. If the owner fails to comply within the time limit specified, the Department may suspend or revoke the vehicle license based on the number and severity of violations. The Department shall follow the provisions of A.R.S. Title 41, Chapter, Article 10 in any suspension or revocation proceeding.

C. The Department shall consider the revocation or suspension of a permit by a local health department for violation of this Article as grounds for revocation of the vehicle license. The local health department shall immediately suspend both the vehicle license and the permit issued by the local health department for gross violation of this Article if in the opinion of the local health department a serious health hazard or environmental nuisance exists.

D. The owner of the vehicle whose license is suspended or revoked may appeal the final administrative decision as permitted under A.R.S. § 41-1092.08.

Historical Note
Recodified from R18-8-616 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1117. Reinstatement

A. Upon request of the vehicle owner, the Department may reinstate a suspended or revoked vehicle license following a Department reinspection and based on an evaluation of compliance with the requirements of this Article.

B. Upon request of a vehicle owner that fails to complete a renewal form approved by the Department and submit the annual license fee to the Department no later than 30 days before expiration, the Department may reinstate an expired vehicle license after completion of a renewal form, submitting the appropriate annual license fee, and following a Department determination of compliance with the requirements of this Article.

Historical Note
Recodified from R18-8-617 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-1118. Repealed

Historical Note
Recodified from R18-8-618 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1119. Repealed

Historical Note
Recodified from R18-8-619 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1120. Repealed

Historical Note
Recodified from R18-8-620 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by

final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

ARTICLE 12. WASTE TIRES; USED TIRES

R18-13-1201. Definitions

In addition to the definitions provided in A.R.S. § 44-1301, the following definitions apply in this Article:

1. "Aquifer protection permit" means an authorization issued by the Department under A.R.S. § 49-241 et seq.
2. "Burial cell" means an area where mining waste tires are placed in or on the land for burial.
3. "Mining" means activities dedicated to the exploration, extraction, beneficiation, and processing, including smelting and refining, of metallic ores.
4. "Mining facility" means any land, building, installation, structure, equipment, device, conveyance, or area dedicated to mining.
5. "Mining waste tire" means an off-road tire that is greater than three feet in outside diameter that was used in mining.
6. "Operator" means an owner, part owner, management agency, or lessee of a mining facility, a person responsible for the overall operation or control of a mining facility, or an authorized representative of the operator.
7. "Person" is defined in A.R.S. § 49-201.
8. "Waste tire collection site" is defined in A.R.S. § 44-1301.
9. "Waste tire cover" means waste tires that are chopped or shredded into pieces that do not exceed four inches in diameter used for cover at a solid waste landfill.

Historical Note

Section recodified from A.A.C. R18-8-701, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-1202. Burial of Mining Waste Tires

A. The operator shall file with the Director a one-time notice within 24 hours after commencement of burial of mining waste tires consisting of a map of the mining facility that clearly identifies the locations and dimensions of each burial cell and the estimated number of mining waste tires that will be buried in each cell. The operator shall identify each burial cell using an alphabetical or numeric identifier. If a mining facility uses a new burial cell not included in the commencement of burial notice, the operator shall notify the Department within 24 hours after commencement of burial in that cell.

B. An operator shall only permit burial of mining waste tires in areas that are, or will be, included in an aquifer protection permit issued for the mining facility. An operator shall not permit burial of mining waste tires in leach areas unless prior to burial the Department issues an aquifer protection permit covering the leach area.

C. An operator shall not permit a burial cell to be located within 10 feet of another burial cell.

D. An operator shall not permit the burial of mining waste tires unless the tires are waste generated at the mining facility or another mining facility of the same owner.

Historical Note

Section recodified from A.A.C. R18-8-702, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1203. Cover Requirements

A. The operator shall cover all mining industry off-road motor vehicle waste tires buried pursuant to this Article with a minimum of 6 inches of earthen material within 50 days of placement, or sooner if necessary, to prevent vector breeding or fire.

B. The operator shall place final cover over the off-road motor vehicle waste tires within 180 days after placement of the last tire which will be buried in a cell. The final cover shall consist of earthen material which is at least 3 feet deep or which complies with the requirements of the aquifer protection permit for the area where the burial cell is located.

C. The operator shall maintain final cover in compliance with this Section for as long as the mining industry off-road motor vehicle waste tires remain in the burial cell.

Historical Note

Section recodified from A.A.C. R18-8-703, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1204. Annual Report

By March 30 of each year, until a burial cell closure certification is filed with the Department, the operator of the mining facility shall file an annual report with the Director which documents the location of each burial cell established during the preceding calendar year, the alphabetical or numerical identifier of each burial cell, and the number of off-road motor vehicle waste tires which were placed in each burial cell for burial during the preceding calendar year. If no tires were placed in the burial cell for burial during the preceding year, the annual report shall so indicate.

Historical Note

Section recodified from A.A.C. R18-8-704, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1205. Burial Cell Closure Certification

An operator shall file with the Director a burial cell closure certification within 30 days after placing final cover over the mining waste tires under R18-13-1203(B). The certificate shall contain a statement by the operator that no additional tires will be buried in the burial cell and a statement by an Arizona registered engineer certifying that the cover requirements of R18-13-1203 have been met.

Historical Note

Section recodified from A.A.C. R18-8-705, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1206. Storage

At no time shall more than 500 mining industry off-road motor vehicle waste tires be stored at the mining facility outside of a burial cell unless the mining facility has Department approval to operate a waste tire collection facility, pursuant to A.R.S. §§ 44-1304 and 49-762.

Historical Note

Section recodified from A.A.C. R18-8-706, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1207. Maintenance of Records

For at least three years after the burial cell closure certification is filed with the Department, the mining facility operator shall maintain, at the mining facility, records which document the number of tires buried in each cell.

Historical Note
Section recodified from A.A.C. R18-8-707, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1208. Inspections
The Department may inspect a mining facility, during regular operating hours, to determine whether mining industry off-road motor vehicle waste tire burial is in compliance with this Article.

Historical Note
Section recodified from A.A.C. R18-8-708, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1209. Repealed

Historical Note
Section recodified from A.A.C. R18-8-709, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section repealed by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1210. Waste Tire Cover
Waste tires used as cover at a solid waste landfill shall be used according to the solid waste facility plan required by A.R.S. § 49-762. An operator shall not permit mining waste tires to be used as cover at a solid waste landfill for more than two consecutive days at a time.

Historical Note
Section recodified from A.A.C. R18-8-710, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee
A. A new waste tire collection site shall not begin operation until the owner or operator registers with the Department. The owner or operator shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable. The owner or operator of a new waste tire collection site shall pay an initial registration fee of $2,400 within 30 days of invoice receipt.
B. The owner or operator shall pay a $2,000 registration fee annually thereafter within 30 days of invoice receipt.
C. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A) and (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:
1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (C)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee
A. A person shall not store 100 or more used tires outdoors until the person registers with the Department. A person that stores 100 or more used tires outdoors shall pay an initial registration fee of $1,800 within 30 days of invoice receipt. The person shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable.
B. A $1,500 registration fee shall be paid annually thereafter within 30 days of invoice receipt.
C. For the purposes of this Section:
1. "Used tire" means any tire which has been used for more than one day on a motor vehicle.
2. "Outdoors" means other than inside a building with a weatherproof roof.
D. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A) and (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:
1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (D)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note
New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-1212.01. Waste Tire Collection Site Subject to Plan Approval; Fees
A. Initial registration. A waste tire collection site that is required to obtain plan approval under A.R.S. § 49-762(A)(7) shall not begin operation until the owner or operator registers with the Department on a form approved by the Department.
B. Annual registration fee. The Department shall bill an annual registration fee of $5,000 to a registered waste tire collection site that is required to obtain plan approval under A.R.S. § 49-762(A)(7) that has not filed a notice of termination of registration with the Department. The owner or operator of the waste tire collection site that is required to obtain plan approval under A.R.S. § 49-762(A)(7) shall pay the annual registration fee within 30 days of invoice receipt.
C. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (B) of this Section annually by the fol-

lowing method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (C)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note

New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

A person who is required to register a tire facility under more than one of the Sections listed in subsections (1) through (4) shall register and follow procedures under each Section, but is only required to pay the registration fees under the Section with the highest fees.

1. R18-13-1211.
2. R18-13-1212.
3. R18-13-1212.01.
4. R18-13-501.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

ARTICLE 13. SPECIAL WASTE AND BEST MANAGEMENT PRACTICES FOR SHREDDER RESIDUE

R18-13-1301. Definitions

In addition to the terms prescribed in A.R.S. § 49-851, the terms in this Article shall have the following meanings:

1. "Disposal" means discharging, depositing, injecting, dumping, spilling, leaking, or placing special waste into or on land or water so that the special waste or any constituent of the special waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwater.
2. "Exception report" means a report that a generator shall submit to the Director which notifies the Director that the generator has not received a copy of the special waste manifest from the primary or alternate special waste receiving facility to which the special waste was sent pursuant to the generator's instructions on the special waste manifest, or from any special waste receiving facility to which special waste was sent.
3. "Generator" means a person whose act or process onsite produces a special waste listed in, or designated pursuant to, A.R.S. §§ 49-852, 49-854, and 49-855, or whose act or process first causes such special waste to be subject to regulation.
4. "Identification number" means an alphanumeric identifier issued by the Department to each generator, special shipper, and special waste receiving facility to be used on documents, as required pursuant to this Article, in conjunction with shipment of special waste.
5. "Off-site consignment" means a generator's delivery of materials or wastes for transport off-site to a special waste receiving facility within Arizona for treatment, storage, recycling, or disposal.
6. "Off-site" means any property located within Arizona that is not onsite as defined in A.R.S. § 49-851(3).
7. "Operator" means a person who owns and controls all or part of a special waste receiving facility, or who leases, operates, or controls such facility, a person responsible for the overall operation of such a facility, a management agency, or an authorized representative.
8. "Recycling" means recycling as defined in A.R.S. § 49-831(21).
9. "Shredder residue" means waste from the shredding of motor vehicles.
10. "Significant manifest discrepancy" means a difference of more than 10% by weight for bulk shipments, any variation in a piece count for a batch delivery, or any difference in the type of special waste received as compared to the type of special waste listed on the manifest.
11. "Special waste receiving facility" means an off-site location to which special waste is sent to be treated, recycled, stored, or disposed.
12. "Special waste manifest" means a form provided by the Department, shown as Appendix B to this Article, and used to identify the origin, quantity, composition, routing, and destination of special waste during its transportation from a generator's facility to a special waste receiving facility.
13. "Special waste shipper" means a person who transports special waste for off-site treatment, recycling, storage, or disposal.
14. "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of special waste.

Historical Note

Section recodified from A.A.C. R18-8-301, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1302. Special Waste Generator Manifesting Requirements

A. A generator shall request a generator identification number on a form provided by the Director, and shown as Appendix A to this Article, prior to shipping special waste. Within 30 days of receiving the completed form, the Director shall issue the identification number to the generator.

B. Prior to off-site consignment of special waste, the generator shall do all of the following:

1. Complete and sign the "Generator" section of a special waste manifest.
2. Obtain the handwritten signature of the special waste shipper on the special waste manifest.
3. Retain the generator's copy of the special waste manifest.
4. Give the special waste manifest and the remaining attached copies to the special waste shipper or forward it to the receiving facility.

C. Within 14 days after shipment was accepted by a special waste shipper for off-site consignment, the generator shall submit to the Director one legible copy of each special waste manifest with the generator's section completed and containing signatures of the generator and special waste shipper.

D. If, within 35 days after the date the waste was accepted by the initial special waste shipper, the generator does not receive a completed copy of this special waste manifest with the handwritten signature of the special waste receiving facility operator, the generator shall contact the special waste shipper and the special waste receiving facility operator to determine the status of the special waste.

E. The generator shall submit an exception report to the Director if the generator does not receive a completed, signed, legible copy of the special waste manifest within 45 days of the date the waste was accepted by the initial special waste shipper for off-site consignment. The exception report shall contain both of the following:
1. A cover letter, signed by the generator, which explains the efforts made to locate the special waste and the results of those efforts.
2. A legible copy of the special waste manifest which was signed by the generator and the special waste shipper and retained by the generator.

F. The generator shall retain a legible copy of each signed special waste manifest for at least three years from the date of acceptance of a shipment of special waste for off-site consignment.

G. If a person is required to have a manifest, shipping paper or shipping record under federal law for the special waste, the federal manifest, shipping paper, or shipping record may be used in lieu of the Arizona special waste manifest form so long as the federal manifest, shipping paper, or shipping record includes all the information required on the Arizona special waste manifest form.

Historical Note
Section recodified from A.A.C. R18-8-302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1303. Special Waste Shipper Manifesting Requirements

A. A special waste shipper who receives special waste in Arizona for transport to a special waste receiving facility in Arizona shall request a special waste shipper identification number on a form provided by the Director and shown as Appendix A to this Article. The Director shall issue an identification number within 30 days of receipt of the completed form.

B. A special waste shipper shall:
1. Accept special waste for intrastate shipment to a special waste receiving facility only if the waste is accompanied by a special waste manifest which is completed and signed in accordance with the provisions of R18-13-1302.
2. Deliver the entire shipment of special waste to a special waste receiving facility as designated on the special waste manifest. If unable to deliver the special waste to the primary or alternate special waste receiving facility designated on the special waste manifest:
   a. Return the special waste to the generator, or
   b. Contact the generator and obtain instructions for an alternate special waste receiving facility and deliver the waste accordingly.

C. Shipments of special waste between facilities owned by the same generator shall be exempt from the requirements of rules adopted pursuant to A.R.S. § 49-856.

Historical Note
Section recodified from A.A.C. R18-8-303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1304. Special Waste Receiving Facility Manifesting Requirements

A. A special waste receiving facility shall request an identification number on a form provided by the Director, and shown as Appendix A to this Article, and obtain the number prior to receiving special waste. The Department shall issue the identification number within 30 days of receipt of the completed form.

B. A special waste receiving facility shall receive only special waste for which it has a special waste manifest signed and dated by the generator and special waste shipper. In the "Facility" section of the special waste manifest, the operator of the special waste receiving facility shall do all of the following:
1. Enter the identification number.
2. Sign and date each copy of a special waste manifest to certify that the type and amount of special waste, as stated on the special waste manifest, was received.
3. Indicate on the special waste manifest any significant discrepancies between the description, volume, or weight of the special waste as stated on the special waste manifest and the special waste received.

C. After completing the "Facility" portion of the special waste manifest, the operator of the special waste receiving facility shall send one legible copy each of the signed special waste manifest to the Director and the generator within 30 days of the delivery of the special waste.

D. Upon discovery of a significant manifest discrepancy in the special waste manifest and the special waste received, the operator of the special waste receiving facility shall:
1. Contact the generator and special waste shipper to attempt to reconcile the discrepancy.
2. If the discrepancy cannot be resolved within 15 days after receiving the waste, submit a letter to the Director, along with the special waste manifest within five days. The letter shall describe the significant manifest discrepancy and all attempts to reconcile it.

Historical Note
Section recodified from A.A.C. R18-8-304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1305. Records

All records required by this Article shall be retained for at least three years. If notification of an enforcement action by the Department has been received, the records shall be retained until a final determination has been made in the matter or in accordance with the final determination.

Historical Note
Section recodified from A.A.C. R18-8-305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1306. Fees

A. Initial registration fee. Upon making a request for a special waste identification number on a form as provided by the Director, and shown as Appendix A to this Article, an appli-

cant shall submit to the Department an initial registration fee for each operation as follows:

1. For a generator of shredder residue, $3,600; and
2. For a special waste shipper, $1,800.

B. Annual registration fee. The Department shall bill an annual registration to a generator of shredder residue, a special waste receiving facility, and a special waste shipper that has a special waste identification number that has not filed a notice of termination of registration with the Department for each operation as follows:

1. For a generator of shredder residue, $3,000;
2. For a special waste receiving facility, $5,000; and
3. For a special waste shipper, $1,500.

C. A generator of shredder residue, special waste receiving facility, or special waste shipper shall pay the annual registration fee within 30 days of invoice receipt.

D. In accordance with A.R.S. § 49-855(G), a solid waste landfill that pays registration fees under A.R.S. § 49-747 is exempt from the fees under subsections (A) and (B) of this Section.

E. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A) and (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (E)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note

New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles; Fees

A. A generator of shredder residue shall follow sampling protocol as follows or submit to the Department for review and approval, at least two weeks prior to the sampling event, an alternative written sampling plan which is consistent with requirements set forth in "Test Methods for Evaluating Solid Waste," EPA SW-846, 3rd Edition, Volume II, Chapter Nine, Sampling Plan, Physical/Chemical Method, EPA, Office of Solid Waste and Emergency Response, Washington, D.C., September 1986, and updated November 1990, and no future editions or amendments, ("EPA Sampling Plan"), herein incorporated by reference and on file with the Department and the Office of the Secretary of State:

1. Sample collection shall be done in accordance with one of the following:
   a. Sampling procedure 1, consisting of both of the following steps:
      i. The generator shall collect samples from a shredder residue sampling pile which shall consist of the average amount of shredder residue from eight hours of operation of the shredder. The shredder residue sampling pile shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
      ii. One 2,000-gram sample shall be collected from each sample point as indicated in Exhibit 1. Samples from sample points A-1, B-1, and C-1 shall be collected from the top of the pile. Samples from sample points A-2, B-2, and C-2 shall be collected from the base of the pile. A sample from sample point C-3 shall be collected at the vertical midpoint at the center of the pile. The seven 2,000-gram samples shall be numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.
   b. Sampling procedure 2, consisting of both of the following steps:
      i. The generator shall collect seven 2,000-gram samples during or immediately following the normal generation of shredder residue. For each sample, shredder residue shall be collected for 8 to 12 minutes, during which a minimum of 500 pounds shall be generated. This process shall be performed seven times to create seven 500-pound amounts. Each 500-pound amount shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
      ii. Twenty 100-gram samples shall be collected from throughout each of the seven 500-pound piles generated. Upon completion of collection, all 20 samples from each of the seven 500-pound piles shall be combined together into seven separate 2,000-gram samples and numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.
2. Each 2,000 grams of shredder residue collected shall include both large and small particles, in proportion to shredder residue generated. The generator shall use a container which is large enough to hold the entire amount of shredder residue collected from each sample point.
3. The generator shall comply with requirements for sample preservation, temperature, and holding times, as set forth in the EPA Sampling Plan.
4. Each one of the three 2,000-gram samples selected at random shall be divided into four equal 500-gram portions and a 200-gram subsample shall be taken from each of the four equal 500-gram portions. Each subsample shall then be passed through a 9.5mm screen. All particles which do not pass through the 9.5mm screen shall be hand cut until small enough to pass through the screen. All four 200-gram subsamples shall then be remixed together and redivided into four equal 200-gram portions. The following amounts shall be taken for constituent sampling:
   a. 10-15 grams per 200-gram subsample for a total of 40-60 grams per 2,000-gram sample for Polychlori-

nated Biphenyls (PCB) analysis as set forth in subsection (A)(10).
b. 25 grams per 200-gram subsample for a total of 100 grams per sample for toxicity characteristic leaching procedure extractions for contaminants as set forth in 40 CFR 261.24, Table 1 (incorporated by reference in R18-8-261(A)), as set forth in subsection (A)(7).
c. 1.25 grams per 200-gram subsample for a total of 5 grams per 2,000-gram sample for extraction fluid determination.

5. Each constituent sample shall be put into a container. Container labeling and chain-of-custody documentation shall be consistent with the requirements in the EPA Sampling Plan.
6. The constituent samples shall be analyzed by a laboratory licensed by the Arizona Department of Health Services in accordance with A.R.S. § 36-495.
7. Of the three samples selected at random, one sample amount required by subsection (A)(4)(b) shall be analyzed for the extractable heavy metals arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, as set forth in 40 CFR 261.24, Table 1. The remaining two samples shall each be analyzed for extractable cadmium and lead.
8. If the results of all three of the analyses for any extractable heavy metal in subsection (A)(7) are below the Regulatory Level of the Maximum Concentration of Contaminants for the Toxicity Characteristic as set forth in 40 CFR 261.24, Table 1, the simple arithmetic mean of the extractable cadmium and lead and the single analysis for the remaining six extractable heavy metals shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
9. If the analyses of any one of three selected samples exceeds the regulatory level as set forth in 40 CFR 261.24, Table 1, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the confirmation sample analysis totals are in excess of the regulatory level as set forth in 40 CFR 261.24, Table 1, the remaining four of the original seven samples shall be analyzed for those extractable heavy metals which exceed the regulatory level as set forth in 40 CFR 261.24, Table 1. The simple arithmetic mean of the results of all seven samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
10. The three samples selected at random shall be analyzed for PCB concentration in the amounts required by subsection (A)(4)(a). If the samples contain concentrations of PCB less than 50 mg/kg, the simple arithmetic mean of the three samples shall be used for reporting to the Director. If any one of the three samples contains concentrations of PCB greater than 50 mg/kg, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the PCB concentration for that sample exceeds 50 mg/kg, the remaining four of the original seven samples shall be analyzed for PCB, in amounts required by subsection (A)(4)(a), and the simple arithmetic mean of all the samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.

B. Shredder residue determined to be hazardous waste shall be managed in accordance with A.R.S. § 49-921 et seq. and R18-8-260 et seq.

C. The generator shall do all of the following:
1. Secure the facility to prevent unauthorized entry;
2. Cover or otherwise manage the shredder residue pile to prevent wind dispersal;
3. Place the shredder residue pile on a surface with a permeability coefficient equal to or less than 1×10^{-7} cm/s;
4. Design, construct, operate, and maintain a run-on control system capable of preventing flow onto the waste pile during peak discharge from, at a minimum, a 25-year storm;
5. Design, construct, operate, and maintain a run-off management system to collect and control at a minimum, the water volume resulting from a 24-hour, 25-year storm;
6. Provide collection and holding facilities for run-on and run-off control systems, which shall have a permeability coefficient equal to or less than 1×10^{-7} cm/s;
7. Record the date accumulation of shredder residue begins.

D. Shredder residue shall be treated, recycled, sorted, stored, or disposed at a Department-approved special waste facility approved in accordance with A.R.S. § 49-857. A facility which seeks to become a special waste facility shall submit a special waste management plan to the Department to ensure compliance with subsection (C).

E. A generator shall not store shredder residue for longer than 90 days. A special waste facility shall not store shredder residue for longer than one year.

F. Shredder residue which has been determined to be nonhazardous pursuant to this Section shall be transported in accordance with the requirements for transportation of garbage as set forth in R18-13-310.

G. The owner or operator of a special waste facility shall pay, to the Department, the fees required by A.R.S. §§ 49-855(C)(2) and 49-863 as follows:
1. $6.68 per ton of shredder residue received; and
2. Not more than $66,835.67 per generator site per year for shredder residue that is transported to a facility regulated by the Department for treatment, storage or disposal.

H. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (G) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:
1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (H)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note

Section recodified from A.A.C. R18-8-307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

Table A. Target Analyses and Sampling Frequency

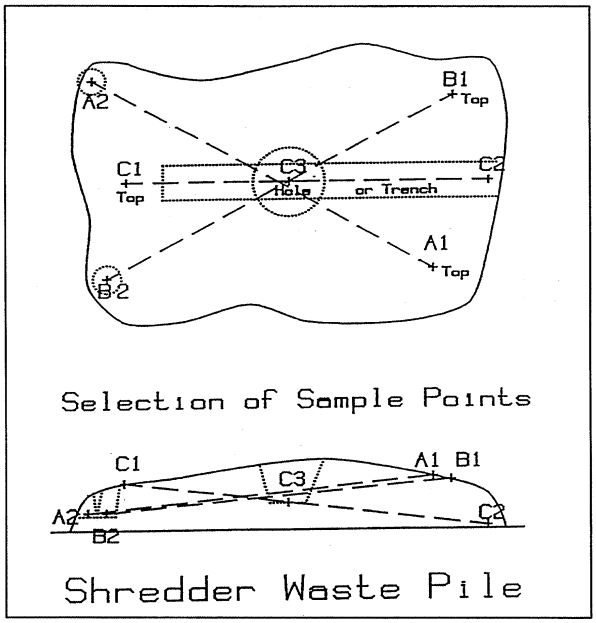
Constituents	Frequency
* TCLP Metals	Quarterly
* TCLP Volatiles	Annually
* TCLP Semi-volatiles	Annually
Polychlorinated Biphenyls (PCB)	Quarterly

* Toxicity Characteristic Leaching Procedure (TCLP)

Historical Note

Table A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Exhibit 1. Selection of Sample Points, Shredder Waste Pile



Historical Note

Exhibit 1 recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix A. Application for Arizona Special Waste Identification Number

Please refer to the instructions on the accompanying page before completing this form.	**ADEQ**	Application for Arizona Special Waste Identification Number	Date Received: (Do not write here official use only)

1. Mark Appropriate Box:

☐ Generator ☐ Shipper ☐ Receiving Facility ☐ Multiple

2. Company/Agency Name

3. Company/Agency Address (Physical Address, not P.O. Box or Route Number).

4. Company/Agency Mailing Address (If different than above).

5. Company/Agency Contact (Person to contact regarding special waste activities).
Name:

Job Title: Phone Number: ( )

6. Company/Agency Contact Address.

7. Name and Address of Company's/Agency's Legal Owner.

Phone Number: ( )

Certification: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this form and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties.

8. Signature: 9. Name and Official Title: (Type or Print) 10. Date Signed:

11. Please list special wastes generated, transported, stored, or received by applicant.

Instructions for the Completion of the ADEQ Application for the Arizona Special Waste Identification Number.

1. Place an “X” in the appropriate box indicating which type of operation you will be performing.
2. Enter the complete company/agency name.
3. Enter the complete address. Do not use P.O. Box or Route Number.
4. Enter the complete address if it is different than the address listed in item 3.
5. Enter the name, job title, and complete phone number of the person who will act as the company/agency contact.
6. Enter the complete address of the company/agency contact listed in item 5.
7. Enter the name, complete address, and phone number of the company’s/agency’s legal owner.
8. Enter the signature of the person who will assume the responsibility of completion of this form and its contents.
9. Enter the name and title of the responsible person listed in item 8.
10. Enter the date that the responsible person signed the document.
11. List all special wastes that the applicant generates, transports, stores, or receives.

Historical Note

Appendix A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix B. Special Waste Manifest

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
SPECIAL WASTE MANIFEST

Generator

1. Generator's AZ ID No. | Emergency Response Notification Phone Number

3. Generator's Name and Mailing Address

Generator's Phone Number and Area Code

4. Transporter 1 Company Name and Mailing Address | Transporter's AZ ID No. | Transporter's Phone No.

5. Transporter 2 Company Name and Mailing Address | Transporter's AZ ID No. | Transporter's Phone No.

6. Primary Receiving Facility Name and Address (physical site location, if different) | Facility's AZ ID No. | Facility's Phone No.

7. Alternate Receiving Facility Name and Address (physical site location, if different) | Facility's AZ ID No. | Facility's Phone No.

8. U.S. DOT description, (if applicable) (Non-DOT regulated materials enter shipping name, physical state and description of all contents of waste	Containers No.	Mark "X" if Haz Mat	Total Quantity	Unit Wt/Vol

9. Additional information on transportation, treatment, storage, or disposal

10. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled and are in all respects in proper condition for transport by highway according to applicable international and governmental regulations. Date

Printed/Typed Name | Signature | Date

Transport

11. Transporter 1 Acknowledgment of Receipt of Materials Date

Printed/Typed Name | Signature | Date

12. Transporter 2 Acknowledgment of Receipt of Materials Date

Printed/Typed Name | Signature | Date

Facility

13. Discrepancy Indication Space

14. Facility Owner or Operator: Certification of receipt of special waste materials covered by this manifest except as noted in above item. Date

Printed/Typed Name | Signature | Date

Instructions for the Completion of the ADEQ Special Waste Manifest

1. Enter the generator's Arizona Identification Number in box 1.
2. Enter the Emergency Response Notification Phone Number in box 2.
3. Enter the generator's name and complete mailing address, including city, state, and zip code, along with the generator's phone number, including the area code, in box 3.
4. Enter the transporter's name, transporter's Arizona identification number, and telephone number, including the area code, in box 4.
5. Complete this box if a second transporter is to be used to transport the special waste to the receiving facility, following the instructions outlined in number 4 in box 5.
6. Enter the name, address, and physical site location of the primary special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 6.
7. Enter the name, address, and physical site location of the alternate special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 7.
8. Enter United States Department of Transportation description (Including proper shipping name, hazard class, and identification number, if applicable) (For all non-Department of Transportation-regulated materials, enter the proper name, physical state, and description of all contents of the waste).

   Mark an "X" in this column if waste is classified as a hazardous material.

   Container Number
   Enter the number of containers being shipped for each waste.

   Total Quantity
   Numerical value representing the number of containers multiplied by the container size. Answer will be listed in pounds, gallons, or cubic yards.

   Unit weight or volume
   P - Pounds
   G - Gallons
   Y - Cubic Yards
9. Use this space to indicate special transportation, treatment, storage, or disposal information. Emergency response telephone numbers or similar information may be included here in box 9.
10. Print or type the generator's name followed by their signature and date in box 10.
11. Print or type the primary transporter's name followed by their signature and date in box 11.
12. Print or type the secondary transporter's name followed by their signature and date in box 12.
13. Indicate significant discrepancies in this box. Significant manifest discrepancy is defined as "a difference of more than 10% by weight for bulk shipments, any variation in a piece count for batch deliveries, or an obvious difference in a special waste type is discovered by inspection or analysis between the type or amount of a special waste designated in a special waste manifest, and the type or amount received by a special waste receiving facility" in box 13.
14. Print or type the receiving facility's owner or operator name followed by their signature and date in box 14.

Historical Note

Appendix B recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

R18-13-1401. Definitions

In addition to the definitions in A.R.S. § 49-701, the following definitions apply in this Article:

1. "Alternative treatment technology" means a treatment method other than autoclaving or incineration that achieves the treatment standards described in R18-13-1415.
2. "Approved medical waste facility plan" means the document that has been approved by the Department under A.R.S. § 49-762.04, and that authorizes the operator to accept biohazardous medical waste at its solid waste facility.
3. "Autoclaving," means using a combination of heat, steam, pressure, and time to achieve sterile conditions.
4. "Biohazardous medical waste" is composed of one or more of the following:
   a. Cultures and stocks: Discarded cultures and stocks generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.
   b. Human blood and blood products: Discarded products and materials that are saturated and/or dripping with human blood or caked with dried human blood, including items that would release blood in a liquid or semi-liquid form if compressed or broken, and items that contain serum, plasma, and other blood components. An item would be considered caked if it could release flakes or particles when handled.
   c. Human pathological wastes: Discarded organs, tissues, and body parts, including cerebrospinal fluid,

synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid and amniotic fluid, removed during surgery or other medical procedures, including autopsy, obstetrics, or emergency care. Human pathological wastes do not include the head, spinal column, hair, nails, or teeth.

d. Medical sharps: Discarded sharps that pose a stick hazard that have come into contact with blood, blood products, or pathological waste. Examples include hypodermic needles; scalpel blades; and needles attached to tubing or syringes.

e. Research animal wastes: Animal carcasses, body parts, and bedding of animals that have been infected with agents that produce, or may produce, human infection.

f. Tattoo and body modification waste: any waste generated during the course of physically altering a human being, including tattooing, ear piercing, or any other process where a foreign object is used to cut or pierce the skin.

g. Trauma scene waste: any crime scene, accident, or trauma clean-up wastes generated by individuals or commercial entities hired to clean crime scenes or accidents, such as sharps and materials that contain human blood and blood products.

5. "Biologicals" means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.
6. "Biological indicator" means a representative microorganism used to evaluate treatment efficacy.
7. "CFR" means the Code of Federal Regulations.
8. "Chemotherapy waste" means any discarded material that has come in contact with an agent that kills or prevents the reproduction of malignant cells.
   a. Trace contaminated chemotherapy waste includes: masks, empty drug vials, gloves, gowns, IV tubing, empty IV bags/bottles, and spill clean-up materials.
   b. Bulk chemotherapy waste, such as full expired vials of chemotherapy drugs, is not biohazardous medical waste. Bulk chemotherapy waste may be considered hazardous wastes and must be handled according to the hazardous waste regulations if deemed a hazardous waste by the generator.
9. "Dedicated vehicle" means a motor vehicle or trailer that is pulled by a motor vehicle used by a transporter for the purpose of transporting biohazardous medical waste in conjunction with other compatible waste according to the USDOT requirements, listed at 49 CFR 177.848, revised as of October 1, 2020, and no future editions or later amendments, is incorporated by reference in this Section and on file with ADEQ.
10. "Department-approved facility" means a storage, transfer, treatment, or disposal facility that has undergone plan approval as described in R18-13-1410.
11. "Discarded drug" means any prescription medicine or over-the-counter medicine used in the diagnosis, treatment, or immunization of a human being or animal, that the generator intends to abandon. The term does not include hazardous waste or controlled substances regulated by the United States Drug Enforcement Agency.
12. "Disposal facility" means a municipal solid waste landfill that has been approved by the Department under A.R.S. § 49-762.04 to accept untreated biohazardous medical waste for disposal.
13. "Emergency situations" include those situations where following location restrictions may result in an imminent threat to human health and the environment.
14. "Facility plan" has the meaning given to it in A.R.S. § 49-701.
15. "Generator" means a person whose act or process produces biohazardous medical waste, or a discarded drug, or whose act first causes medical waste or a discarded drug to become subject to regulation.
16. "Hazardous waste" has the meaning prescribed in A.R.S. § 49-921.
17. "Health care worker" means, with respect to R18-13-1403(B)(5), a person who provides health care services at an off-site location that is none of the following: a residence, a facility where health care is normally provided, or a facility licensed by the Arizona Department of Health Services.
18. "Improper disposal of biohazardous medical waste" means the disposal by a person of untreated or inadequately treated biohazardous medical waste at any place that is not approved to accept untreated biohazardous medical waste.
19. "Independent testing laboratory" means a testing laboratory independent of oversight activities by a provider of alternative treatment technology.
20. "Medical sharps container" means a vessel that is rigid, puncture resistant, leak proof, and equipped with a cap capable of being securely closed.
21. "Medical waste," as defined in A.R.S. § 49-701, means "*any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in A.R.S. § 49-921 other than conditionally exempt small quantity generator waste.*"
22. "Medical waste treatment facility" or "treatment facility" means a solid waste facility approved by the Department under A.R.S. § 49-762.04 to accept and treat biohazardous medical waste from off-site generators.
23. "Multi-purpose vehicle" means any motor vehicle operated by a health care worker in the course of providing health care services, where the general purpose is the non-commercial transporting of people and the hauling of goods and supplies, but not solid waste. A multi-purpose vehicle is limited to hauling biohazardous medical waste generated at a location other than a hospital or clinic.
24. "Off site" means a location that does not fall within the definition of "on site" contained in A.R.S. § 49-701.
25. "Packaging" or "properly packaged" means the use of a container or a practice under R18-13-1407.
26. "Putrescible waste" means waste materials capable of being decomposed rapidly by microorganisms.
27. "Radioactive material" has the meaning under A.R.S. § 30-651.
28. "Secure" means to lock out or otherwise restrict access to unauthorized personnel.
29. "Spill" means either of the following:
   a. Any release of biohazardous medical waste from its package while in the generator's storage area.
   b. Any release of biohazardous medical waste from its package or the release of packaged biohazardous

medical waste by the transporter at a place or site that is not a medical waste treatment or disposal facility.

30. "Store" or "storage" means, in addition to the meaning under A.R.S. § 49-701, either of the following:
    a. The temporary holding of properly packaged biohazardous medical waste by a generator in a designated accumulation area awaiting collection by a transporter.
    b. The temporary holding of properly packaged biohazardous medical waste by a transporter or a treater at an approved medical waste storage facility or treatment facility.
31. "Technology provider" means a person that manufactures or a vendor who supplies alternative medical waste treatment technology.
32. "Tracking document" means the written instrument that signifies acceptance of biohazardous medical waste by a transporter, or a transfer, storage, treatment, or disposal facility operator.
33. "Transportation management plan" means the transporter's written plan consisting of both of the following:
    a. The procedures used by the transporter to minimize the exposure to employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
    b. The emergency procedures used by the transporter for handling spills or accidents.
34. "Transporter" means a person engaged in the business of hauling of biohazardous medical waste from the point of generation to a Department-approved storage facility or to a Department-approved treatment or disposal facility.
35. "Treat" or "treatment" means, with respect to the methods used to render biohazardous medical waste less infectious: incinerating, autoclaving, or using the alternative treatment technologies prescribed in this Article.
36. "Treated medical waste" means biohazardous medical waste that has been treated and that meets the treatment standards of R18-13-1415. Treated medical waste that requires no further processing is considered solid waste.
37. "Treater" means a person, also known as an operator, who receives solid waste facility plan approval for the purpose of operating a medical waste treatment facility to treat biohazardous medical waste that is generated off site.
38. "Treatment certification statement" means the written document provided by either a generator who treats biohazardous medical waste on site or by a treater to inform a solid waste disposal or recycling facility that biohazardous medical waste has been treated as prescribed in this Article, and therefore is no longer subject to regulation under this Article.
39. "Treatment standards" mean the levels of microbial inactivation, prescribed in R18-13-1415, to be achieved for a specific type of biohazardous medical waste.
40. "USDOT" means the United States Department of Transportation.
41. "Universal biohazard symbol" or "biohazard symbol" means a representation that conforms to the design shown in 29 CFR 1910.145(f)(8)(ii) (Office of the Federal Register, National Archives and Records Administration, July 1, 1998) and which is incorporated by reference in this rule. This incorporation does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department of Environmental Quality and the Office of the Secretary of State.
42. "Vehicle not dedicated to the transportation of biohazardous medical waste but which is engaged in commerce" means a motor vehicle or a trailer pulled by a motor vehicle whose primary purpose is the transporting of goods that are not solid waste or biohazardous medical waste and that is used by a transporter for the temporary transportation of biohazardous medical waste.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1402. Applicability

A. This Article applies to the following:
1. A generator who treats biohazardous medical waste on site, before disposing of it as treated medical waste, and to any equipment used for that purpose. Specific requirements for a generator who treats on site are prescribed in R18-13-1405.
2. A generator who contracts with a medical waste treatment facility for the purpose of treating biohazardous medical waste. Specific requirements for such a generator are prescribed in R18-13-1406.
3. A person who transports biohazardous medical waste and any motor vehicle used for that purpose.
4. A medical waste treatment facility operator, a medical waste treatment facility, and any equipment used for medical waste treatment.
5. A person who provides alternative medical waste treatment technology for the purpose of treatment, and to any technology used for treatment.
6. A person in possession of biohazardous medical waste if the waste does not meet the treatment standards in R18-13-1415.
7. An operator of a Department-approved disposal facility who accepts untreated biohazardous medical waste.
8. A person who generates medical sharps in the preparation of human remains.
9. A person who generates medical sharps in the treatment of humans or animals.
10. A generator of discarded drugs not returned to the manufacturer.

B. The requirements for biohazardous medical waste set out for collection do not apply to the manner in which the generator collects or handles material prior to that material becoming biohazardous medical waste.

C. Provisions in this Article requiring placement in Department-approved facilities do not restrict the right to place materials in facilities that are out of state or in Indian Country.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1403. Exemptions; Partial Exemptions

A. The following persons are exempt from the requirements of this Article:

1. Law enforcement personnel handling biohazardous medical waste for law enforcement purposes.
2. A person in possession of medical waste that is regulated by a state or federal agency due to its radioactive nature.
3. A person who returns unused medical sharps to the manufacturer.
4. A household generator residing in a private, public, or semi-public residence who generates biohazardous medical waste in the administration of self care or the agent of the household generator who administers the medical care. This exemption does not apply to the facility in which the person resides if that facility is licensed by the Arizona Department of Health Services.
5. A generator that separates medical devices from the medical waste stream that are sent out for re-processing and returned to the generator.
6. A person in possession of human bodies regulated by A.R.S. Title 36.

B. The following are conditionally exempt from the requirements of this Article:
1. A person who prepares human corpses, remains, and anatomical parts that are intended for interment or cremation. However, medical sharps must be disposed of as prescribed by this Article.
2. A person who operates an emergency rescue vehicle, an ambulance, or a blood service collection vehicle in the course of providing medical services if the biohazardous medical waste is returned to the home facility for disposal. This facility is considered to be the point of generation for packaging, treatment, and disposal.
3. A person who discharges liquid and semi-liquid biohazardous medical wastes, excluding cultures and stocks, to the sanitary sewer system if the operator of the wastewater sewer system and treatment facility allows, permits, authorizes, or otherwise approves of the discharges.
4. Hazardous waste regulated by A.R.S. Title 49, Chapter 5.
5. A health care worker who uses a multi-purpose vehicle in the conduct of routine health care business other than transporting waste is exempt from the requirements of R18-13-1409 if the health care worker complies with all of the following:
   a. Packages the biohazardous medical waste according to R18-13-1407.
   b. Secures the packaged biohazardous medical waste within the vehicle so as to minimize spills.
   c. Transports the biohazardous medical waste to the place of business or to a medical waste treatment or disposal facility.
   d. Cleans the vehicle when it shows visible signs of contamination.
   e. Secures the vehicle to prevent unauthorized contact with the biohazardous medical waste.
6. A person who transports biohazardous medical waste between multiple properties separated by a public thoroughfare and which is owned or operated by the same owner or governmental entity is exempt from the requirements of R18-13-1409 if the person complies with R18-13-1403(B)(5)(a) through (e).
7. A hospital that chooses to accept medical sharps from staff physicians who generate medical sharps in a private practice is exempt from the requirement to obtain facility plan approval as long as the hospital collects medical sharps for off-site treatment or disposal.

C. The following are exempt from some of the requirements of this Article:
1. A generator who treats biohazardous medical waste on site and who accepts for treatment medical waste described in R18-13-1403(A)(4) is exempt from the requirement to obtain solid waste facility plan approval prescribed in R18-13-1410.
2. A generator who self-hauls biohazardous medical waste to a Department-approved medical waste treatment, storage, transfer, or disposal facility is exempt from the requirements of R18-13-1409 if the generator complies with R18-13-1403(B)(5)(a) through (e).

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1404. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Repealed by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1405. Biohazardous Medical Waste Treated On Site

A. A person who treats biohazardous medical waste on site shall use incineration, autoclaving, or an alternative medical waste treatment method that meets the treatment standards prescribed in R18-13-1415.

B. A generator who uses:
1. Incineration shall follow the requirements of subsections (C), (F), (G), and (H),
2. Autoclaving shall follow the requirements of subsections (D), (F), (G) and (H), or
3. An alternative treatment method shall follow the requirements of subsections (E), (F), (G), and (H).

C. A generator who incinerates biohazardous medical waste on site shall comply with all of the following requirements:
1. Obtain a permit if required by the local or state air quality agency having jurisdiction.
2. Reduce the biohazardous medical waste, excluding metallic items, into carbonized or mineralized ash.
3. Determine whether incinerator ash is hazardous waste as required by hazardous waste rules promulgated under A.R.S. Title 49, Chapter 5.
4. Dispose of the non-hazardous waste incinerator ash at a Department-approved municipal solid waste landfill.

D. A generator who autoclaves biohazardous medical waste on site shall comply with all of the following requirements:
1. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render such waste non-recognizable and ensure effective treatment.
2. Operate the autoclave at the manufacturer's specifications appropriate for the quantity and density of the load.
3. Keep records of operational performance levels for six months after each treatment cycle. Operational performance level recordkeeping includes all of the following:
   a. Duration of time for each treatment cycle.
   b. The temperature and pressure maintained in the treatment unit during each cycle.

c. The method used to determine treatment parameters in the manufacturer's specifications.
d. The method in manufacturer's specifications used to confirm microbial inactivation and the test results.
e. Any other operating parameters in the manufacturer's specifications for each treatment cycle.

4. Keep records of equipment maintenance for the duration of equipment use that include the date and result of all equipment calibration and maintenance.

E. A generator who uses an alternative treatment method on site shall comply with all of the following requirements:

1. Use only alternative treatment methods registered under R18-13-1414.
2. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render this waste non-recognizable and ensure effective treatment.
3. Follow the manufacturer's specifications for equipment operation.
4. Supply upon request all of the following:
   a. The Departmental registration number for the alternative medical waste treatment technology and the type of biohazardous medical waste that the equipment is registered to treat.
   b. The equipment specifications that include all of the following:
      i. The operating procedures for the equipment that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
      ii. The instructions for equipment maintenance, testing, and calibration that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
5. Maintain a training manual regarding the proper operation of the equipment.
6. Maintain a treatment record consisting of a log of the volume of medical waste treated and a schedule of calibration and maintenance performed under the manufacturer's specifications.
7. Maintain treatment records for six months after the treatment date for each load treated.
8. Maintain the equipment specifications for the duration of equipment use.

F. A generator shall do all of the following:

1. Package the treated medical waste according to the waste collection agency's requirements;
2. Attach to the package or container a label, placard, or tag with the following words: "This medical waste has been treated as required by the Arizona Department of Environmental Quality standards" before placing the treated medical waste out for collection as a general solid waste. The generator shall ensure that the treated medical waste meets the standards of R18-13-1415.
3. Upon request of the solid waste collection agency or municipal solid waste landfill, provide a certification that the treated medical waste meets the standards of R18-13-1415.
4. Make treatment records available for Departmental inspection upon request.

G. A generator of medical sharps shall handle medical sharps as prescribed in R18-13-1419.

H. A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle that waste as prescribed in R18-13-1420.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment

A. A generator of biohazardous medical waste shall cause the waste to first be packaged as prescribed in this Article and shall subsequently either self-haul or store the waste as provided under R18-13-1408 and set the waste out for collection by a properly licensed transporter under R18-13-1409.

B. A generator shall obtain a copy of the tracking document signed by the transporter signifying acceptance of the biohazardous medical waste. A generator shall keep a copy of the tracking document for the period required under the USDOT requirements, as listed in 49 CFR 172.201, revised as of October 1, 2020, and no future editions or later amendments, is incorporated by reference in this Section and on file with ADEQ. The tracking document shall contain all of the following information:

1. Name and address of the generator, transporter, and medical waste treatment, storage, transfer, or disposal facility, as applicable.
2. Quantity of biohazardous medical waste collected by weight, volume, or number of containers.
3. Identification number attached to bags or containers, as specified as by the USDOT requirements, as listed in 49 CFR 172.300 through 172.338, revised as of October 1, 2020, and no future editions or later amendments, is incorporated by reference in this Section and on file with ADEQ.
4. Date the biohazardous medical waste is collected.

C. A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle the waste as prescribed in R18-13-1420.

D. A generator of medical sharps shall handle the waste as prescribed in R18-13-1419.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1407. Non-Sharps Packaging

A. A generator who sets biohazardous medical waste that does not include sharps out for collection for off-site treatment or disposal shall package the biohazardous medical waste in either of the following:

1. A red disposable plastic bag that is:
   a. Leak resistant,
   b. Impervious to moisture,
   c. Of sufficient strength to prevent tearing or bursting under normal conditions of use and handling,
   d. Sealed to prevent leakage during transport, and
   e. Placed in a secondary container. This container shall be constructed of materials that will prevent breakage of the bag in storage and handling during collection and transportation and bear the universal biohazard symbol. The secondary container may be either disposable or reusable.

2. A reusable container that bears the universal biohazard symbol and that is:
   a. Leak-proof on all sides and bottom, closed with a fitted lid, and constructed of smooth, easily cleanable materials that are impervious to liquids and resistant to corrosion by disinfection agents and hot water, and
   b. Used for the storage or transport of biohazardous medical waste and cleaned after each use unless the inner surfaces of the container have been protected by disposable liners, bags, or other devices removed with the waste. "Cleaning" means agitation to remove visible particles combined with one of the following:
      i. Exposure to hot water at a temperature of at least 180° F for a minimum of 15 seconds.
      ii. Exposure to an EPA-approved chemical disinfectant used under established protocols and regulations.
      iii. Any other method that the Department determines is acceptable, if the determination of acceptability is made in advance of the cleaning.

B. A generator shall handle any container used for the storage or transport of biohazardous medical waste that is not capable of being cleaned as described in subsection (A)(2)(b), or that is disposable packaging, as biohazardous medical waste.

C. A generator shall not use reusable containers described in subsection (A)(2) for any purpose other than the storage of biohazardous medical waste.

D. A generator shall not reuse disposable packaging and liners and shall manage such items as biohazardous medical waste.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1408. Storage

A. A generator may place a container of biohazardous medical waste alongside a container of solid waste if the biohazardous medical waste is identified and not allowed to co-mingle with the solid waste. The storage area shall not be used to store substances for human consumption or for medical supplies.

B. Once biohazardous medical waste has been packaged for shipment off site, a generator shall provide a storage area for biohazardous medical waste until the waste is collected and shall comply with both of the following requirements:
1. Secure the storage area in a manner that restricts access to, or contact with the biohazardous medical waste to authorized persons.
2. Display the universal biohazard symbol and post warning signs worded as follows for medical waste storage areas: (in English) "CAUTION -- BIOHAZARDOUS MEDICAL WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and (in Spanish) "PRECAUCION -- ZONA DE ALMACENAMIENTO DE DESPERDICIOS BIOLOGICOS PELIGROSOS -- PROHIBIDA LA ENTRADA A PERSONAS NO AUTORIZADAS."

C. Beginning at the time the waste is set out for collection, a generator who stores biohazardous medical waste shall comply with all of the following requirements:
1. Putrescible biohazardous medical waste may be kept unrefrigerated up to 72 hours if it would not otherwise cause odor detectable beyond the property line or attract vermin.
2. Refrigerate at 40° F or less from hour 72 through day 90 putrescible biohazardous medical waste kept for up to 90 days.
3. Nonputrescible biohazardous medical waste may be kept unrefrigerated for up to 90 days.
4. Store biohazardous medical waste for 90 days or less unless the generator has obtained facility plan approval under A.R.S. § 49-762.04 and is in compliance with the design and operational requirements prescribed in R18-13-1412.
5. Keep the storage area free of visible contamination.
6. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals. A generator shall ensure that the waste does not provide a breeding place or a food source for insects or rodents.
7. Handle spills by re-packaging the biohazardous medical waste, re-labeling the containers and cleaning any soiled surface as prescribed in R18-13-1407(A)(2)(b).
8. Notwithstanding subsections (C)(1) and (2), a generator shall minimize the off-site migration of odors and the presence of vermin. If the Department determines that a generator has not acted or adequately addressed odors or vermin, the Department shall require the waste to be removed or refrigerated at 40° F or less.

D. Trace chemotherapy waste shall be clearly identified as such by its label.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1409. Transporter License; Fees; Transportation

A. A transporter shall obtain a transporter license from the Department as provided under subsections (B) and (C) of this Section in addition to possessing a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.

B. A transporter license is valid for five years after issuance. To renew the license, the licensee shall submit an application no later than 60 days prior to the license's expiration, and shall pay the license renewal fee, as provided in subsection (B)(1). With each application submitted for approval, the applicant shall remit an initial transporter license application fee as provided in subsection (B)(1). All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.
1. To apply for or to renew a transporter license, an applicant shall submit all of the following in a Department-approved format:
   a. The name, address, and telephone number of the transportation company or entity.
   b. All owners' names, addresses, and telephone numbers.
   c. All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.

d. A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.
e. Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
f. A copy of the transportation management plan as defined in R18-13-1401.
g. A list identifying each dedicated vehicle.
h. For an initial transporter license application, a fee of $1,800, and for a license renewal, a fee of $1,500.

2. The Department may only issue a transporter license, including a renewal, if all of the items in subsection (B)(1)(a) through (h) have been received and determined to be correct and complete, and a Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article.

C. Transporters shall pay by the invoice due date an annual fee of $1,500 for each calendar year following payment of the new or renewal application license fee and subsequent years in which a renewal application license fee is not charged and paid, indicated in Table 2. Fee Table, Transporters Annual Fee.

D. Amendments. After issuance, the licensee shall submit to the Department any change to the information listed in subsections (B)(1)(a) through (g) of this Section within 30 days of its occurrence. Vehicles may only be added to the license after a Department inspection shows that the vehicle is in compliance with this Article. Amendments adding vehicles to the license shall be processed after payment of inspection fees and other expenses, except that the application fee shall be $350.

E. A person who transports biohazardous medical waste shall maintain in each transporting vehicle at all times a transportation management plan.

F. A transporter who accepts biohazardous medical waste from a generator shall transmit electronically or leave a physical copy of the tracking document described in R18-13-1406(B) with the person from whom the waste is accepted. A transporter shall ensure that a copy of the tracking document accompanies the person who has physical possession of the biohazardous medical waste. Upon delivery to a Department-approved transfer, storage, treatment, or disposal facility, the transporter shall obtain a copy of the tracking document, signed by a person representing the receiving facility, signifying acceptance of the biohazardous medical waste.

G. A transporter who transports biohazardous medical waste in a dedicated vehicle shall ensure that the cargo box, trailer, or compartment can be secured to limit access to authorized persons at all times except during loading and unloading. In addition, the cargo box, trailer, or compartment shall be constructed in compliance with one of the following:

1. Have a fully enclosed, leak-proof cargo compartment consisting of a floor, sides, and a roof that are made of a non-porous material impervious to biohazardous medical waste and physically separated from the driver's compartment.
2. Haul a fully enclosed, leak-proof cargo box made of a non-porous material impervious to biohazardous medical waste.
3. Tow a fully enclosed leak-proof trailer made of a non-porous material impervious to biohazardous medical waste.

H. A person who transports biohazardous medical waste in a vehicle not dedicated to the transportation of biohazardous medical waste, but that is used at least once weekly for a month, shall comply with the following:

1. Subsections (A), (E) through (G), and (I) of this Section.
2. Clean the vehicle as prescribed in R18-13-1407(A)(2)(b) before it is used for another purpose.

I. A transporter of biohazardous medical waste shall comply with all of the following:

1. Accept only biohazardous medical waste packaged as prescribed in R18-13-1407.
2. Accept biohazardous medical waste only after providing the generator with a signed tracking document as prescribed in R18-13-1406(B), and keep a copy of the tracking document for the period required under the USDOT requirements, as listed in 49 CFR 172.201.
3. Deliver biohazardous medical waste to a Department-approved biohazardous medical waste storage, transfer, treatment, or disposal facility within the following timeframes:
   a. 72 hours of collection, if putrescible and unrefrigerated; or
   b. 90 days of collection, if putrescible and refrigerated at 40° F or less from hour 72 through day 90; or
   c. 90 days of collection, if nonputrescible and unrefrigerated.
4. Not hold biohazardous medical waste longer than specified under subsection (I)(3) unless the vehicle is parked at a Department-approved facility.
5. Except in emergency situations, not unload, reload, or transfer the biohazardous medical waste to another vehicle in any location other than a Department-approved facility. Combination vehicles or trailers may be uncoupled and coupled to another cargo vehicle or truck trailer as long as the biohazardous medical waste is not removed from the cargo compartment.

J. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (B), (C), and (D) of this Section, and Table 2. Fee Table, Transporters Annual Fee, annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (J)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

Table 1. Frequency of Application for Transporter License

Year	Type of Application	Frequency
1	New	Once
6, 11, 16, etc.	Renewal	Every 5th Year

Historical Note
Table 1. Fee Table, Transporter License Fees; Frequency of Application for Transporter License Fees made by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

Table 2. Fee Table – Transporter Annual Fee

Years	Amount
2, 3, 4, 5, 7, 8, 9, 10, 12, 13, etc.	$1,500

Historical Note
Table 2. Fee Table, Transporter Annual Fee made by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval; Fees

A. A person shall obtain solid waste facility plan approval from the Department as prescribed in A.R.S. § 49-762.04 and pursuant to R18-13-702 to construct any facility that will be used to store, transfer, treat, or dispose of biohazardous medical waste that was generated off site. Plan approval shall be obtained before starting construction of the medical waste treatment or disposal facility. This requirement also applies to solid waste facilities for which an operator self-certifies under A.R.S. § 49-762.05, if the facility also will receive biohazardous medical waste.

B. If an air quality permit is required for the facility under A.R.S. Title 49, Chapter 3, the person shall include evidence of that air quality permit, or evidence of an air quality permit application with the application for solid waste facility plan approval.

C. A person applying for facility plan approval shall ensure that the plan contains information demonstrating how the plan will comply with this Article.

D. Annual registration fee. The Department shall bill an annual registration fee to a biohazardous medical waste facility described in subsection (A) of this Section as follows:
1. For a disposal or treatment facility, $12,500;
2. For a storage facility, $7,500; and
3. For a transfer facility, $3,000.

E. A facility subject to more than one fee under subsection (D) of this Section shall only pay the highest fee amount.

F. The biohazardous medical waste facility shall pay the annual registration fee within 30 days of invoice receipt.

G. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (D) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:
1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (G)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-1411. Storage and Transfer Facilities; Design and Operation

An operator of a storage facility or transfer facility shall comply with all of the following design and operation requirements:
1. Design the facility so that biohazardous medical waste is always handled and stored separately from other types of solid waste if accepted at the facility.
2. Display prominently the universal biohazard symbol as prescribed in R18-13-1401.
3. Construct the storage area from smooth, easily cleanable non-porous material that is impervious to liquids and resistant to corrosion by disinfecting agents and hot water.
4. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals.
5. Specify in the application for facility plan approval the maximum storage time that biohazardous medical waste will remain at the facility. If putrescible biohazardous medical waste will be stored for more than 72 hours, the operator shall equip the facility with a refrigerator to refrigerate putrescible biohazardous medical waste. The operator of the facility shall maintain the temperature in the refrigerator at 40° F or less.
6. Accept biohazardous medical waste only if it is accompanied by the tracking document. The operator shall sign the tracking document and keep a copy of the acceptance documentation for the period required under the USDOT requirements, as listed in 49 CFR 172.201.
7. Accept biohazardous medical waste if it is packaged as described in R18-13-1407. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a transfer facility operator shall do one of the following:
   a. Reject the waste and return it to the transporter or self-hauling generator.
   b. Accept the waste and immediately repackage it as prescribed in R18-13-1407(A).
8. Clean the storage area daily. “Clean” means to remove visible particles combined with one of the following:
   a. Exposure to hot water at a temperature of at least 180° F for a minimum of 15 seconds.
   b. Exposure to an EPA-approved chemical disinfectant used under established protocols and regulations.
   c. Any other method that the Department determines is acceptable, if the determination of acceptability is made in advance of the cleaning.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801

(December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1412. Treatment Facilities; Application Requirements; Design and Operation

A. An operator who applies for facility plan approval shall comply with subsections (A)(1) and (2) as well as all of the requirements in subsections (B)(1) through (11):

1. Submit to the Department the following documentation:
   a. Equipment specifications that identify the proper type of medical waste to be treated in the equipment and any design or equipment restrictions.
   b. Manufacturer's specifications and operating procedures for the equipment that describe the type and volume of waste to be treated, monitoring data of the treatment process, and calibration and testing of the equipment, providing specific details about the capability of the equipment to achieve the treatment standards prescribed in R18-13-1415.
   c. Instructions for equipment maintenance, testing, and calibration that ensure the equipment achieves the treatment standards prescribed in R18-13-1415.
   d. Training manual for the equipment.
   e. Written certification from the manufacturer stating that the equipment, when operated properly, is capable of achieving the treatment standards prescribed in R18-13-1415.
2. Submit to the Department and have readily available at the facility, an operations procedure manual describing how the waste will be handled from the time it is accepted by the treater through the treatment process and final disposition of the treated waste. The operations procedure manual shall include all of the following:
   a. Provisions for treating biohazardous medical waste within 72 hours of receipt or refrigerating at 40° F or less upon determination that treatment or disposal will not occur within 72 hours. Nonputrescible biohazardous medical waste that is not immediately treated may be stored for up to 90 days unrefrigerated.
   b. A contingency plan if the treatment equipment is out of service for an extended period of time. The plan shall address the manner and length of time for storage of the waste. An operator shall not store biohazardous medical waste more than 90 days. The plan shall be based on the capacity of the treatment equipment to treat all waste at the facility, including any backlog of stored waste and any new waste intake. If the 90-day time-frame will be exceeded, the operator shall either stop accepting waste until the backlog is treated, or contract with another treatment facility for treating the waste.
   c. Procedures for handling hazardous chemicals, radioactive waste, and chemotherapy waste. The plan shall provide for scanning biohazardous medical waste with a Geiger counter and handling waste that measures above background level in a manner that complies with state and federal law.

B. An operator of a Department-approved facility shall comply with all of the following:

1. Have readily accessible written procedures stating that biohazardous medical waste is to be accepted from a transporter only if the waste is accompanied by a tracking document, and written procedures that require compliance with both of the following:
   a. The treater or the treater's authorized agent shall sign the tracking document and keep a copy of the acceptance documentation for the period required under the USDOT requirements, as listed in 49 CFR 172.201.
   b. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a treater shall do one of the following:
      i. Reject the waste and return it to the transporter or self-hauling generator.
      ii. Accept the waste and transfer it directly from the transporting vehicle to the treatment processing unit.
      iii. If the waste will not be treated immediately, repackage the waste for storage.
2. Assure that the facility is designed to meet both of the following requirements:
   a. Any floor or wall surface in the processing area of the facility which may come into contact with biohazardous medical waste is constructed of a smooth, easily cleanable non-porous material that is impervious to liquids.
   b. The floor surface in the treatment and storage area either has a curb of sufficient height to contain spills or slopes to a drain that connects to an approved sanitary sewage system, septic tank system, or collection device.
3. Store biohazardous medical waste as required in R18-13-1408.
4. Comply with all of the following if the treatment method is incineration:
   a. Reduce the incinerated medical waste, excluding metallic items, into carbonized or mineralized ash by incineration.
   b. Determine whether the ash is hazardous waste as required under R18-8-262.
5. Conduct any autoclaving according to the manufacturer's specifications for the unit.
6. Use only alternative medical waste treatment methods that achieve the treatment standards in R18-13-1415(A).
7. Treat animal waste, chemotherapy waste, and cultures and stocks as prescribed in R18-13-1420.
8. Render medical sharps incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard.
9. Keep records of equipment maintenance and operational performance levels for three years. The records shall include the date and result of all equipment calibration and maintenance. Operational performance level records shall indicate the duration of time for each treatment cycle and:
   a. For steam treatment and microwaving treatment records, both the temperature and pressure maintained in the treatment unit during each cycle and the method used for confirmation of temperature and pressure.
   b. For chemical treatment, a description of the solution used.
   c. For incineration, the temperature is maintained in the treatment unit during operation.
   d. Any other operating parameters in the manufacturer's specifications.
   e. A description of the treatment method used and a copy of the maintenance test results.

10. Not open a sealed biohazardous medical waste container prior to treatment unless opening the container is required to treat the contents. Transfer of the entire contents, when performed as part of the treatment process, is permitted.
11. Clean the storage and treatment areas as necessary to protect the public health and employee health and safety.

C. The treater shall make treatment records available for Departmental inspection upon request.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1413. Changes to Approved Medical Waste Facility Plans

A. As required by A.R.S. § 49-762.06, before making any change to an approved facility plan, a facility owner or operator shall submit a notice to the Department stating the type of change requested, including but not limited to:
1. A Type I change to an approved medical waste facility plan is a change not described in subsections (A)(2), (3), or (4).
2. A Type II change to an approved medical waste facility plan is a change in which treatment equipment is replaced with equal or like equipment, resulting in either no increase to treatment capacity or the addition of equipment that is not directly used in the treatment process.
3. A Type III change to an approved medical waste facility plan is a change described by one of the following:
   a. Treatment equipment is added, resulting in less than a 25% increase in treatment capacity.
   b. The storage area is enlarged resulting in less than a 25% increase in storage capacity.
   c. Treatment technology is changed.
4. A Type IV change to an approved medical waste facility plan is a change described by one of the following:
   a. Treatment equipment is added, resulting in a 25% or more increase in treatment capacity.
   b. The storage area is enlarged resulting in a 25% or more increase in storage capacity.
   c. Treatment equipment is added that requires an environmental permit.
   d. An expansion of the treatment facility onto land not previously described in the approved plan.

B. As required by A.R.S. § 49-762.06, a treatment facility operator who has identified a change under subsection (A) shall comply with one of the following:
1. For a Type I change, make the change without notice to, or approval by the Department.
2. For a Type II change, before making any change, provide written notification that describes the change to the Department. The addition of refrigeration units only for compliance with this Article is a Type II change for which no Departmental approval is required.
3. For a Type III or Type IV change, submit an amended plan to the Department for approval before making any change. Departmental approval is required prior to making any change.

C. An owner or operator of an existing municipal solid waste landfill who intends to accept untreated biohazardous medical waste shall submit a notice of a Type III change and an amended facility plan.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1414. Alternative Medical Waste Treatment Methods: Registration and Equipment Specifications

A. A manufacturer or its agent who applies for alternative medical waste treatment method registration shall submit to the Department all of the following:
1. The manufacturer or company name and address.
2. The name, address, and telephone number of the person who submits the application.
3. A description of the alternative medical waste treatment method.
4. A list of any other states in which the treatment method is used, including a copy of any state approvals.
5. A description of by-products generated as result of the alternative treatment method.
6. A certification statement that the contents of the application are true and accurate to the knowledge and belief of the applicant.
7. Written documentation demonstrating that the alternative medical waste treatment method is capable of compliance with the treatment standards in this Article for the type of waste treated. The manufacturer shall employ a laboratory independent of any oversight activities by the manufacturer to provide this analysis.
8. The manufacturer's equipment specifications for the alternative medical waste treatment method being registered, including all of the following:
   a. Unit model number, or serial number.
   b. Equipment specifications that identify the proper type of biohazardous medical waste to be treated by the equipment and any design or equipment restrictions.
   c. Operating procedures for the equipment that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
   d. Instructions for equipment maintenance, testing, and calibration that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
9. Written documentation of registration if required by A.R.S. § 3-351.

B. The Department shall make a determination whether to approve the registration application. If the Department approves the application, it shall issue to the applicant a certification of registration containing an alternative medical waste treatment method registration number. Only an alternative technology method with a valid Department issued registration number meets the requirements of this Article.

C. If documentation of Departmental registration is not on file with a generator utilizing alternative medical waste treatment technology, the Department shall classify biohazardous medical waste treated using the unregistered alternative treatment technology as untreated biohazardous medical waste.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801

(December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1415. Treatment Standards, Quantification of Microbial Inactivation and Efficacy Testing Protocols

A. A treater using an alternative treatment technology shall ensure that treatment achieves either of the following treatment standards:
1. A 6 $\log_{10}$ inactivation in the concentration of vegetative microorganisms.
2. A 4 $\log_{10}$ inactivation in the concentration of *Bacillus stearothermophilus* or *Bacillus subtilis* as is appropriate to the technology.

B. A treater utilizing an alternative treatment method shall conduct efficacy studies to demonstrate that the treatment mechanisms are capable of achieving the standards in subsection (A) through either of the following:
1. Mycobacterial species used as indicators of vegetative microorganisms:
   a. *Mycobacterium phlei*, or
   b. *Mycobacterium bovis* (BOG) (ATCC 35743)
2. Spore suspensions of one of the following two bacterial species, as appropriate to the technology, used as biological indicators in efficacy tests of thermal, chemical, and irradiation treatment systems. Studies shall demonstrate a 4 $\log_{10}$ reduction in the concentration of viable spores, through the use of an initial inoculum suspension of 5 $\log_{10}$ or greater of:
   a. *Bacillus stearothermophilus* (ATCC 7953), or
   b. *Bacillus subtilis* (ATCC 19659).

C. A treater utilizing an alternative treatment method shall quantify microbial inactivation as follows:
1. Microbial inactivation, or "kill" efficacy is equated to "Log_{10} Kill" that is defined as the difference between the logarithms of the number of viable test microorganisms before and after treatment. This definition is stated as:
   $\text{Log}_{10}\text{Kill} = \text{Log}_{10}(\text{cfu/g "I"}) - \text{Log}_{10}(\text{cfu/g "R"})$
   where:
   Log_{10}Kill is equivalent to the term Log_{10} reduction,
   "I" is the number of viable test microorganisms introduced into the treatment unit,
   "R" is the number of viable test microorganisms recovered from the treatment unit, and
   "cfu/g" are colony forming units per gram of waste solids.
2. For those treatment processes that can maintain the integrity of the biological indicator carrier of the desired microbiological test strain, biological indicators of the required strain and concentration may be used to demonstrate microbial inactivation. Quantification is evaluated by growth or no growth of the cultured biological indicator.
3. For those treatment mechanisms that cannot ensure or provide integrity of the biological indicator, quantitative measurement of microbial inactivation requires a two-step approach: Step 1 "Control" and Step 2 "Test". The purpose of Step 1 is to account for the reduction of test microorganisms due to loss by dilution or physical entrapment.
   a. Step 1:
      i. Use microbial cultures of a predetermined concentration necessary to ensure a sufficient microbial recovery at the end of this step.
      ii. Add suspension to a standardized medical waste load that is to be processed under normal operating conditions without the addition of the treatment agent (that is, heat, chemicals).
      iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
      iv. Plate the recovered microorganism suspensions to quantify microbial recovery. The number of viable microorganisms recovered serves as a baseline quantity for comparison to the number of recovered microorganisms from wastes processed with the treatment agent.
      v. The required number of recovered viable indicator microorganisms from Step 1 must be equal to or greater than the number of microorganisms required to demonstrate the prescribed Log reduction, either a 6 Log_{10} reduction for vegetative microorganisms or a 4 Log_{10} reduction for bacterial spores. This can be defined by the following equation:
      $\text{Log}_{10}\text{RC} = \text{Log}_{10}\text{IC} - \text{Log}_{10}\text{NR}$
      or
      $\text{Log}_{10}\text{NR} = \text{Log}_{10}\text{IC} - \text{Log}_{10}\text{RC}$
      where:
      Log_{10}RC is greater than 6 for vegetative microorganisms and greater than 4 for bacterial spores and where:
      Log_{10}RC is the number of viable "control" microorganisms in colony forming units per gram of waste solids recovered in the non-treated, processed waste residue;
      Log_{10}IC is the number of viable "control" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit;
      Log_{10}NR is the number of "control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue. Log_{10}NR represents an accountability factor for microbial loss.
   b. Step 2:
      i. Use microbial cultures of the same concentration as in Step 1.
      ii. Add suspension to the standardized medical waste load that is to be processed under normal operating conditions with the addition of the treatment agent.
      iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
      iv. Plate recovered microorganism suspensions to quantify microbial recovery.
      v. From data collected from Step 1 and Step 2, the level of microbial inactivation, "Log_{10} Kill", is calculated by employing the following equation:
      $\text{Log}_{10}\text{Kill} = \text{Log}_{10}\text{IT} - \text{Log}_{10}\text{NR} - \text{Log}_{10}\text{RT}$
      where:
      Log_{10}Kill is equivalent to the term Log_{10} reduction;
      Log_{10}IT is the number of viable "Test" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit.
      $\text{Log}_{10}\text{IT} = \text{Log}_{10}\text{IC}$;

$Log_{10}NR$ is the number of "Control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue;
$Log_{10}RT$ is the number of viable "Test" microorganisms in colony forming units per gram of waste solids recovered in treated, processed waste residue.

D. A treater shall employ the appropriate methodology to determine efficacy of the treatment technology following the protocols in subsection (C) that are congruent with the treatment method.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1416. Recycled Materials

A. Once a generator places biohazardous medical waste in a red bag as required in R18-13-1407, a person shall not remove any of the biohazardous medical waste from the bag until the biohazardous medical waste has been treated as required in R18-13-1415.

B. A generator of biohazardous medical waste intending to recycle any portion of the biohazardous medical waste shall segregate that portion of biohazardous medical waste from the portion of biohazardous medical waste that will not be recycled. The generator shall do either of the following:
1. Treat the biohazardous medical waste intended for recycling as required in R18-13-1415 before sending the treated medical waste to a recycler.
2. Follow the requirements in R18-13-1406, R18-13-1407, and R18-13-1408, before either contracting with a transporter to haul or self-hauling the biohazardous medical waste to a treatment facility for treatment. After treatment, the treated medical waste may be sent to a recycler.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1417. Disposal Facilities: Design and Operation

An operator of a municipal solid waste landfill that accepts untreated biohazardous medical waste shall comply with all of the following in design and operational requirements:
1. Accept biohazardous medical waste only if packaged according to R18-13-1407.
2. Keep the biohazardous medical waste disposal area separate from the general purpose disposal area.
3. Clearly label the biohazardous medical waste disposal area, informing persons that the disposal area contains untreated medical waste.
4. Not drive directly over deposited medical waste. The operator shall achieve compaction by first spreading a layer of soil that is sufficiently thick to prevent compaction equipment from coming into direct contact with the waste, or dragging waste over the area.
5. Cover the biohazardous medical waste with 6 inches of compacted soil at the end of the working day or more often as necessary to prevent vector breeding and odors.
6. Not allow salvaging of untreated biohazardous medical waste from the landfill.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1418. Discarded Drugs

Discarded drugs that are not hazardous waste, not returned to the manufacturer, and not segregated and labeled on site for transport to a treatment facility shall be destroyed on site by the generator of such drugs by any method that prevents the drugs' use prior to placing the waste out for collection. If federal or state law prescribes a specific method for destruction of discarded drugs, the generator shall comply with that law.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1419. Medical Sharps

A. Medical sharps shall be handled as follows:
1. A generator who treats biohazardous medical waste on site shall place medical sharps in a sharps container after rendering them incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard. Medical sharps encapsulated or processed in this manner are considered to be solid waste.
2. A generator who ships biohazardous medical waste off site for treatment shall either:
   a. Place medical sharps in a medical sharps container and follow the requirements of R18-13-1406, or
   b. Package and send medical sharps to a treatment facility via a mail-back system as prescribed by the instructions provided by the mail-back system operator. The generator shall retain proof of shipping.

B. Notwithstanding subsections (A)(1) and (2), the following syringes do not have to be placed in a medical sharps container:
1. Syringes that have never had a needle (sharp) attached.
2. Syringes where a needle or sharp had been attached and has been separated from the syringe so that no stick or puncture hazard remains with the syringe.

C. Syringes that are exempted by subsections (B)(1) and (2) from being placed in a medical sharps container are not biohazardous medical waste, and may be treated as a solid waste, if they are not composed of biohazardous items listed in R18-13-1401(4) and do not contain discarded drugs or another regulated substance.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

R18-13-1420. Additional Handling Requirements for Certain Wastes

A. A person who treats the following biohazardous medical waste categories shall meet the following additional requirements:
1. Cultures and stocks shall be incinerated, autoclaved, or treated by an alternative medical waste treatment method that meets the treatment standards set forth in R18-13-

1415(A). If cultures and stocks are shipped off site for treatment or disposal, they shall be packaged inside a watertight primary container with absorbent packing materials. The primary container shall be placed inside a watertight secondary inner container that is then placed inside an outer container with sufficient cushioning material to prevent shifting between the secondary inner container and the outer container. If federal or state law prescribes specific requirements for packaging and transporting this waste, the treater shall comply with that law.

2. Trace chemotherapy waste shall be incinerated or disposed of in either an approved solid waste or hazardous waste disposal facility.
3. Experimental or research animal waste shall be handled as follows:
   a. Autoclave bedding on site or package as described in R18-13-1407 for off-site treatment or landfilling.
   b. Incinerate animal carcasses on site, or if taken off site for treatment, comply with one of the following requirements:
      i. Package the waste in a leakproof, covered container, label the contents and send to an incinerator or a Department-approved landfill, or
      ii. If treated by a method other than incineration, pre-process by grinding, then treat by a method that achieves the standards of R18-13-1415(A).

B. If a treater uses grinding in combination with another treatment method described in this Article, the treater shall conduct it in a closed system to prevent humans from being exposed to the release of the waste into the environment. If grinding is used for medical sharps, the grinding shall render the medical sharps incapable of creating a stick hazard.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 27 A.A.R. 2801 (December 3, 2021), effective January 4, 2022 (Supp. 21-4).

ARTICLE 15. RECODIFIED

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

R18-13-1501. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-902 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1002 (Supp. 01-4).

R18-13-1502. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-901 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1001 (Supp. 01-4).

R18-13-1503. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-903 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1003 (Supp. 01-4).

R18-13-1504. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-904 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1004 (Supp. 01-4).

R18-13-1505. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-905 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1005 (Supp. 01-4).

R18-13-1506. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-906 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1006 (Supp. 01-4).

R18-13-1507. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-907 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1007 (Supp. 01-4).

R18-13-1508. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-908 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1008 (Supp. 01-4).

R18-13-1509. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-909 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1009 (Supp. 01-4).

R18-13-1510. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-910 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1010 (Supp. 01-4).

R18-13-1511. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-911 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1011 (Supp. 01-4).

R18-13-1512. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-912 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1012 (Supp. 01-4).

R18-13-1513. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-913 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1013 (Supp. 01-4).

R18-13-1514. Recodified

Historical Note
Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-914 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1014 (Supp. 01-4).

Appendix A. Recodified

Historical Note
Appendix A, "Procedures to Determine Annual Biosolids Application Rates", adopted effective April 23, 1996 (Supp. 96-2). Appendix A recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to 18 A.A.C. 9, Article 10 (Supp. 01-4).

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

Article 16, consisting of Sections R18-13-1601 through R18-13-1614, recodified from 18 A.A.C. 8, Article 16 at 8 A.A.R. 5172, effective November 27, 2002; Section and subsection citations within this Article were also updated under A.R.S. § 41-1011(C) (Supp. 02-4).

R18-13-1601. Definitions
In addition to definitions in A.R.S. § 49-851 and A.A.C. R18-13-1301, the terms in this Article shall have the following meanings:

1. "Accumulation site" means an area or site at which PCS from one or more points of generation under the control of the generator of PCS is accumulated for more than 12 hours but less than 90 days prior to treatment, storage, or disposal.
2. "Containment system" means a system designed to contain an accumulation of special waste which meets the design and performance standards in R18-13-1608 and either R18-13-1609 or R18-13-1611.
3. "Excavated" means removed from the earth by scraping or digging a hole or cavity in the earth's surface or otherwise removed from the earth's surface.
4. "Facility" or "special waste receiving facility" means a treatment facility, storage facility, or disposal facility which has been approved by the Director in accordance with A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
5. "Hazardous waste" means hazardous waste as defined in A.R.S. § 49-921(5).
6. "Non-fuel, non-solvent petroleum product" means a petroleum-based substance refined from virgin crude oil that is not used as a solvent or fuel including mineral oils and hydraulic oils.
7. "Non-regulated soils" means soils that are neither hazardous waste, PCS, nor solid waste PCS, and which do not constitute an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
8. "PCS" or "petroleum-contaminated soils" means soils *excavated for storage, treatment or disposal containing* one or more of the contaminants in the list below at the following concentrations:
   a. Benzene greater than or equal to 1.4 mg/kg,
   b. Toluene greater than or equal to 650 mg/kg,
   c. Ethylbenzene greater than or equal to 400 mg/kg,
   d. Total Xylenes greater than or equal to 420 mg/kg,
   e. Anthracene greater than or equal to 240,000 mg/kg,
   f. Benz(A)anthracene greater than or equal to 21 mg/kg,
   g. Benzo(A)pyrene greater than or equal to 2.1 mg/kg,
   h. Benzo(B)fluoranthene greater than or equal to 21 mg/kg,
   i. Benzo(K)fluoranthene greater than or equal to 210 mg/kg,
   j. Chrysene greater than or equal to 2,000 mg/kg,
   k. Dibenz(A,H)anthracene greater than or equal to 2.1 mg/kg,
   l. Fluoranthene greater than or equal to 22,000 mg/kg,
   m. Fluorene greater than or equal to 26,000 mg/kg,
   n. Indenopyrene greater than or equal to 21 mg/kg,
   o. Naphthalene greater than or equal to 190 mg/kg,
   p. Pyrene greater than or equal to 29,000 mg/kg.
9. "PCS disposal facility" means a site or special waste receiving facility at which the disposal of PCS has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
10. "Petroleum" means petroleum as defined in A.R.S. § 49-1001(11).
11. "Point of compliance" means point of compliance as defined in A.R.S. § 49-244.
12. "Special waste shipper" means a person who transports special waste for off-site treatment, storage, or disposal.
13. "Solid waste PCS" means excavated soils contaminated with petroleum that are not hazardous waste and not PCS but that contain one or more of the contaminants in the list below at the following concentrations:
   a. Benzene greater than or equal to 0.65 but less than 1.4 mg/kg;
   b. Toluene greater than or equal to 650 mg/kg;
   c. Ethylbenzene greater than or equal to 400 mg/kg;
   d. Total Xylenes greater than or equal to 270 but less than 420 mg/kg;
   e. Anthracene greater than or equal to 22,000 but less than 240,000 mg/kg;
   f. Benz(A)anthracene greater than or equal to 6.9 but less than 21 mg/kg;
   g. Benzo(A)pyrene greater than or equal to 0.69 but less than 2.1 mg/kg;
   h. Benzo(B)fluoranthene greater than or equal to 6.9 but less than 21 mg/kg;
   i. Benzo(K)fluoranthene greater than or equal to 69 but less than 210 mg/kg;
   j. Chrysene greater than or equal to 680 but less than 2,000 mg/kg;
   k. Dibenz(A,H)anthracene greater than or equal to 0.69 but less than 2.1 mg/kg;
   l. Fluoranthene greater than or equal to 2,300 but less than 22,000 mg/kg;

m. Fluorene greater than or equal to 2,700 but less than 26,000 mg/kg;
n. Indenopyrene greater than or equal to 6.9 but less than 21 mg/kg;
o. Naphthalene greater than or equal to 56 but less than 190 mg/kg;
p. Pyrene greater than or equal to 2,300 but less than 29,000 mg/kg.

14. "Storage" means the holding of PCS for a period of more than 90 days but less than one year.
15. "Storage facility" means a special waste receiving facility which engages in storage and which has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
16. "Temporary treatment facility" means an on-site treatment facility, or an off-site treatment facility owned or operated by the generator of PCS, where the PCS is treated to reduce the contaminants that make it PCS and which complies with the requirements of R18-13-1610.
17. "Treatability study" means a study in which a special waste is subjected to a treatment process to determine any one or more of the following:
    a. Whether the waste is amenable to the treatment process,
    b. What pretreatment is required,
    c. The optimal process conditions needed to achieve the desired treatment,
    d. The efficiency of a treatment process,
    e. The characteristics and volumes of residual contaminants from a particular treatment process,
    f. Toxicological and health effects.
18. "Treatment facility" means a special waste receiving facility at which PCS is treated to reduce the PCS contaminants and, if in the state of Arizona, has been Department-approved pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.

Historical Note

Recodified from R18-8-1601 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1602. Applicability

A. The Director declares that PCS, as defined in R18-13-1601(8), constitutes a special waste as defined in A.R.S. § 49-851(A)(9). Except as otherwise provided in this Section and R18-13-1603, PCS shall be treated, stored, and disposed of in accordance with this Article. PCS shall not be diluted with any material or substance for purposes of avoiding applicability of these rules.

B. PCS which is used in a treatability study shall comply with all of the following:
1. The owner or operator of the facility where a treatability study is to be conducted shall notify the Department of its intent to conduct a treatability study at least 30 days prior to the commencement of the treatability study.
2. The total quantity of PCS used in the treatability study shall not exceed 5000 kilograms, unless evidence is provided which justifies the need for a larger quantity and permission to use a larger amount is granted by the Director.
3. The owner or operator of the facility shall maintain records detailing the treatability study and the results obtained in accordance with R18-13-1614.
4. The treatability study shall be completed and the PCS shall be removed from the site within one year from commencement of the study.
5. Upon completion of the treatability study, the owner or operator of a facility shall dispose of the PCS used in the treatability study in accordance with this Article.
6. Sampling of the PCS shall be conducted in accordance with R18-13-1604(B) and (C) before and after the treatability study is performed.
7. The performance of the treatability study shall not result in an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.

C. PCS which is excavated pursuant to the requirements of A.R.S. Title 49, Chapter 6, Underground Storage Tank Regulation, and which is not removed from the site, shall comply with the requirements of R18-13-1610 and R18-13-1612.

D. PCS incorporated into asphalt for use in paving is not subject to other provisions of this Article if the owner or operator of the facility where the asphalt is produced does all of the following:
1. Notifies the Department in writing at least 30 days prior to commencing such incorporation,
2. Maintains records in accordance with R18-13-1614,
3. Stores the PCS prior to incorporation in accordance with R18-13-1611.

E. Requirements in this Article for Department-approved facilities do not apply to facilities that are out of state or in Indian Country.

Historical Note

Recodified from R18-8-1602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1603. Exemptions

A. Solid waste PCS are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are subject to A.R.S. § 49-761 et seq.

B. Non-regulated soils are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are exempt from the requirements of A.R.S. § 49-761 et seq.

C. Asphaltic cement which is not hazardous waste is exempt from the requirements of this Article.

D. Soils which are contaminated with petroleum, which have been generated by households, and which are not hazardous waste, shall be exempt from the requirements of this Article.

Historical Note

Recodified from R18-8-1603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1604. Waste Determination

A. A generator of excavated soil contaminated with petroleum shall determine whether the soil is PCS, solid waste PCS, or non-regulated soil. The basis for the determination shall be maintained for at least three years and shall be made available to the Department upon request. The generator shall make such determination using either of the following methods:
1. Testing the soil pursuant to subsection (B) of this Section. Laboratory analysis of these samples shall be performed

by a laboratory licensed by the Arizona Department of Health Services. Approved testing methods, which identify concentrations for total recoverable extraction of contaminants, shall be used.

2. Application of knowledge of the characteristics of the contaminated soil in light of the known or potential source of the contamination. The Department may require sampling to confirm the accuracy of applied knowledge.

B. Sampling of soils contaminated with petroleum shall be performed in accordance with a site-specific written sampling plan which is consistent with the requirements set forth in either of the following:

1. "Test Methods for Evaluating Solid Waste", EPA SW-846, 3rd Edition Volume II: Field Manual, Physical/Chemical Method, Chapter Nine (SW-846 Third Edition), 1986, Environmental Protection Agency, Washington, D.C. and no future editions or amendments, incorporated herein by reference and on file with the Department and the Office of the Secretary of State.
2. "Quality Assurance Project Plan", Chapter 9, May 1991 Edition, Arizona Department of Environmental Quality, Phoenix, Arizona and no future editions or amendments incorporated herein by reference and on file with the Department and the Office of the Secretary of State.

C. If soil excavated during the initial investigation of a site to determine the extent of contamination is PCS, the PCS may be returned into the excavation site from which the soil was removed if all of the following conditions are met:

1. There is no freestanding liquid within the excavation, unless the State Fire Marshal or other jurisdictional fire authority directs otherwise, and the requirements of subsections (C)(2) and (3) are met.
2. The owner or operator provides notification to the Department that the PCS has been returned to the excavation within 14 days after the return of the PCS to the excavation.
3. The owner or operator completes a site characterization within 120 days and implements remediation within 150 days after the date the site characterization began.

Historical Note

Recodified from R18-8-1604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1605. Transportation

A. PCS transported to a special waste receiving facility in Arizona shall be transported by a special waste shipper which has met the requirements of R18-13-1303.

B. A special waste shipper shall transport the PCS in closed containers pursuant to R18-13-1611(E) or shall ensure that any vehicle used to transport the PCS is loaded and covered in such a manner that the contents will not blow, fall, leak, or spill from the vehicle.

C. A special waste shipper transporting PCS to a special waste receiving facility in Arizona, except a facility located on Indian country, shall deliver PCS to a special waste receiving facility approved by the Department.

Historical Note

Recodified from R18-8-1605 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1606. Fees

A. In accordance with A.R.S. §§ 49-855(C)(2) and 49-863, the treatment, storage, or disposal facility in this state that first receives a shipment of PCS shall remit to the Department a fee of $6.68 per ton but not more than $66,835.67 per generator site per year for PCS that is transported to the facility.

B. Initial registration fee. Upon making a request for a special waste identification number on a form as provided by the Director pursuant to Article 13, A generator of PCS shall submit to the Department an initial registration fee of $900.

C. Annual registration fee. The Department shall bill an annual registration fee to a generator of PCS or special waste receiving facility that has received facility approval under R18-13-1607 that has not filed a notice of termination of registration with the Department as follows:

1. For a generator of PCS, $750; and
2. For a special waste receiving facility, $5,000.

D. The generator of PCS or special waste receiving facility shall pay the annual registration fee within 30 days of invoice receipt.

E. In accordance with A.R.S. § 49-855(G), a solid waste landfill that pays registration fees under A.R.S. § 49-747 is exempt from the annual registration fee under subsection (C) of this Section.

F. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A), (B), and (C) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (F)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note

Recodified from R18-8-1606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-1607. Facility Approval; Application

A. PCS shall be treated, stored, or disposed only at a PCS disposal facility, storage facility, treatment facility, or temporary treatment facility. A facility located in Arizona shall not be constructed or operated prior to obtaining written approval from the Department, except as provided for in A.R.S. § 49-858.

B. The owner or operator of a PCS treatment, storage, or disposal facility shall submit an application to the Department which contains all of the information required in accordance with A.R.S. § 49-762.

C. In addition to the requirements specified in A.R.S. § 49-762, the application shall contain all of the following:

1. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties.

2. An engineering report which includes all of the following:
   a. Detailed plans and specifications for the entire facility including manufacturer's performance data and design features of treatment, pollution control, and monitoring equipment.
   b. A site description which includes general information on the geology, hydrogeology, soils, and land use. If a facility is located within the pollution management area of a facility for which an aquifer protection permit has been issued under A.R.S. § 49-241 et seq., then the applicant may resubmit or incorporate by reference the general information.
   c. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths, and number of samples.
3. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses.
4. An operational plan which includes all of the following:
   a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
   b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
   c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
   d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
   e. Procedures to ensure that only waste which has been characterized is received and that hazardous waste is not received;
   f. Procedures for random inspection of incoming loads to verify that only waste which has been characterized is accepted;
   g. Procedures for collecting and managing run-off which comes in contact with PCS;
   h. Procedures for recordkeeping of all inspection results, training of personnel, and sampling results;
   i. Procedures to control public access, and prevent unauthorized entry and illegal dumping.
5. A contingency plan for emergency preparedness which describes alternatives for storage, treatment, or disposal.
6. A closure plan which includes:
   a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
   b. Information on site conditions and characterization of the waste received during the life of the facility;
   c. A description of the sampling plan utilized to sample background soil beneath the site following closure;
   d. A description of plans for use of the land site after closure;
   e. A description of post-closure care.
7. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted.

D. Following completion of construction of a facility and prior to placement of PCS on the site, the owner or operator shall submit to the Department a construction certification report, including as-built plans which indicate any changes to the design or operational plans for the facility.

E. Plans required in accordance with this Section shall be sealed by a professional engineer registered in the state of Arizona, if required by statute.

F. A facility shall be in compliance with all other applicable federal, state, and local approvals or permits which are required for the design, construction, and operation of the facility.

Historical Note

Recodified from R18-8-1607 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1608. General Design and Performance Standards

A. A facility which receives PCS for treatment, storage, or disposal shall be designed and operated to ensure compliance with the following performance standards relating to aquifer protection:
1. Pollutants discharged shall in no event cause or contribute to a violation of Aquifer Water Quality Standards, at the applicable point of compliance, or, if the facility is a municipal solid waste landfill, it shall comply with the requirements of A.R.S. § 49-761.01(C).
2. Any pollutant discharged shall not further degrade, at the applicable point of compliance, the quality of any aquifer that already violates an Aquifer Water Quality Standard for that pollutant.

B. A facility which receives PCS for treatment, storage, or disposal shall meet the general design criteria of either subsection (B)(1) or (2) as follows:
1. The PCS shall be held within a containment system designed and constructed to preclude the migration of contaminants into subsurface soil, groundwater, or surface water. The containment system shall meet the following criteria:
   a. Maintain a maximum permeability coefficient of no more than 1×10^{-7} cm/sec;
   b. Be designed to provide structural integrity throughout the life of the facility;
   c. Be designed in accordance with the applicable design criteria set forth in subsection (C) of this Section and R18-13-1609 through R18-13-1613; or
2. An alternative design shall contain, at a minimum, all of the following and shall demonstrate that the design will limit discharges listed in A.R.S. § 49-243(D) to the maximum extent practicable:
   a. The hydrogeologic setting of the facility and the capacity of the liner and soils to preclude discharge to groundwater or surface water;
   b. The operating methods, processes, or other alternatives to be used at the facility;
   c. Additional factors which would influence the quality and mobility of the leachate produced and the potential for that leachate to migrate to groundwater or surface water.

C. A PCS treatment, storage, or disposal facility shall meet the following general design criteria:
1. The facility shall be designed to prevent run-on and run-off. The design shall provide run-on control for the peak discharge from a 24-hour, 25-year storm event. Run-off shall be collected and controlled for at least the water volume resulting from a 24-hour, 25-year storm event.

2. The facility shall not restrict the flow of the 100-year floodplain, reduce temporary water storage capacity of the floodplain, or be maintained in a manner which results in a washout or inundation of the PCS.
3. The owner or operator shall control public access and shall prevent unauthorized vehicular traffic and illegal dumping.
4. The owner or operator shall manage any standing water that has come into contact with the PCS in accordance with rules promulgated pursuant to A.R.S. § 49-761 et seq.

D. A facility which manages PCS in accordance with the requirements of this Article shall be exempt from the aquifer protection permit requirements in accordance with A.R.S. § 49-250(B)(21).

E. A facility which has been issued an aquifer protection permit from the Department shall be exempt from the requirements of subsections (A) and (B) of this Section but shall comply with the requirements of subsection (C).

Historical note

Recodified from R18-8-1608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1609. Treatment Facility

A. The owner or operator of a PCS treatment facility shall obtain approval from the Department prior to commencement of construction or operation and shall comply with all of the following:
1. Not dilute PCS as a method of treatment, except as allowed in the approved plan for the facility;
2. Treat the PCS or, if the chosen treatment process fails to remediate the soil to below the regulatory thresholds, dispose of the PCS pursuant to R18-13-1613.
3. Sample the treated soil and provide the results of the sampling to the Department within 45 days of completion of the treatment.

B. A PCS treatment facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
1. At a minimum, a containment system shall include a clay, synthetic, concrete, or asphalt liner component which is placed upon a foundation or prepared subgrade which supports the liner, and resists pressure gradients above and below the liner, to prevent failure due to settlement, compression, or uplift.
2. During construction or installation of a containment system, liners and cover systems shall be inspected for uniformity, damage, and imperfections. Immediately after construction or installation is completed, and prior to placement of PCS within the containment system, the systems shall be checked for both of the following:
   a. Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.
   b. Concrete, asphalt, and soil-based liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.
3. The liner component shall consist of one of the following:
   a. A synthetic liner which is compatible with the waste and which has a minimum 6” buffer layer of sand or soil between the liner and the PCS.
   b. A compacted soil or admixed liner provided with a minimum 6” buffer layer of sand or soil between the liner and the PCS.
   c. An asphalt or reinforced concrete liner which is not in the drainage area of a dry well and is free of unsealed cracks and seams.
4. Aeration equipment shall be limited to the area above the buffer layers indicated in subsections (B)(2)(a) and (b).
5. The owner or operator of the facility shall utilize protective measures to ensure containment system integrity during placement, treatment, or removal of the PCS.
6. PCS stored at a treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.

Historical Note

Recodified from R18-8-1609 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1610. Temporary Treatment Facility

A. The owner or operator of a temporary treatment facility shall treat and remove all PCS from the temporary treatment facility within one year from the date of commencement of receipt of PCS for treatment. PCS shall not be diluted to meet any treatment requirement, except in accordance with the approved plan.

B. A temporary treatment facility shall obtain approval from the Department prior to commencing construction or operation. In lieu of the requirements of R18-13-1607(C), an application for approval shall contain all of the following:
1. An affidavit signed by the owner or operator of the temporary treatment facility which states that the facility will comply with the requirements of this Article;
2. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted;
3. Application information required pursuant to A.R.S. § 49-762.03(C)) for plan approval for temporary treatment facilities;
4. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties;
5. A site description which includes general information on the geology, hydrogeology, soils, and land use;
6. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths and number of samples;
7. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses;
8. An operational plan which includes all of the following:
   a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
   b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
   c. The schedule for sampling the PCS during treatment to evaluate treatment methods;

d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;

9. A closure and post-closure care plan which includes both of the following:
   a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
   b. A description of the sampling plan utilized to sample background soil beneath the site following closure.

C. A temporary treatment facility shall not be operated for more than one year unless a one-time extension is granted by the Department. The Department may grant an extension of up to one additional year if all of the following are met:
1. The inability to perform is caused by events beyond the control of the owner or operator, including acts of God, which include flood, tornado, earthquake, and causes beyond the owner's or operator's control including fire, explosion, unforeseen strikes or work stoppages, riot, sabotage, public enemy, war, requirements established by courts of competent jurisdiction, and other governing law. Financial inability to perform shall not be justification for an extension.
2. The owner and operator submits to the Department verifiable documentation which includes all of the following:
   a. A description of the circumstances causing any delay;
   b. Evidence of the existence of the circumstance;
   c. A description of past, present, and future measures taken or to be taken by the owner or operator to prevent or minimize any delay;
   d. A timetable by which the owner and operator will resume and complete required performance.
3. The request is received at least 60 days prior to the expiration of the year in which the facility first received PCS. Where the Department grants an extension, that extension shall be granted prior to the expiration of the deadline and communicated to the owner or operator in writing.

D. A temporary treatment facility shall meet the design criteria as specified in R18-13-1608 and R18-13-1609(B).

E. PCS stored at a temporary treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.

F. In accordance with A.R.S. §§ 49-762.03(C), a temporary treatment facility shall be exempt from the notice and public hearing requirements set forth in A.R.S. § 49-762.04(A).

Historical Note

Recodified from R18-8-1610 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1611. Storage Facility

A. A shipment of PCS shall not be stored for a period exceeding one year from the date the PCS is received.

B. Each shipment of contaminated soil shall be identified by source and stored in a manner which does not allow commingling of different shipments until all sampling results have been obtained. PCS shall be stored within an approved containment system and shall not be commingled with treated soils.

C. A PCS storage facility shall obtain approval from the Department prior to commencement of construction or operation. A PCS storage facility designed in accordance with R18-13-1608(B)(1) shall comply with either of the following:
1. The containment system shall meet the requirements of R18-13-1609(B).
2. The PCS shall be stored in tanks or containers which meet the requirements of subsection (E) of this Section.

D. A PCS storage area or each tank or container used for storage shall be marked as follows:

CAUTION: CONTAINS PETROLEUM-CONTAMINATED SOIL
GENERATOR NAME:
GENERATOR ID#:
ACCUMULATION START DATE:

The owner or operator of the storage facility shall fill in the accumulation start date at the time the PCS is placed into storage. The letters shall be legible, not obstructed from view, on a high contrast background, and sufficiently durable to equal or exceed the duration of storage. Lettering size shall be 2.5 cm (1 inch) and in Sans Serif, Gothic, or Block style.

E. A tank or container used to store PCS shall meet all of the following requirements:
1. Prevent leakage of PCS and any free liquids from the tank or container;
2. Be made of, or lined with, materials which will not react with the PCS;
3. Be kept closed during storage except to add or remove PCS;
4. Not be opened, handled, or stored in a manner which may rupture the tank or container or cause it to leak;
5. Shall be inspected monthly by the owner or operator of the storage facility for leaks and for deterioration. A written record of the inspection shall be prepared at the time of the inspection and shall document corrective action, if any, taken as a result of the inspection.

F. A PCS storage facility at which PCS is stored in piles shall comply with both of the following:
1. All storage piles shall be covered or otherwise managed to control wind dispersal of the PCS.
2. Storage piles of PCS shall be inspected weekly and a written record of the inspection shall be prepared at the time of the inspection which documents any corrective action taken as a result of the inspection. The record shall document detection of any of the following:
   a. Deterioration, malfunctions, or improper operation of run-on and run-off control systems;
   b. Malfunctioning of wind dispersal control systems;
   c. The presence of leachate in and the malfunctioning of any leachate collection and removal systems.

Historical Note

Recodified from R18-8-1611 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1612. Accumulation Sites

A. PCS from one or more points of generation under the control of a single generator may be accumulated in an accumulation site under the control of that generator for up to 90 days prior to shipment of the PCS to a storage, disposal, or treatment facility.

B. An accumulation site shall comply with the storage facility requirements set forth in R18-13-1611, except subsection (A) of that Section. An accumulation site shall not be required to comply with the requirements in R18-13-1607.

C. While PCS is at an accumulation site, the owner or operator shall control public access and prevent unauthorized vehicular

traffic and illegal dumping. PCS shall be managed to prevent the PCS from being exposed to storm water run-on or run-off.

Historical Note
Recodified from R18-8-1612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1613. Disposal

A. PCS shall be disposed at a special waste receiving facility which has been approved for the disposal of PCS, or at a hazardous waste management facility as defined in R18-13-260(E)(13).

B. A PCS disposal facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
1. The disposal facility shall be designed with a composite liner, as defined in subsection (B)(2), and a leachate collection system that is designed and constructed to maintain less than a 12-inch depth of leachate over the liner.
2. For purposes of this Section, "composite liner" means a system consisting of two components: the upper component shall consist of a minimum 30-mil flexible membrane liner (FML) and the lower component shall consist of at least a two-foot layer of compacted soil with a permeability coefficient of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML component shall be installed in direct and uniform contact with the compacted soil component.

Historical Note
Recodified from R18-8-1613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 27 A.A.R. 57, with an immediate effective date of January 5, 2021 (Supp. 21-1).

R18-13-1614. Records

Records required to be kept pursuant to this Article shall be maintained by the owner or operator and made available for inspection by the Director for a period of three years or longer during the course of an enforcement action or litigation.

Historical Note
Recodified from R18-8-1614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

ARTICLE 17. RESERVED

ARTICLE 18. RESERVED

ARTICLE 19. LEAD ACID BATTERY RECYCLING

R18-13-1901. Collection or Recycling Facility of Lead Acid Batteries; Registration; Fees

A. Initial registration. The owner or operator of an existing collection or recycling facility that accepts lead acid batteries as of the effective date of this Section shall register with the Department by March 1, 2025, on a form approved by the Department. A collection or recycling facility shall not begin operation to accept lead acid batteries until the owner or operator registers with the Department on a form approved by the Department that includes a statement that the facility is in compliance with A.R.S. § 44-1322. The owner or operator of a new collection or recycling facility of lead acid batteries shall submit an initial registration fee of $810 at the time of registration under this subsection.

B. Annual registration fee. The Department shall bill an annual registration fee of $675 to a registered collection or recycling facility that has not filed a notice of termination of registration with the Department. The owner or operator of a registered collection or recycling facility shall pay the annual registration fee within 30 days of invoice receipt.

C. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A) and (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:
1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (C)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

D. For purposes of this Section, "lead acid battery" means a battery with a core of elemental lead and a capacity of six or more volts that is suitable for use in a vehicle or a boat.

Historical Note
New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

ARTICLE 20. USED OIL

R18-13-2001. Definitions

A. "40 CFR 279", and any section therein, refers to 40 CFR part 279, as amended on January 1, 1997, and no future editions or later amendments. Copies of 40 CFR 279 are available at https://www.govinfo.gov/app/collection/cfr/. Copies are on file with the Department.

B. "CFR" means the Code of Federal Regulations.

C. "Department" means the Arizona Department of Environmental Quality.

D. "Used oil" means the same as defined in 40 CFR 279.1 and includes oil that has been contaminated as a result of handling, transportation, or storage.

E. "Used oil collection center" means the same as defined in 40 CFR 279.1.

F. "Used oil burner" means the same as defined in 40 CFR 279.1.

G. "Used oil fuel marketer" means the same as defined in 40 CFR 279.1.

H. "Used oil handler" means a used oil burner, used oil marketer, used oil transporter, or used oil processor.

I. "Used oil processor" means the same as defined in 40 CFR 279.1.

J. "Used oil transporter" means the same as defined in 40 CFR 279.1.

Historical Note
New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-2002. Used Oil Handler Registration; Fee

A. Initial registration. A new used oil handler that has received, or is required to obtain, an EPA identification number pursuant to 40 CFR 279 shall not begin operation until the owner or operator registers with the Department on a form approved by the Department. A new used oil handler shall submit an initial registration fee at the time of registration under this subsection as follows:

1. For a used oil processor, $9,000;
2. For a used oil burner, $15,000;
3. For a used oil transporter, $1,800; and
4. For a used oil fuel marketer, $1,800.

B. Annual registration fee. The Department shall bill an annual registration fee to a used oil handler that has received, or is required to obtain, an EPA identification number pursuant to 40 CFR 279 that has not filed a notice of termination of registration with the Department as follows:

1. For a used oil processor, $7,500;
2. For a used oil burner, $12,500;
3. For a used oil transporter, $1,500; and
4. For a used oil fuel marketer, $1,500.

C. The registered used oil handler shall pay the annual registration fee within 30 days of invoice receipt.

D. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsections (A) and (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (D)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note

New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-2003. Used Oil Collection Center Identification Number; Requirements

A. A used oil collection center shall request a used oil collection center identification number on a form provided by the Director pursuant to A.R.S. § 49-802(C) that contains all of the following:

1. The company name;
2. The name of the owner of the company;
3. The mailing address and telephone number of the company;
4. The location of the collection center; and
5. A description of the type of used oil activity at the company.

B. Within 30 days of receiving the completed form, the Director shall issue the identification number to the used oil collection center.

Historical Note

New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION AND DISPOSAL FEES

Article 21, consisting of Sections R18-13-2101 through R18-13-2103, made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2).

R18-13-2101. Definitions

In addition to the definitions in A.R.S. §§ 49-701 and 49-701.01, for the purpose of this Article, the terms used in this Article have the following meanings:

1. "Defined time period" means the 12-month period that begins on July 1 of a calendar year and ends on June 30 of the following calendar year and consists of the actual number of calendar days in that 12-month period.
2. "Disposal fee invoice" means the quarterly landfill disposal fee invoice the Department mails to a landfill operator, on which the landfill operator indicates the amount of waste received and the amount of the disposal fees owed to the Department as required under A.R.S. § 49-836.
3. "Local public facility" means a facility operated pursuant to A.R.S. § 49-741.
4. "Recycling residue" means waste generated from recycling:
   a. Solid waste; or
   b. Effluent from a secondary wastewater treatment plant or wastewaters.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-2102. Solid Waste Landfill Registration; Annual Registration Fee

A. An operator of a new solid waste landfill shall register the solid waste landfill with the Department on a form approved by the Department.

B. An existing solid waste landfill shall pay an annual registration fee within 30 days of receipt of an invoice from the Department according to the following:

1. For solid waste landfills that received less than 60,000 tons during the defined time period, $5,000.
2. For solid waste landfills that received at least 60,000 tons but less than 225,000 tons during the defined time period, $10,000.
3. For solid waste landfills that received 225,000 tons or more during the defined time period, $18,565.

C. The Department shall determine the amount of waste received by a solid waste landfill by one of the following methods:

1. As the reported tons of solid waste received on the disposal fee invoices over the defined time period; or
2. As the reported units of compacted or uncompacted solid waste received on the disposal fee invoices and reported under R18-13-2104 over the defined time period.

D. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (C)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage

and install them in the billing software as soon as practicable.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-2103. Landfill Closure and Post-Closure Care Obligations; Fees

A. The Department shall calculate and the solid waste landfill shall pay the annual landfill registration fee until the first defined time period after the solid waste landfill stops accepting waste.

B. From the time a solid waste landfill stops accepting waste as specified in subsection (A), until the owner or operator of the solid waste landfill has completed closure and is released from its obligation for post-closure care as required by A.R.S. §§ 49-761 or 49-770, the annual registration fee is $3,500.

C. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (B) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.

2. Round the result from subsection (C)(1) to the nearest cent. ADEQ shall post the new amounts on its webpage and install them in the billing software as soon as practicable.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-2104. Solid Waste Landfill Disposal Fee; Exemptions

A. The operator of a solid waste landfill shall pay to the Department the disposal fee required by A.R.S. § 49-836 as follows:

1. $.58 for each six cubic yards of uncompacted solid waste;
2. $.58 for each three cubic yards of compacted solid waste; or
3. $.58 per ton of solid waste.

B. A solid waste landfill that receives only waste generated on site shall compute the fee in subsection (A) of this Section by one of the following methods:

1. By actual volume or weight; or
2. By estimate based on landfill capacity use, volume or number of waste loads or any other reasonable means for approximating the volume or weight of disposed waste.

C. Facilities that generate recycling residue shall pay the disposal fee required by A.R.S. § 49-836 as follows, to an annual maximum of $34,942.20, for on-site disposal:

1. $.29 for the dry weight or volume of the recycling residue generated; or
2. $.29 for the dewatered weight or volume of the recycling residue generated.

D. A person who for a fee disposes of waste in a solid waste landfill that is not regulated by the Department shall keep accurate records of the waste disposed of in those landfills and shall pay to the Department the disposal fee as prescribed in subsection (A) of this Section.

E. The operator of a local public facility that does not have on-site operators or scales shall pay to the Department a fee that shall be calculated by multiplying the population of the political subdivision served by the local public facility by $.16.

F. A person who is subject to fees under this Section shall sign and submit a form prepared by the Department with each fee payment. The form shall state the total volume or weight of solid waste disposed of at that landfill during the payment period.

G. The following are exempt from the requirements of this Section:

1. Persons disposing of a load containing less than six cubic yards of uncompacted solid waste or three cubic yards of compacted solid waste.
2. A site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.
3. Material produced in connection with a mining or metallurgical operation.

Historical Note
New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

ARTICLE 22. NEW TIRE SELLERS

R18-13-2201. Definitions

A. "Motor vehicle" means any automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination or other vehicle operated on the roads of this state, used to transport persons or property and propelled by power other than muscular power, but motor vehicle does not include traction engines, vehicles that run only on a track, bicycles or mopeds.

B. "Tire seller" means a retail seller of motor vehicle tires or a wholesale seller of motor vehicle tires who sells tires to the state, to a political subdivision of the state, or to a private entity not for resale, and includes a person whose retail sales of new motor vehicle tires are not in the ordinary course of business.

Historical Note
New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

R18-13-2202. New Tire Sellers; Fee

A. Beginning April 1, 2025, a tire seller of new motor vehicle tires shall collect a fee of 2% of the retail sales price, not including transaction privilege tax, of each tire to a maximum of $4.66 per tire. For the sale of a new motor vehicle with a gross weight of under 10,000 pounds by a manufacturer to a wholesaler or retailer, if the sales price of the tires is not specified by the manufacturer, the tire seller shall collect a fee of $2.33 per tire.

B. A seller required to collect a fee under subsection (A) of this Section may credit $.10 per tire against the fee for expenses incurred by the seller for accounting and reporting related to the fee.

C. A seller who collects a fee under subsection (A) of this Section shall remit the fee to the Arizona Department of Revenue for deposit on a quarterly basis in the waste tire fund established pursuant to section A.R.S. § 44-1305.

D. Beginning July 1, 2026, the Director shall adjust the fee amounts in subsection (A) of this Section annually by the following method, except that no adjustment in any year shall exceed four percent of the fee amount of the preceding year:

1. Multiply the amount by the October CPI for the most recent year and then divide by the October CPI for the year 2024. The October CPI for any year is the Consumer Price Index for All Urban Consumers, Phoenix-Mesa-Scottsdale, AZ, all items, published by the United States Department of Labor at www.bls.gov/cpi/regional-resources.htm, for October of that year.
2. Round the result from subsection (D)(1) to the nearest cent. ADEQ shall notify the Arizona Department of Revenue of the adjusted fee amounts and post the new amounts on its webpage as soon as practicable.

Historical Note

New Section made by final rulemaking at 31 A.A.R. 348 (January 24, 2025), with an immediate effective date of December 24, 2024 (Supp. 24-4).

ARTICLE 23. RESERVED

ARTICLE 24. RESERVED

ARTICLE 25. EXPIRED

R18-13-2501. Expired

Historical Note

Section adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(J), at 23 A.A.R. 3429, effective October 10, 2017 (Supp. 17-4).

ARTICLE 26. EXPIRED

R18-13-2601. Expired

Historical Note

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2602. Expired

Historical Note

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2603. Expired

Historical Note

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2604. Expired

Historical Note

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

ARTICLE 27. EXPIRED

R18-13-2701. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1503, effective July 1, 2010 (Supp. 10-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

R18-13-2702. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

R18-13-2703. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Section and fee table expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

44-1302. Sale of new tires; fees; acceptance of waste tires; notice; definition

(Rpld. 1/1/26)

A. Until the effective date of the fees authorized pursuant to subsection N of this section, a retail seller of new motor vehicle tires shall collect a fee of two percent of the purchase price for each tire sold but not more than $2 for each tire sold, which shall be listed separately on any invoice.

B. Until the effective date of the fees authorized pursuant to subsection N of this section, if in a sale of a motor vehicle by a manufacturer to a wholesaler or retailer the cost of the tires as a separate component of the motor vehicle is not specified by the manufacturer, the fee per tire to be collected shall not exceed one-half of the maximum fee allowed under this section for a motor vehicle with a gross vehicle weight under ten thousand pounds.

C. Until the effective date of the fees authorized pursuant to subsection N of this section, a wholesale seller of new motor vehicle tires who sells tires to this state or a political subdivision of this state or who sells tires to a private entity that does not resell the tires shall collect a fee of two percent of the purchase price for each tire sold but not more than $2 for each tire sold, which shall be listed separately on any invoice.

D. The fee shall be paid to the department of revenue for deposit on a quarterly basis in the waste tire fund established by section 44-1305. Unless the context otherwise requires, title 42, chapter 5, article 1 governs the administration of the fees imposed by this section, except that:

1. A separate license is not required for the fee imposed by this section. The fee shall be reported and paid on forms prescribed by the department.

2. A separate bond is not required of employees of the department in administering the fee.

3. The fee imposed by this section may be included without segregation in any notice and lien filed for unpaid transaction privilege taxes.

4. The fee imposed by this section shall not be included in computing the tax base, gross proceeds of sales or gross income from the sale of new motor vehicle tires for the purposes of title 42, chapter 5 and is not subject to any transaction privilege, sales, use or other similar tax levied by a city, town, or special taxing district.

E. A retail seller of new motor vehicle tires or a wholesale seller of new motor vehicle tires shall accept waste tires from customers at the point of transfer. A seller shall accept up to the number of new tires sold at that point of transfer annually and may accept additional tires from customers. The seller shall accept tires from a customer if the customer presents a receipt within thirty days after the date of purchase. This subsection does not apply to sellers of new motor vehicles.

F. A designated waste tire collection site established pursuant to section 44-1304, subsection G, shall require a manifest for the disposal of waste tires at the site and shall establish registration procedures for the collection site.

G. A seller of motor vehicle tires or the seller's designee complying with this section shall provide a manifest to the designated collection site established pursuant to section 44-1304, subsection G, to dispose of waste tires and shall be preregistered at the designated collection site.

H. A county or private enterprise under contract with a county may refuse to accept waste tires and may impose a tire tipping fee, not exceeding an amount necessary to recover the costs of administering a waste tire program

established pursuant to section 44-1305, if any of the following conditions exists:

1. The private enterprise is not receiving waste tire fund monies from the county pursuant to section 44-1305.

2. Waste tires are manifested as originating outside of the county.

3. A seller of motor vehicle tires complying with subsection E of this section, is not preregistered at a collection site where registration is required.

4. The county's pro rata share of the total waste tire fund is two percent or less, and after a year of receiving monies from the waste tire fund, the county determines that the cost of waste tire disposal exceeds the amount received.

I. A designated waste tire collection site established pursuant to section 44-1304, subsection G, shall not refuse to accept waste tires from a resident of the county who is not a seller of motor vehicle tires and shall not impose a tire tipping fee for up to five waste tires per year from a resident of the county who is not a seller of motor vehicle tires. Such waste tire collection sites may impose a tire tipping fee on waste tires in excess of five tires per year from a resident of the county who is not a seller of motor vehicle tires.

J. A seller of motor vehicle tires who is subject to subsection E of this section shall post a written notice that is clearly visible in the public sales area of the establishment and that contains the following language:

It is unlawful to throw away a motor vehicle tire.

Recycle all used tires.

This retailer is required to accept scrap tires if any new or recapped tires are purchased here. When any new tire is purchased, an additional fee will be charged.

K. An advertisement or other printed promotional material related to the retail sale of tires shall contain the following notice in bold print:

State or local taxes or surcharges for environmental protection will be an extra charge.

L. A credit of $.10 per tire is allowed against the fee imposed by this article for expenses incurred by the payer of the fee for accounting for and reporting the fees.

M. This section does not apply to a person whose retail sales of new motor vehicle tires are not in the ordinary course of business.

N. The director of environmental quality shall establish by rule the fees, including any associated maximum fees, required by subsection A, B or C of this section.

O. For the purposes of this section, "retail seller of new motor vehicle tires" and "wholesale seller of new motor vehicle tires" includes those persons who sell or lease new motor vehicles to others in the ordinary course of business.

44-1304. Disposal of waste tires

A. The disposal of waste tires in landfills and the incineration of those tires is prohibited, except as provided in subsection C or D of this section or in accordance with rules adopted by the director of the department of environmental quality. An owner or operator of a solid waste disposal site shall not knowingly accept waste tires for disposal unless the director has approved waste tire disposal pursuant to the site's solid waste facility plan.

B. A person shall not dispose of motor vehicle waste tires unless the waste tires are disposed of at a waste tire collection site or as provided in subsection C or D of this section or in accordance with rules adopted by the director of the department of environmental quality.

C. Off-road motor vehicle waste tires shall not be disposed of or reused except in accordance with this article or rules adopted by the director of the department of environmental quality. In the absence of rules, off-road motor vehicle waste tires shall not be disposed of or put to beneficial use in a manner that results in an environmental nuisance pursuant to section 49-141. Mining industry off-road motor vehicle waste tires may be disposed of by burial at a mining facility in the same manner allowed by rule in effect on February 1, 1996 until the director by rule determines on-site recycling methods that are technically feasible and economically practical.

D. The following are permissible methods of waste tire disposal:

1. Retreading or recapping.

2. Constructing collision barriers.

3. Controlling soil erosion or for flood control only if used in accordance with approved engineering practices.

4. Chopping or shredding for use as waste tire daily cover material at a solid waste landfill.

5. Grinding for use in asphalt and as a raw material for other products.

6. Sludge composting.

7. Using as playground equipment.

8. Incinerating or using as a fuel or pyrolysis if allowed by laws, regulations or ordinances relating to burning or fuel.

9. Hauling to out-of-state collection or processing sites.

10. Tire monofills if tires are chopped or shredded.

11. Use as a building material for building construction in accordance with applicable city, town and county building codes.

12. Agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site.

E. For the purposes of subsection D, paragraph 10 of this section, "tire monofill" means a solid waste disposal facility or a part of a facility used for the exclusive purpose of the disposal of waste tires that are chopped, shredded or cut up for the purpose of disposal.

F. The director of the department of environmental quality, by rule, may authorize other methods of disposal of waste tires. If used as daily cover material for a solid waste landfill, the director shall specify the size of the parts into which the material must be cut. The director may allow the disposal of whole tires, including with or without rims, pursuant to a solid waste facility plan if disposed of in either of the following manners:

1. As a layer immediately above the base liner system of a new solid waste landfill.

2. Buried with other waste at a depth of fifty feet or more.

G. Each county shall provide at least one designated waste tire collection site in the county to receive waste tires from a seller of motor vehicle tires or the seller's designee complying with section 44-1302. Additional waste tire collection sites or disposal arrangements shall be established by the county as necessary for the disposal of waste tires as provided in subsection B of this section. All collection sites established under this subsection shall comply with applicable zoning and ordinance regulations. The county or private enterprise receiving waste tire fund monies from a county shall not impose a tire tipping fee and shall not refuse to accept waste tires from a seller of motor vehicle tires or the seller's designee complying with section 44-1302, unless provided for in section 44-1302, subsection H.

H. The director of the department of environmental quality shall issue or revise a permit required pursuant to title 49, chapter 3, article 2 for a facility that applies to the department of environmental quality for a permit or a revision to a permit to burn a tire derived fuel if the applicant can demonstrate that the burning of tire derived fuel will result in equal to or lower emissions than the burning of other types of fuel for which the department of environmental quality may issue permits and the applicant has met all requirements of titles I and V of the clean air act. Any tests involving tire derived fuel conducted by the United States environmental protection agency or any test results involving tire derived fuel approved by the United States environmental protection agency, including hazardous air pollutant studies, shall be accepted by the department of environmental quality. No duplicate testing by the applicant shall be required, except that the applicant shall meet all testing requirements under titles I and V of the clean air act. For the purposes of this subsection, "clean air act" has the same meaning prescribed in section 49-401.01.

44-1306. Department of environmental quality; rules; annual county report to the department

A. The department of environmental quality shall adopt and enforce rules to carry out the provisions of this article.

B. Each county shall report by September 30 of each year to the department of environmental quality the following for the preceding fiscal year and provide a summary for each waste tire collection site:

1. The number of eligible waste tires collected each month at each collection site with a list of registered tire dealers delivering the tires to each collection site and the number of tires from each dealer.

2. The number of tires collected each month at each collection site from sources other than registered tire dealers.

3. The number of tires transported out of each collection site.

4. The estimated number of tires remaining at each collection site at the end of the preceding fiscal year.

5. Summaries of all manifests tracking the incoming and outgoing waste tires at each collection site.

6. The amount of monies received and expended pursuant to the waste tire program.

44-1322. Disposal of lead acid batteries

A. The disposal of lead acid batteries in landfills and the incineration of those batteries is prohibited.

B. An owner or operator of a solid waste disposal facility shall not knowingly accept a lead acid battery for disposal.

C. A lead acid battery shall be discarded or disposed of only as follows:

1. A lead acid battery retailer or wholesaler may deliver a lead acid battery to any one of the following:

(a) A permitted secondary lead smelter.

(b) A battery manufacturer.

(c) A collection or recycling facility authorized by the federal environmental protection agency or the department of environmental quality.

(d) In the case of battery retailers only, an agent of a battery wholesaler.

2. A person other than a lead acid battery retailer or wholesaler may deliver a lead acid battery to any one of the following:

(a) A lead acid battery retailer or wholesaler.

(b) A permitted secondary lead smelter.

(c) A collection or recycling facility authorized by the federal environmental protection agency or the department of environmental quality.

D. The director of the department of environmental quality shall register collection and recycling facilities that accept lead acid batteries. The director shall require collection and recycling facilities that handle lead acid batteries to pay an initial registration fee and annual fee established by rule. The director shall deposit, pursuant to sections 35-146 and 35-147, registration fees in the solid waste fee fund established by section 49-881.

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through regulating the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

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

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and not more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Use any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department shall establish by rule a fee as a condition of licensure, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, articles 8 and 9 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203 except that state agencies are exempt from paying the fees.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-701.01. Definition of solid waste; exemptions

A. "Solid waste" means any garbage, trash, rubbish, waste tire, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material.

B. The following are exempt from the definition of solid waste:

1. Hazardous waste regulated pursuant to chapter 5 of this title.

2. Waste that contains radioactive materials subject to the atomic energy act of 1954 (42 United States Code sections 2011 through 2297; 68 Stat. 919) or title 30, chapter 4.

3. Any discharge from a facility regulated pursuant to chapter 2, article 3 of this title.

4. Any discharge regulated pursuant to section 402 or 404 of the clean water act (33 United States Code sections 1342 and 1344).

5. Domestic sewage.

6. Discharges into a publicly or privately owned treatment works including the treatment works and the sewer collection system.

7. Irrigation waters.

8. Irrigation return flows.

9. Reclaimed wastewater from wastewater reuse facilities.

10. Leachate resulting from the direct natural infiltration of precipitation through undisturbed regolith or bedrock, if pollutants are not added by man.

11. Storm water.

12. Substances and materials that remain on site as specifically approved in a work plan or other approval by the department in the course of remedial or corrective actions undertaken pursuant to any of the following:

(a) Chapter 2, articles 3 and 5 of this title.

(b) Chapters 5 and 6 of this title.

(c) The comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9675).

(d) The federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1387).

(e) The resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).

(f) Chapter 1, article 5 of this title.

13. Water used in gardening, lawn care, landscape maintenance and related activities.

14. Discharges from ponds used for watering livestock and wildlife.

15. Landscaping rubble used to reclaim land.

16. Mining industry off-road waste tires that are larger than three feet in outside diameter and that are buried at the site and rock, copper concentrate, leachate material, tailing and slag that are either of the following:

(a) Produced and maintained at the site of the mining or metallurgical operation.

(b) Not maintained at the site of a mining or metallurgical operation and that are consolidated at the site of a mining or metallurgical operation that is both of the following:

(i) Located within fifty miles of the materials' current off-site location, or, on written approval of the director, located at a site that is farther than fifty miles of the materials' current off-site location.

(ii) Regulated by a permit issued pursuant to chapter 2, article 3 of this title or by an approved work plan pursuant to chapter 1, article 5 of this title.

17. Inert material.

18. Effluent as defined in section 45-101.

19. Return flows from irrigated agriculture.

20. Materials that are generated on site and that are processed or reused on site if the following conditions are met:

(a) On-site processing or reuse of the materials is technically feasible.

(b) At least seventy-five percent by weight or volume of the materials that are accumulated on site for processing or reuse each year are processed or reused in that same year.

(c) Materials that are accumulated on site for processing or reuse are managed in a manner that:

(i) Controls wind dispersion and other surface dispersion of the materials so that the materials do not create a public nuisance or pose an imminent and substantial endangerment to public health or the environment. Visible materials that are dispersed beyond the boundaries of the site shall be collected on a regular basis by the operator of the site.

(ii) Does not discharge hazardous substances as defined in section 49-281 to surface water, groundwater or subsurface soils in a manner that creates a public nuisance or poses an imminent and substantial endangerment to public health or the environment.

(iii) Controls vector breeding and fire hazards.

(iv) Controls public access to the materials by the use of reasonable measures.

21. Recovered feedstocks if those materials are processed through advanced recycling and if the advanced recycling facilities are operated in a manner that:

(a) Controls wind dispersion and other surface dispersion of recovered feedstock from the advanced recycling facility so that the recovered feedstock does not create a public nuisance or pose an imminent and substantial endangerment to public health or the environment, including requiring the operator of the advanced recycling facility to recover on a regular basis any visible recovered feedstock that is dispersed beyond the boundaries of the advanced recycling facility.

(b) Does not discharge hazardous substances as defined in section 49-281 to surface water, groundwater or subsurface soil in a manner that creates a public nuisance or poses an imminent and substantial endangerment to

public health or the environment.

(c) Does not cause a nuisance, vector breeding or fire hazard by storing recoverable feedstocks or post-use polymers.

(d) Requires recoverable feedstocks or post-use polymer to be converted using an advanced recycling process after storage of less than ninety days or, for advanced recycling operations on government property and if allowed pursuant to any contractual agreements with this state or local government, the storage period may be extended to one hundred twenty days.

C. Any person may petition the director to exempt a substance as solid waste by submitting a written request to the director. The request may be for a statewide or site-specific exemption. Within ninety days after receipt of a written request, the director shall determine whether to exempt the substance. The director's determination shall be based on a demonstration that the substance is unlikely to cause or substantially contribute to a threat to the public health or the environment. The procedure is as follows:

1. Within thirty days after the director's determination to add a substance on a site-specific basis, a notice of that determination shall be published in the Arizona administrative register. A site-specific determination is effective on the date of the director's determination.

2. Within thirty days after the director's determination to add a substance on a statewide basis, the director shall initiate rulemaking to add the substance to the list of exemptions. This rulemaking is exempt from the requirements of title 41, chapter 6, except for the requirements regarding public notice. The effective date for the final rule is the effective date for the exemption.

D. An advanced recycling facility is subject to routine inspection by the department to ensure compliance with this chapter and shall provide a onetime notice to the department of the facility's location on the opening of a new advanced recycling facility.

E. This section does not affect the department's authority to require abatement of any environmental nuisance pursuant to chapter 1, article 3 of this title.

49-705. Integration of solid waste programs

The director shall consider and integrate federal and state laws and rules and all of the programs authorized in this chapter and those other programs regulating solid waste management that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual regulation to the maximum extent practicable.

49-706. Waste programs general permits; rules; fee

A. The department may establish a general permit for any permit or license issued pursuant to this chapter. The general permit consists of the following:

1. The director may issue by rule a general permit for a defined class of facilities, activities or practices if all of the following apply:

(a) The cost of issuing individual permits or licenses cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.

(b) The facilities, activities or practices in the class are substantially similar in nature.

(c) The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity or practice will meet the applicable requirements prescribed in this chapter for the facility, activity or practice.

2. In addition to other applicable enforcement actions, if a person is in substantial noncompliance with the conditions of a general permit, the director may revoke coverage under the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended by rule if the director determines that any of the conditions prescribed in paragraph 1 no longer apply.

3. Rules adopted pursuant to paragraph 1 may require a person seeking coverage under a general permit to notify the director of the person's intent to operate pursuant to the general permit and to pay the applicable fee established by the director by rule.

B. The director shall establish by rule fees for general permits pursuant to this section, including maximum fees. Fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

49-747. Annual registration of solid waste landfills; fee; disposition of revenue

A. All solid waste landfills shall be registered annually with the department.

B. The director shall establish a procedure for mailing registration forms each year to the owners of all solid waste landfills. The registration is valid for one year after the date of registration.

C. At the time of registration, the owner of a solid waste landfill shall pay to the department an annual fee. The department shall establish by rule an annual fee, including a maximum fee.

D. All monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881. The director may authorize the expenditure of monies from the solid waste fee fund to pay the reasonable and necessary costs of administering the registration program pursuant to section 49-881.

49-761. Rulemaking authority for solid waste facilities; exemption; financial assurance; recycling facilities

A. The department shall adopt rules regarding the storage, processing, treatment and disposal of solid waste as prescribed by subsections B through M of this section. In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to section 49-706 are exempt from rules adopted pursuant to this section. In adopting rules for solid waste facilities, the director may include requirements for corrective actions in response to a release, as defined in section 49-281, from a solid waste facility that violates or results in a violation of any provision of this chapter, rule adopted pursuant to this chapter or solid waste facility plan approved pursuant to this chapter. These rules shall be consistent with section 49-762.08, subsection B, subsection C, paragraphs 1 and 2 and subsections D and E.

B. For purposes of administering 42 United States Code section 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this subsection. This subsection, as it applies to municipal solid waste landfills, governs if there is any conflict between this subsection and any other statute relating to solid waste. Municipal solid waste landfill facility plans submitted pursuant to section 49-762 shall comply with this subsection. In administering this subsection or in adopting or administering any rules adopted pursuant to this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained. The following apply to the department's administration of 42 United States Code section 6945 and to the department's adoption of rules for municipal solid waste landfills:

1. The department may adopt rules for municipal solid waste landfills. Rules adopted pursuant to this paragraph shall not be more stringent than or conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258 if those standards are consistent with and not more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. Rules adopted pursuant to this paragraph are effective on the concurrence of the administrator with this state's municipal solid waste landfill program.

2. 40 C.F.R. part 258, table I is not adopted in its entirety. The department shall use aquifer water quality standards that have been adopted by the department pursuant to section 49-223 and shall use those portions of table I that are more restrictive than the standards adopted pursuant to section 49-223.

C. The department shall adopt rules for those solid waste land disposal facilities that are not municipal solid waste landfills and that are not regulated by the coal combustion residuals program established pursuant to article 11 of this chapter. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 C.F.R. part 257, subparts A and B for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 257, subparts A and B if these standards are consistent with and not more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. In administering this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained in the department's rules. Aquifer protection provisions adopted pursuant to this subsection do not apply to an owner or operator of a solid waste facility if the owner or operator submits an administratively complete application for an aquifer protection permit pursuant to chapter 2, article 3 of this title before the date that the owner or operator is required to submit a solid waste facility plan.

D. The department shall adopt rules to define biohazardous medical waste and to regulate biohazardous medical waste and medical sharps to include all of the following:

1. A definition for biohazardous medical waste that includes wastes that contain material that is likely to transmit etiologic agents that have been shown to cause or contribute to increased human morbidity or mortality of

epidemiologic significance. The department shall consult with the department of health services in making this determination.

2. Reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of biohazardous medical waste and medical sharps, beginning with the placement by the generator of the waste in containers for the purpose of waste collection. The department shall require payment of a fee for the licensure of a transporter of biohazardous medical waste. The department shall establish by rule a fee for the licensure of a transporter of biohazardous medical waste, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881. In the case of self-hauling of waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules. The department shall also adopt reasonably necessary rules regarding the tracking of biohazardous medical waste and medical sharps.

3. Rules that require facilities that receive plan approval under section 49-762, subsection A, paragraph 3 to pay an annual fee as established by rule. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881.

E. The department may adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

F. The department shall adopt rules for the application of sludge from a wastewater treatment facility to land for use as fertilizer or beneficial soil amendment. For the purposes of this subsection, "sludge" has the same meaning as sewage sludge as defined in 40 Code of Federal Regulations section 122.2 in effect on January 1, 1998.

G. The department shall adopt rules regarding the storage, processing, treatment or disposal of solid waste at solid waste facilities that are identified in section 49-762.01. The rules shall allow the owner or operator to certify compliance with the department's statutes and rules instead of obtaining a solid waste facility plan approval. The rules shall provide that the applicant at its option may request approval of a solid waste facility plan rather than certifying compliance.

H. The department shall issue by rule best management practices for the classes of solid waste facilities set forth in section 49-762.02. The department shall establish fees in rules for solid waste facilities. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881.

I. The department shall adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These rules shall provide for inspecting premises, containers, processes, equipment and vehicles, and for abating as environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these rules. The rules adopted pursuant to this subsection do not apply to sites that are either regulated by section 49-762, 49-762.01 or 49-762.02 or exempted from the definition of solid waste facility in section 49-701 or from the definition of solid waste in section 49-701.01. Notwithstanding any other provision of this subsection, rules adopted pursuant to this subsection shall apply to defining environmental nuisances pursuant to section 49-141.

J. The department shall adopt rules relating to financial assurance requirements. The rules shall indicate the types of financial assurance mechanisms to be required and the content, terms and conditions of each financial mechanism, including circumstances under which the department may take action on the financial assurance mechanism for facility closure, postclosure care if necessary and corrective action for known releases. The department shall establish fees in rule. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881. The financial assurance mechanisms shall include all of the following:

1. Surety bond.

2. Certificate of deposit.

3. Trust fund with pay-in period.

4. Letter of credit.

5. Insurance policy.

6. Certificate of self-insurance.

7. Deposit with the state treasurer.

8. Evidence of ability to meet any of the following:

(a) Corporate financial test.

(b) Local government financial test.

(c) Corporate guarantee test.

(d) Local government guarantee test.

(e) Political subdivision financial test that shall require the department to consider the entity's bond rating, income stream, assets, liabilities and assessed valuation of taxable property.

9. Multiple financial assurance mechanisms.

10. Additional financial assurance mechanisms that may be acceptable to the director.

K. The department shall adopt rules that prescribe standards to be used in determining if a site is a recycling facility.

L. The director may adopt rules that prescribe standards to be used in determining if a solid waste facility includes significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

M. The department shall adopt facility design, construction, operation, closure and postclosure maintenance rules for biosolids processing facilities and waste composting facilities that must obtain plan approval pursuant to section 49-762. The department shall require facilities that receive plan approval pursuant to section 49-762 to pay an annual fee. The department shall establish by rule the annual fee. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881.

49-762. Facilities requiring solid waste facility plans; exemption

A. The owner or operator of the following solid waste facilities shall obtain approval of a solid waste facility plan in accordance with sections 49-762.03 and 49-762.04:

1. Solid waste land disposal facilities except those facilities regulated by 40 Code of Federal Regulations part 257, subpart D or the coal combustion residuals program that is established pursuant to article 11 of this chapter and that is approved by the United States environmental protection agency in accordance with 42 United States Code section 6945(d)(1).

2. Biosolids processing facilities.

3. Medical waste facilities.

4. Special waste facilities.

5. Municipal solid waste landfills.

6. Commercial or government-owned waste composting facilities.

7. A site at which at least five hundred waste tires are stored on any day and any tire is stored for more than twelve months unless the site is a waste tire collection site owned by a municipality or a county.

B. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to section 49-706 are exempt from submitting a solid waste facility plan pursuant to this section.

49-762.03. Solid waste facility plan approval

A. Except as provided in subsections C and E of this section, the owner or operator of a solid waste facility identified in section 49-762 shall obtain the department's approval of a solid waste facility plan as follows:

1. For a new solid waste facility and before commencing construction of the solid waste facility, the owner or operator shall obtain approval of a solid waste facility plan that satisfies rules adopted by the director.

2. For an existing solid waste facility, the owner or operator shall file with the department a solid waste facility plan within one hundred eighty days after the effective date of rules adopted pursuant to section 49-761 that contain design and operation standards for that type of solid waste facility. An existing solid waste facility may continue to operate while the department reviews the plan.

B. For a solid waste facility subject to site approval pursuant to section 49-767, a solid waste facility plan shall not be submitted to the department until the site for the solid waste facility has been approved pursuant to section 49-767. For all new solid waste landfills, a solid waste facility plan shall provide evidence of compliance with or the inapplicability of city, town or county zoning ordinances.

C. The director shall grant temporary authorization to operate a new solid waste facility if in the director's opinion the solid waste facility is needed immediately and could not be properly planned in advance.

D. An owner or operator of more than one solid waste facility that conducts similar activities with similar waste streams may prepare and implement a single plan that covers all of its facilities if it has received prior approval from the director and has complied with rules regarding single plans that are adopted by the director.

E. The director by rule may exempt from some or all of the facility plan approval requirements those solid waste facilities that are located in unincorporated areas and that are used for disposal by any single family residence located on the same property or those solid waste facilities that do not present a threat to public health and safety and the environment.

F. The department shall collect from the applicant reasonable fees established by the director by rule for the approval of the plan, including costs for the processing, review, approval or disapproval of the plan. The director shall establish by rule fees for costs incurred by the department for the processing, review, approval or disapproval of the plan up to the established maximum fees. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

G. The department may contract with private consultants for the purposes of assisting the department in reviewing solid waste facility plan approvals to determine whether a facility meets the criteria of section 49-762.04. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant. If the department contracts with a consultant under this section, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding section 49-881, fees collected by the department for expedited plan review shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881 and used for payment of the costs of the consultant services. Fees received for the purpose of expedited plan review are not subject to appropriation.

49-762.05. Self-certification procedures; rules

A. The owner or operator of a solid waste facility identified in section 49-762.01 shall comply with the self-certification requirements prescribed by this section and rules adopted by the director.

B. The owner or operator of a new solid waste facility may be required by rule to submit some or all of the following information to the department before the start of construction:

1. Design and operational plans or other documents necessary to describe the design of the facility and the practices and methods that are or will be used to comply with the design and operation rules adopted by the director for that type of facility.

2. A demonstration of financial assurance in accordance with section 49-770.

3. A demonstration of compliance with either local zoning laws or section 49-767.

4. A demonstration of the issuance of other environmental permits that are required by statute.

5. A copy of the public notice in a newspaper of general circulation in the area in which a new solid waste facility will be located. The public notice shall state the intent to construct and operate a new solid waste facility pursuant to this subsection.

C. The owner or operator of an existing solid waste facility may be required by rule to submit some or all of the information described in subsection B, paragraphs 1 through 4 of this section within one hundred eighty days after the adoption of design and operation rules for that type of facility.

D. The owner or operator shall maintain all documents required by statute or rule at the solid waste facility or any other location as determined by rule, and those documents shall be made available for inspection pursuant to section 49-763.

E. An owner or operator making a substantial change to a solid waste facility shall submit documentation to the department before the start of construction stating that the facility will remain in compliance with the design and operation rules for that type of facility. The owner or operator of a solid waste facility that makes any changes in its compliance with subsection B, paragraph 2 or 3 of this section shall submit copies of those changes to the department.

F. A person making a submittal under this section shall certify in writing that the information submitted is true, accurate and complete to the best of the person's knowledge and belief.

G. Self-certified facilities identified in section 49-762.01 are not subject to the location restrictions of section 49-772.

H. The department shall collect from the applicant registration fees. The department shall establish by rule registration fees, including maximum fees. Fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

I. An owner or operator of more than one solid waste facility identified in section 49-762.01 that conducts similar activities with similar waste streams may submit one self-certification filing for all such facilities if the owner or operator has received prior approval from the director and has complied with rules for self-certification that are adopted by the director.

49-802. Federal used oil program; incorporation by reference; rulemaking

A. The department shall administer 42 United States Code section 6935, as amended on January 1, 1997, as the used oil program for this state. For that purpose, 40 Code of Federal Regulations part 279, as amended on January 1, 1997, is adopted by reference. For purposes of this program, the United States, the environmental protection agency and the administrator shall be applied to mean this state, the department and the director, respectively.

B. The department may adopt rules for the administration of the federal program. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 Code of Federal Regulations part 279. The department shall require an annual registration fee established by rule for handlers of used oil that are required to obtain a United States environmental protection agency identification number pursuant to 40 Code of Federal Regulations part 279. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881.

C. The following requirements apply in addition to 40 Code of Federal Regulations part 279:

1. A used oil collection center, as defined in 40 Code of Federal Regulations part 279, shall register with the department by obtaining an identification number from the department. A request for an identification number shall include:

(a) The company name.

(b) The name of the owner of the company.

(c) The mailing address and telephone number of the company.

(d) The location of the collection center.

(e) A description of the type of used oil activity at the company.

2. A person who sends used oil fuel to a person who burns the used oil fuel for energy recovery shall certify to the burner that the used oil fuel has been analyzed or otherwise tested for compliance with the used oil specifications in 40 Code of Federal Regulations part 279.

3. Each used oil fuel transporter, used oil fuel marketer and used oil processor and re-refiner, as defined in 40 Code of Federal Regulations part 279, shall submit to the department a written report annually. The report shall be submitted within thirty days after the end of the calendar year to which the report applies, and it shall contain a copy of the tracking information required to be kept pursuant to 40 Code of Federal Regulations part 279 or a summary of such tracking information on a reporting form supplied by the department.

4. Each person who burns used oil fuel in devices identified in 40 Code of Federal Regulations section 279.61(a)(1) through (3) shall submit to the department a written annual report. The report shall be submitted to the department by February 1 for the previous calendar year and shall contain the following information:

(a) The name, address and telephone number of the person reporting.

(b) The name, address and telephone number of the burner facility.

(c) The United States environmental protection agency identification number of the burner facility.

(d) The total volume of on-specification used oil burned.

(e) The period being reported.

(f) The total volume of self-generated used oil burned on site.

(g) The total volume of used oil fuel burned.

(h) A summary of the tracking information required to be kept pursuant to 40 Code of Federal Regulations part 279.

5. Used oil fuel marketers and used oil fuel burners shall label all tanks that store on-specification used oil with the words "on-specification used oil". The department may sample and test used oil or used oil fuel to determine its properties or characteristics as prescribed in this article and rules adopted pursuant to this article.

6. A household "do-it-yourselfer" used oil generator, as defined under 40 Code of Federal Regulations part 279, shall send its used oil to a "do-it-yourselfer" collection station, a household hazardous waste collection center, a used oil collection center, a used oil fuel marketer or a used oil processor or refiner.

D. In administering this section or in adopting or administering rules pursuant to this section, the department shall maintain the level of discretion that is permitted pursuant to applicable federal rules.

E. Any client names or related identifying data required to be submitted to the department pursuant to this section are confidential.

49-851. Definitions; applicability

A. In this article, unless the context otherwise requires:

1. "Best management practices" means a method or combination of methods that is used in the treatment, storage and disposal of a special waste and that achieves the maximum practical cost effective protection of public health or the environment.

2. "On site" means at or on the same or geographically contiguous property that may be divided by public or private right-of-way, provided the entrance and exit between the properties are at a crossroads intersection and access is by crossing as opposed to travel along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that that person controls and to which the public does not have access are also on-site property.

3. "Petroleum contaminated soils" means soils excavated for storage, treatment or disposal containing benzene, toluene, ethylbenzene, total xylenes, acenaphthylene, anthracene, benz(A)anthracene, benzo(A)pyrene, benzo(B)fluoranthene, benzo(K)fluoranthene, cyrysene, dibenz(A, H)anthracene, fluoranthene, fluorene, indenopyrene, naphthalene or pyrene in concentrations in excess of levels determined by the director pursuant to section 49-152 to protect the public health and the environment.

4. "Shipper" means a person who transports a special waste in commerce.

5. "Special waste" means a solid waste as defined in section 49-701.01, other than a hazardous waste, that requires special handling and management to protect public health or the environment and that is listed in section 49-852 or in rules adopted pursuant to section 49-855. Special waste does not include return flows from irrigated agriculture, medical waste, used oil or by-products of a regulated agricultural activity, as defined in section 49-201, that are subject to best management practices under section 49-247, by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers regulated pursuant to title 3, chapter 2, article 6 or waste that contains radioactive materials that are subject to a permit or regulation under the atomic energy act of 1954 (42 United States Code section 2011; 68 Stat. 919), as amended, or title 30, chapter 4.

6. "Storage" means the holding of special waste for a period of not more than one year unless a lesser period of time is designated by the director pursuant to best management practices rules. The director shall not designate a storage time of less than ninety days.

B. Defining or categorizing any material as a special waste under this article shall not affect the duty of care or breach of that duty for a cause of action for personal injury or for a workers' compensation claim arising from the handling of any materials.

49-852. Statutory list of special wastes; best management practices rules; applicability of hazardous waste designation

A. The following are designated as special wastes for purposes of this article:

1. Waste that contains petroleum contaminated soils.

2. Waste from shredding motor vehicles.

B. The director shall establish rules for best management practices for these special wastes pursuant to section 49-855.

C. Notwithstanding section 49-856, the wastes listed pursuant to subsection A of this section are required to comply with those manifest requirements within three months of the adoption of the best management practices.

49-854. Designation of special wastes; criteria; notice; rules

A. The director shall give public notice pursuant to title 41, chapter 6 of the decision to formally study a waste for possible designation as a special waste pursuant to the criteria established in subsection B of this section.

B. In determining whether a waste shall be designated as a special waste, the director shall consider the potential adverse effects on public health or the environment from the treatment, storage, transportation or disposal of each waste based upon:

1. The acute and chronic toxicity for those wastes including the human or animal data for the following exposures:

(a) Aquatic.

(b) Dermal.

(c) Inhalation.

(d) Oral.

2. The carcinogenic, mutagenic or teratogenic effects of those wastes on humans or other life forms.

3. The degree to which the wastes or degradation products of those wastes are persistent or bioaccumulative in the environment.

4. Information and studies from other states and the federal government if the committee or director finds them to be derived from standard protocols.

5. Other appropriate scientific data, environmental testing or analytical data.

C. The director shall give public notice pursuant to title 41, chapter 6 of the decision to designate or not to designate a waste as a special waste.

D. The director shall by rule, designate a waste as a special waste and adopt best management practices concerning the special waste pursuant to section 49-855 within eighteen months after giving public notice pursuant to subsection C of this section that a waste will be designated as a special waste.

E. The designation of a waste as a special waste and the adoption of best management practices pursuant to section 49-855 shall occur in the same rule making process.

49-855. Best management practices; fee; criteria

A. The director shall adopt, by rule, best management practices for the treatment, storage and disposal of each waste to be designated as a special waste pursuant to this article.

B. In adopting best management practices for a special waste, the director shall consider:

1. The availability, effectiveness, economic feasibility and technical feasibility of alternative handling or management technologies and practice.

2. The potential nature and severity of the effect on public health and the environment resulting from the special waste.

3. Circumstances under which the practices shall be applied, including climatological, geological and hydrogeological conditions.

4. Consistency with other federal and state laws, rules and regulations in an effort to avoid practices or requirements that duplicate, are inconsistent with or result in dual regulation under other federal and state laws, rules and regulations.

C. The best management practices adopted by the director shall contain procedures necessary for the protection of public health and the environment for the transportation, treatment, storage and disposal of special wastes. Additional items to be contained in the best management practices shall include at least:

1. A designated time of not less than ninety days beyond which a waste may not be stored.

2. A fee for each ton of special waste that is transported to a facility in this state for treatment, storage or disposal. The department shall establish by rule a fee for each ton of special waste that is transported to a facility in this state for treatment, storage or disposal, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

D. The director may adopt special waste best management practices that apply to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

E. The director may enact special waste best management practices that are more stringent than federal laws or regulations that govern polychlorinated biphenyls pursuant to the toxic substances control act (15 United States Code section 2605) if the director determines in writing that:

1. The additional regulation is necessary to protect public health or the environment.

2. There is a scientific basis for the additional regulation based on appropriate environment testing and analytical data.

3. The additional regulation is technically feasible.

F. This section does not preclude the director from adopting best management practices under this article, which incorporate management practices applicable to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

G. The department shall require facilities that generate, transport or receive special waste to pay an annual fee. The department shall establish by rule an annual fee. The department shall deposit, pursuant to sections 35-146 and 35-147, fees in the solid waste fee fund established by section 49-881. Facilities that pay registration fees pursuant to section 49-747 are exempt from the fee prescribed by this section.

49-856. Special waste handling requirements; manifest; exemption

A. The director shall adopt rules by September 1, 1993 that include an Arizona special waste manifest form designed to implement the provisions of this article.

B. Within three months of the adoption of best management practices for a special waste pursuant to section 49-855:

1. A person who generates, transports, offers for transportation or receives special waste for off-site treatment, recycling, storage or disposal shall comply with the rules adopted pursuant to subsection A of this section.

2. A person who transports a special waste that is defined as a hazardous material, hazardous substance or hazardous waste in 49 Code of Federal Regulations part 171 shall do so in accordance with the applicable motor carrier safety provisions of 49 United States Code appendix sections 1801 through 1819 and title 28, chapter 14.

3. A person who arranges for the treatment, storage or disposal of a special waste shall do so only at a facility approved by the director pursuant to section 49-857 or 49-858.

49-857. Special waste management plans; director; approval; fee

A. Except as provided in section 49-858, a facility that plans to manage special waste for treatment, storage or disposal shall apply for and obtain approval of the director.

B. The application shall include all of the following:

1. A complete solid waste facility plan pursuant to section 49-762 that includes a special waste management plan component that complies with best management practices adopted pursuant to section 49-855 for each special waste for that portion of the facility that is engaged in the treatment, storage or disposal of special waste.

2. Evidence of compliance with permit filing requirements pursuant to this title.

C. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the plan. The director may amend an existing rule or adopt a new rule to establish criteria for those costs. Monies from fees shall be deposited in the solid waste fee fund established by section 49-881.

D. A facility at which the treatment, storage or disposal of special waste occurs only as a result of an episodic release at that facility shall not be subject to the special waste management plan requirements of this section. The special waste shall be managed pursuant to applicable best management practices.

49-857.01. Plan; approval; deadline; judicial review

A. Within ninety days of receipt of the complete plan and other information prescribed by section 49-857, subsection B, the director shall approve in writing any plan or portion of a plan that complies with this article or shall deny in writing any plan or portion of a plan that does not comply with this article.

B. If the director denies a plan or a portion of a plan, the director shall notify the applicant in writing of the specific reasons for denial within ten days. The applicant has an additional ninety days from receipt of the written denial to file a modified plan addressing the specific deficiencies.

C. Within ninety days of receipt of a modified plan, the director shall approve or disapprove in writing the modified plan. The director may issue a compliance order to any applicant who has failed to submit a modified plan when required as prescribed by subsection B of this section or whose modified plan has been disapproved.

D. Any major modification from an approved plan is subject to review and approval by the director before implementation.

E. If the director fails to approve or disapprove the plan as prescribed by this section, the plan is deemed approved. Except as provided in section 41-1092.08, subsection H, the director's disapproval of a modified plan is subject to judicial review pursuant to title 12, chapter 7, article 6.

49-858. Interim use facilities; special waste

A. A facility that is in operation on the effective date of best management practices rules that are applicable to that facility and that are adopted by the director pursuant to section 49-855 and that manages wastes designated as special waste pursuant to this article for treatment, storage or disposal may continue to manage special waste for treatment, storage or disposal if all of the following conditions are met:

1. Within sixty days after the effective date of adoption of the best management practices that are applicable to the facility, the facility submits a notice to the director that contains the following information:

(a) Facility name and mailing address.

(b) Legal description by township, range and section.

(c) Major design features.

(d) Type and volume of waste handled.

(e) Methods of waste management.

(f) Measures taken to protect the environment and measures taken to protect public health.

(g) A summary of permits from city, county, state and federal agencies.

2. The facility files an application containing the information required in section 49-857, subsection B within one hundred eighty days of the adoption of best management practices.

B. A generator may treat, store or dispose of special waste at a facility that is managed or operated by that generator and that is in operation on July 3, 1991 if the same conditions prescribed in subsection A of this section are met.

C. The process for plan approval and disapproval shall conform to section 49-857.01.

D. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the application. The director may amend an existing rule or adopt a new rule to establish criteria for those costs.

49-859. Application to water quality permits

A. Neither the classification of a particular type of waste as a special waste nor the adoption or revision of the best management practices criteria constitutes a major modification to a facility with a groundwater quality protection permit or an aquifer protection permit unless that action otherwise meets the definition of new facility prescribed by section 49-201.

B. The director's approval of a special waste management plan either before or after the adoption of best management practices criteria does not constitute a major modification of a facility with a groundwater quality protection permit or an aquifer protection permit unless that action otherwise meets the definition of new facility prescribed by section 49-201.

49-860. Annual reporting requirements; inspections

A. A shipper required to comply with the special waste manifesting procedures of this article shall report the following information to the department on or before March 1 of each year:

1. A shipping description of the special waste shipped during the preceding year.

2. The volume or weights of each type of special waste shipped during the preceding year.

3. The facility to which the special waste was shipped, identified by name, address, location and groundwater quality protection permit number or aquifer protection permit number, if applicable.

B. A facility or person that receives from off site a special waste for treatment, storage or disposal shall report the following information to the department on or before March 1 of each year:

1. The shipping descriptions of each special waste received during the preceding year.

2. The volume or weight of each type of special waste received during the preceding year.

3. For each special waste type, the identity by generator name, address, location, telephone number and amount of that special waste sent to the facility during the preceding year.

4. For each special waste type received, a description of the methods and practices used by the receiving facility or person to treat, store or dispose of the special waste.

C. Generators who treat, store or dispose of special waste shall keep records of the volume or weights of each type of special waste handled. Generators who treat, store or dispose of special waste shall report to the department on or before March 1 of each year for each facility:

1. The volume or weight of each type of special waste treated, stored or disposed of on site for the preceding year.

2. The volume or weight of each type of special waste treated, stored or disposed of off site for the preceding year.

3. For each type of special waste disposed, a description of the methods and practices used to minimize the amount or toxicity of the waste before disposal or reuse that constitutes disposal.

4. The volume or weight of waste received pursuant to section 49-863, subsection G.

D. The department may conduct inspections of facilities and records in order to enforce this section.

49-861. Violation; classification; civil penalty

A. Beginning January 1, 1993 a person who knowingly violates this article is guilty of a class 6 felony.

B. A person who violates any provision of this article or a rule or order adopted or issued pursuant to this article is subject to a civil penalty of not more than ten thousand dollars per day for each violation. In issuing any final order in any civil action brought under this section, the court may award costs of litigation including reasonable attorney and expert witness fees to any substantially prevailing party if the court determines that an award is appropriate.

C. The attorney general, at the request of the director, shall file an action in superior court to recover civil penalties provided by this section.

49-862. Compliance orders; injunctive relief

A. If the director has reasonable cause to believe that a person is violating this article or a rule adopted pursuant to this article, the director may serve on the person an order requiring compliance with that provision or rule. The order shall state with reasonable particularity the nature of the violation and shall specify either immediate compliance or a time period for compliance that the director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable legal requirements. The alleged violator may request a hearing pursuant to title 41, chapter 6, article 10.

B. If the director has reasonable cause to believe that an order issued pursuant to this section is being violated or that a person is engaging in an act or practice that constitutes a violation for which he is authorized to issue an order pursuant to this section, the attorney general, at the request of the director, may apply to the superior court in the county in which the violation is occurring or in which the department has an office for a temporary restraining order, preliminary injunction or permanent injunction.

C. If the director has reasonable cause to believe that a person is engaging in an act or practice in violation of this article that causes an imminent and substantial endangerment to the public health or environment, whether or not the person has requested a hearing, the attorney general, at the request of the director, may apply to the superior court in the county in which the violation is occurring or in which the department has an office for a temporary restraining order, preliminary injunction or permanent injunction.

49-863. Special waste management fee; exemption

A. The director shall collect the fee established by section 49-855, subsection C from the special waste treatment, storage or disposal facility that first receives the waste. Any government entity that is required to collect a fee pursuant to this section may establish fees to recover the costs of collection and administration.

B. A generator who ships special waste for purposes of treatment, storage or disposal to a facility in this state that is not regulated by the department shall retain for three years accurate records of the special waste transported to a facility and shall pay a fee to the department at the same rate and in the same manner as provided in subsection A of this section.

C. Each operator or person who is required to pay a special waste management fee shall make the fee payment as determined by the department.

D. Each fee payment shall be accompanied by a form furnished by the department and completed by the operator. The form shall state the total volume or weight of the special waste transported to or disposed at that facility during the payment period and shall provide any other information deemed necessary by the department. The operator shall sign the form.

E. If an operator or person fails to pay the fee as provided in subsection C of this section, that operator or person is additionally liable for interest on the unpaid amount at a rate prescribed by section 49-113.

F. Monies collected pursuant to this section shall be deposited in the solid waste fee fund established pursuant to section 49-881.

G. A generator who ships special waste for purposes of treatment, recycling, storage or disposal from a facility that is managed or operated by that generator to another facility that is managed or operated by that generator is exempt from the fee collected pursuant to this section.

H. A generator who treats, recycles, stores or disposes of special waste on site at a facility that is managed or operated by the generator is exempt from the fee collected pursuant to this section.

I. State agencies, including state universities, are not exempt from the fees prescribed in this section.

49-865. Inspections

The department may conduct such inspections of facilities that manage special waste, including premises and equipment, as are necessary. The department shall give the management agency or the owner or operator of the facility the opportunity to have its representative accompany the inspector. Within forty-five days after the date of the inspection, the department shall provide to the facility owner or operator a copy of any inspection report produced as a result of an inspection of that facility that occurs as prescribed by this section.

49-866. Orders; monitoring; pollution control devices

A. Except as otherwise provided in sections 49-422 and chapter 3, article 3 of this title, the director may require by order the installation of necessary monitoring and pollution control devices at a special waste facility if the requirements of subsection B of this section have been met.

B. Before issuing an order pursuant to subsection A of this section, the director shall determine in writing that all of the following conditions are met:

1. The special waste facility may adversely affect public health or the environment.

2. A monitoring, sampling or quantification method or a pollution control device is technically feasible for the subject contaminant and the special waste disposal facility.

3. An adequate scientific basis for the monitoring, sampling or quantification method or the pollution control device exists.

4. The monitoring, sampling or quantification method is reasonably accurate or the pollution control device is reasonably effective.

5. The cost of the method or device is reasonable in light of the use to be made of the data or the device.

6. The director has considered the relative cost and the relative accuracy or effectiveness of any alternative method or device that may be reasonable under the circumstances.

49-868. Agency orders; appeal

Any final agency order issued pursuant to this article is appealable pursuant to title 41, chapter 6, article 10.

E-2.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 8, Articles 1 & 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 13, 2025

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 8, Articles 1 & 2

Summary

This Five-Year Review Report (5YRR) from the Department of Environmental Quality (Department) relates to twelve (12) rules in Title 18, Chapter 8, Articles 1 and 2 regarding Hazardous Waste Management. Specifically, Article 1 relates to Remedial Action Requirements and Article 2 relates to Hazardous Wastes.

In the prior 5YRR for these rules, which was approved by the Council in March 2020, the Department proposed amendments to rules relating to inspection requirements for large quantity generators. Specifically, the Department indicated it received a question in 2019 following the hazardous waste rulemaking conducted in February of that year, asking why the Department required inspection of logs for small quantity generators but not large quantity generators. The Department determined that this was an oversight and rule R18-8-262(G) should be amended to read "Any generator who must comply with 262.16 or 262.17 shall keep a written log of the inspections." This change was implemented as part of the Department's hazardous waste rulemaking conducted in 2020 and became effective November 3, 2020.

Proposed Action

In the current report, the Department indicates it will update the incorporations by reference outlined in Section 4 of its report to incorporate EPA rulemakings, and any subsequent EPA rulemakings, and will incorporate the changes listed in Section 6 of the report to improve clarity of the rules. The Department anticipates conducting this rulemaking following updates to the Federal Register in July 2025, to be completed mid 2026.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department has determined that for Article 1 the direct economic impact of R18-8-101 has not differed from that projected in the Economic Impact Statement (EIS) issued in the last rulemaking conducted on February 5, 2019. The Department indicates that this rule clarifies that the soil cleanup standards from 18 A.A.C. 7, and applicable in other Department programs, apply to hazardous waste corrective actions and helps provide consistency across all programs performing soil remediation.

The Department has determined that the direct economic impacts of the Chapter 8 Article 2 rules have not differed from those projected by the EIS provided for the November 2020 and March 2023 rulemakings. The Department states that Article 2 includes the regulatory burden of applicable standards for safe and proper management of hazardous waste applicable to hazardous waste generators and transporters, and owners and operators of hazardous waste treatment, storage and disposal facilities.

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

The Department states that for Article 1 it is not aware of any cost directly attributable to this rule, while it provides benefits in the form of consistency, predictability, and clarity to soil cleanup standards.

The Department believes the costs of the standards and fees outlined in Article 2 are outweighed by the benefits of ensuring the long-term viability of the Hazardous Waste Management Program, allowing the state to retain the technical, managerial, and financial capacity necessary to protect public health from hazardous waste risks.

4. Has the agency received any written criticisms of the rules over the last five years?

While the Department indicates it engaged in stakeholder engagement through public meetings and workshops related to rulemakings in 2020 and 2023, the Department received no

written criticisms regarding the Chapter 8 rules during either the informal or formal comment periods for these rulemakings, and has not received any other written criticisms of the rules within the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are mostly clear, concise, and understandable except for the following rules for which minor clarifications could be made:

- **R18-8-260**
  - Including an internet website where the most current amounts for fees listed in subsection (M) can be found would provide additional clarity on fee amounts.
- **R18-8-264**
  - Language can be added to clarify that the phone numbers provided for the ADEQ Emergency Response Unit are not intended for general emergencies.
- **R18-8-265**
  - Language can be added to clarify that the phone numbers provided for the ADEQ Emergency Response Unit are not intended for general emergencies.
- **R18-8-268**
  - The incorporation by reference in subsection (A) can be updated to the most recent version of the CFR. As of the date of this report, the referenced section of the CFR has not been changed since the last update to Chapter 8's incorporations by reference, so updating it will not alter the substance of the rule.
- **R18-8-273**
  - The incorporation by reference in subsection (A) can be updated to the most recent version of the CFR. As of the date of this report, the referenced section of the CFR has not been changed since the last update to Chapter 8's incorporations by reference, so updating it will not alter the substance of the rule.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates it conducts rule updates periodically in order to ensure consistency with state and federal rules and statutes. The Department conducted such a rulemaking for Chapter 8 on November 3, 2020 incorporating multiple EPA rule promulgations. Since the 2020 rulemaking, the EPA has promulgated several rulemakings altering portions of the CFR incorporated in Chapter 8. Specifically, the following rules are no longer consistent with other rules or statutes:

- **R18-8-260**
  - The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Modernizing Ignitable Liquids Determinations, 85 FR 40606, July 7, 2020; Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.

- **R18-8-261**
    - The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Modernizing Ignitable Liquids Determinations, 85 FR 40606, July 7, 2020; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections, 88 FR 84710, Dec. 6, 2023; Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024; Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.
- **R18-8-262**
    - The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Conforming Changes to Canada Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes, 86 FR 54385 Oct. 1, 2021; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections, 88 FR 84710, Dec. 6, 2023; Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024, Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.
- **R18-8-263**
    - The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.
- **R18-8-264**
    - The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Conforming Changes to Canada Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes, 86 FR 54385 Oct. 1, 2021; Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.
- **R18-8-265**
    - The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulation: Conforming Changes to Canada Specific Hazardous Waste Import-Export

Recovery and Disposal Operation Codes, 86 FR 54385 Oct. 1, 2021; Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.

- **R18-8-266**
  - The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: EPA Method 23 - Determination of Polychlorinated Dibenzo-P-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources, 88 FR 16774, Mar. 20, 2023; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections, 88 FR 84710, Dec. 6, 2023, Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.
- **R18-8-267**
  - The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.
- **R18-8-270**
  - The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024, Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.
- **R18-8-271**
  - The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024, Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are currently enforced as written.

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

The Department indicates the rules in Article 1 have no corresponding federal law. The Department indicates the rules in Article 2 correspond with the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, and the associated federal Hazardous Waste Management program rules. The Department states Article 2 incorporates by reference several portions of the federal rules while being no more stringent, specifically 40 CFR § 124, 40 CFR 260, 40 CFR §§ 261 through 266, 40 CFR 268, 40 CFR 270, and 40 CFR 273.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

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

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

The Department indicates the rules in Article 1 do not require issuance of a regulatory permit, license, or agency authorization. The Department indicates the rules in Article 2 require a regulatory permit for transportation, storage, and disposal (TSD) facilities. The Department indicates the rules comply with A.R.S. § 41-1037 because, pursuant to A.R.S. § 41-1037(A)(2), a specific alternative permit is authorized by state statute under A.R.S. § 49-922(B)(5).

11. Conclusion

This 5YRR from the Department relates to twelve (12) rules in Title 18, Chapter 8, Articles 1 and 2 regarding Hazardous Waste Management. Specifically, Article 1 relates to Remedial Action Requirements and Article 2 relates to Hazardous Wastes. The Department indicates it will update the incorporations by reference outlined in Section 4 of its report to incorporate EPA rulemakings, and any subsequent EPA rulemakings, and will incorporate the changes listed in Section 6 of the report to improve clarity of the rules. The Department

anticipates conducting this rulemaking following updates to the Federal Register in July 2025, to be completed mid 2026.

Council staff recommends approval of this report.

Arizona Department of Environmental Quality

Katie Hobbs
Governor

Karen Peters
Deputy Director

December 24, 2024

SENT VIA EMAIL ONLY

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., #302
Phoenix, AZ 85007
grrc@azdoa.gov

Re: Submittal of Five-Year Review Report for A.A.C. Title 18, Chapter 8, Articles 1, and 2

Dear Chair Klein:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's Five-Year Review Report for A.A.C. Title 18, Chapter 8, Articles 1: Remedial Action Requirements, and 2: Hazardous Wastes.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact John MacBain, Waste Programs Division at 602-771-0101 or macbain.john@azdeq.gov, if you have any questions.

Sincerely,

DocuSigned by:
Karen Peters
72DC0E312D584BF...
Karen Peters
Deputy Director

Enclosure

Arizona Department of Environmental Quality

Five-Year Review Report

Title 18. Environmental Quality

Chapter 8. Department of Environmental Quality – Hazardous Waste Management

Article 1: Remedial Action Requirements

Article 2: Hazardous Wastes

December 27, 2024

1. Authorization of the rule by existing statutes:

R18-8-101 in 18 A.A.C. 8, Article 1 is generally authorized by A.R.S. §§ 41-1003 and 49-104(B)(4), and is specifically authorized by A.R.S. § 49-152(A).

The hazardous waste rules in 18 A.A.C. 8, Article 2 are generally authorized by A.R.S. §§ 41-1003 and 49-104(B)(4), and are specifically authorized by A.R.S. §§ 49-104(B)(17) and 49-922.

2. The objective of each rule:

The purpose of the Chapter 8 rules, broadly, is to receive and maintain authorization from the U.S. Environmental Protection Agency (EPA) to implement the federal hazardous waste program in Arizona through incorporation by reference of federal hazardous waste regulations. Specific objectives for the rules in this chapter are below.

Rule	Objective
R18-8-101	The objective of this rule is to clarify that, if soil remediation is required under 18 A.A.C. 8, it shall be conducted in accordance with the soil remediation levels in 18 A.A.C. 7, Article 2.
R18-8-260	The objective of this rule is to establish the general provisions of Arizona's hazardous waste management system by incorporating federal regulations outlined in 40 CFR 260, while providing state-specific amendments for Arizona's rules. The rule also provides a budgetary purpose by establishing fees for hazardous waste generation and disposal.
R18-8-261	The objective of this rule is to provide a comprehensive framework for identifying and listing hazardous waste in Arizona by incorporating federal regulations outlined in 40 CFR 261, while providing state-specific amendments for Arizona's rules.
R18-8-262	The objective of this rule is to establish specific requirements and responsibilities for entities that generate hazardous waste in Arizona by incorporating federal regulations outlined in 40 CFR 262, while providing state-specific amendments for Arizona's rules.
R18-8-263	The objective of this rule is to establish specific requirements and responsibilities for entities that transport hazardous waste in Arizona by incorporating federal regulations outlined in 40 CFR 263, while providing state-specific amendments for Arizona's rules.
R18-8-264	The objective of this rule is to establish standards for Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDFs) in Arizona by incorporating federal regulations outlined in 40 CFR 264, while providing state-specific amendments for Arizona's rules.
R18-8-266	The objective of this rule is to establish standards for the management of specific types of hazardous waste in Arizona, such as recyclable materials, used oil, specific industrial wastes, military munitions, and burning hazardous waste in boilers and industrial furnaces. The rule incorporates federal regulations outlined in 40 CFR 266, while providing state-specific amendments for Arizona's rules

R18-8-268	The objective of this rule is to establish land disposal restrictions that minimize the disposal of untreated hazardous waste in landfills in Arizona by incorporating federal regulations outlined in 40 CFR 268, while providing state-specific amendments for Arizona's rules.
R18-8-270	The objective of this rule is to establish the permitting framework for hazardous waste management facilities in Arizona. The rule incorporates federal regulations outlined in 40 CFR 270 while providing state-specific amendments for Arizona's rules, and provides a fee structure for Hazardous Waste Permitting Application and Maximum fees.
R18-8-271	The objective of this rule is to establish the procedures for administering hazardous waste permits in Arizona by incorporating federal regulations outlined in 40 CFR 124, while providing state-specific amendments for Arizona's rules.
R18-8-273	The objective of this rule is to establish standards for specific hazardous wastes categorized as "Universal Wastes" in Arizona by incorporating federal regulations outlined in 40 CFR 273, while providing state-specific amendments for Arizona's rules
R18-8-280	The objective of this rule is to supplement incorporated federal regulations to help ensure equivalency, and to detail how the Arizona program relates to inspections and compliance.

3. Are the rules effective in achieving their objectives? **Yes _X_ No __**

The rules are effective in achieving their objectives.

4. Are the rules consistent with other rules and statutes? **Yes _X_ No __**

The rules are consistent with the rules and statutes of Arizona and the United States. ADEQ conducts rule updates periodically in order to ensure consistency with state and federal rules and statutes. ADEQ conducted such a rulemaking for Chapter 8 on November 3, 2020 incorporating multiple EPA rule promulgations. Since the 2020 rulemaking, the EPA has promulgated several rulemakings altering portions of the CFR incorporated in Chapter 8. Those EPA promulgated rules are as follows:

1. Modernizing Ignitable Liquids Determinations, 85 FR 40606, July 7, 2020.

2. Conforming Changes to Canada Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes, 86 FR 54385, Oct. 1, 2021.

3. EPA Method 23 - Determination of Polychlorinated Dibenzo-P-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources, 88 FR 16774, Mar. 20, 2023.

4. Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections, 88 FR 84710, Dec. 6, 2023.

5. Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.

6. Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.

In addition to the finalized EPA rules outlined above, ADEQ is monitoring several ongoing EPA rulemakings which may impact Chapter 8's rules. Following the completion of these ongoing EPA rulemakings, ADEQ will begin a rulemaking to update the impacted incorporations by reference in order to maintain consistency with

federal law when the Federal Register is updated in July, 2025. The table below outlines the Chapter 8 rules that include incorporations by reference that are no longer consistent based on the outlined EPA rulemakings.

Rule	Explanation
R18-8-260	The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Modernizing Ignitable Liquids Determinations, 85 FR 40606, July 7, 2020; Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.
R18-8-261	The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Modernizing Ignitable Liquids Determinations, 85 FR 40606, July 7, 2020; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections, 88 FR 84710, Dec. 6, 2023; Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024; Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.
R18-8-262	The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Conforming Changes to Canada Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes, 86 FR 54385 Oct. 1, 2021; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections, 88 FR 84710, Dec. 6, 2023; Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024, Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.
R18-8-263	The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.
R18-8-264	The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Conforming Changes to Canada Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes, 86 FR 54385 Oct. 1, 2021; Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.
R18-8-265	The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulation: Conforming Changes to Canada Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes, 86 FR 54385 Oct. 1, 2021; Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.
R18-8-266	The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: EPA Method 23 - Determination of Polychlorinated Dibenzo-P-Dioxins and Polychlorinated Dibenzofurans

	from Stationary Sources, 88 FR 16774, Mar. 20, 2023; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections, 88 FR 84710, Dec. 6, 2023, Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.
R18-8-267	The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024.
R18-8-270	The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024, Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.
R18-8-271	The portions of the CFR incorporated by reference in this rule are not consistent with the current version of the CFR as updated by the following EPA regulations: Integrating e-Manifest with Hazardous Waste Exports and Other Manifest-Related Reports, PCB Manifest Amendments, and Technical Corrections, 89 FR 60692, July 26, 2024, Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020, 89 FR 82682, October 11, 2024.

5. Are the rules enforced as written? **Yes _X_ No __**

The rules are enforced as written.

6. Are the rules clear, concise, and understandable? **Yes _X__ No __**

The rules are clear, concise, and understandable. Minor clarifications can be made as described in the table below.

Rule	Explanation
R18-8-260	Including an internet website where the most current amounts for fees listed in subsection (M) can be found would provide additional clarity on fee amounts.
R18-8-264	Language can be added to clarify that the phone numbers provided for the ADEQ Emergency Response Unit are not intended for general emergencies.
R18-8-265	Language can be added to clarify that the phone numbers provided for the ADEQ Emergency Response Unit are not intended for general emergencies.
R18-8-268	The incorporation by reference in subsection (A) can be updated to the most recent version of the CFR. As of the date of this report, the referenced section of the CFR has not been changed since the last update to Chapter 8's incorporations by reference, so updating it will not alter the substance of the rule.
R18-8-273	The incorporation by reference in subsection (A) can be updated to the most recent version of the CFR. As of the date of this report, the referenced section of the CFR has not been changed since the last update to Chapter 8's incorporations by reference, so updating it will not alter the substance of the rule.

7. Has the agency received written criticisms of the rules within the last five years? Yes ___ No _X_

ADEQ has conducted two rulemakings involving Chapter 8 since the last five-year review was completed. In November of 2020, ADEQ adopted changes to the state's hazardous waste rules to incorporate certain changes in federal regulations, and in March of 2023 ADEQ conducted a rulemaking to increase certain hazardous waste fees. Both rulemakings involved stakeholder engagement through public meetings and workshops, which were well attended. ADEQ received no written criticisms regarding the Chapter 8 rules during either the informal or formal comment periods for these rulemakings, and has not received any other written criticisms of the rules within the last five years.

8. Economic, small business, and consumer impact comparison:

Article 1: The direct economic impact of R18-8-101 has not differed from that projected in the Economic Impact Statement (EIS) issued in the last rulemaking conducted on February 5, 2019. *See* 25 A.A.R. 439-42 (Mar. 1, 2019). The soil remediation levels in Chapter 7, Article 2 that are referenced in R18-8-101 have not changed since 2007.

Article 2: ADEQ conducted a rulemaking on November 3, 2020, impacting each section of Chapter 8 Article 2 and updating incorporations by reference. That rulemaking adopted changes to the state's hazardous waste rules to incorporate certain changes in federal regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid waste Amendments of 1984 (HSWA). The amendments adopted changes to federal regulations that were in effect as of July 1, 2020. The EPA rules that altered the Federal Hazardous Waste Regulations as of July 1, 2020 that were incorporated into Arizona rules in the November, 2020 rulemaking were the following:

- Revisions to the Definition of Solid Waste, 73 FR 64667, October 30, 2008.
- Definition of Solid Waste, 80 FR 1693, January 13, 2015.
- Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule, 83 FR 24664, May 30, 2018.
- Safe Management of Recalled Airbags, 83 FR 61552, November 30, 2018.
- Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine, 84 FR 5816, February 22, 2019.
- Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, 84 FR 67202, December 9, 2019.
- Address Change for Waste Import-Export Submittals from the Office of Federal Activities to the Office of Resource Conservation and Recovery, 83 FR 38263, August 6, 2018.

The 2020 EIS identified several economic benefits in the incorporation of updated federal rules, including cost savings and increased flexibility for businesses. *See* 26 A.A.R. 2952-54 (Nov. 20, 2020). The incorporation of the

updated federal rules reduced the regulatory burden, particularly for small businesses handling hazardous waste, such as healthcare facilities and those managing hazardous waste pharmaceuticals and aerosol cans.

ADEQ conducted an additional, fee related, rulemaking on March 8, 2023, amending R18-8-260 and R18-8-270. In the EIS for that rulemaking, ADEQ described how revenues and expenditures resulted in a shortfall of $800,000 based on fees collected at the Fiscal Year 2022 levels. *See* 29 A.A.R. 732-34 (Mar. 17, 2023). This shortfall would have impaired ADEQ's ability to maintain an EPA authorized hazardous waste program and therefore jeopardize approximately $1,000,000 in federal funding. ADEQ estimated in the EIS, that the additional cost of the 2023 fee rulemaking would be $800,000, the amount of increased fees necessary to address the budgetary shortfall.

ADEQ has determined that the direct economic impacts of the Chapter 8 Article 2 rules have not differed from those projected by the EIS provided for the November 2020 and March 2023 rulemakings.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

ADEQ has not received a business competitiveness analysis of the rules in this Chapter.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

ADEQ has completed the proposed course of action laid out in its 2019 five-year review report for Chapter 8. ADEQ proposed one course of action in that report, relating to inspection requirements for large quantity generators. ADEQ received a question in 2019 following the hazardous waste rulemaking conducted in February of that year, asking why ADEQ required inspection of logs for small quantity generators but not large quantity generators. ADEQ determined that this was an oversight and R18-8-262(G) should be amended to read "Any generator who must comply with 262.16 or 262.17 shall keep a written log of the inspections." This change was implemented as part of ADEQ's hazardous waste rulemaking conducted in 2020 and effective November 3, 2020.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

Rule	Explanation
Article 1: Remedial Action Requirements	R18-8-101 is the only rule contained in Article 1. This rule clarifies that the soil cleanup standards from 18 A.A.C. 7, and applicable in other ADEQ programs, apply to hazardous waste corrective actions and helps provide consistency across all programs performing soil remediation. ADEQ is not aware of any costs directly attributable to this rule, while it provides benefits in the form of consistency, predictability, and clarity to soil cleanup standards.
Article 2: Hazardous Wastes	The costs of the Hazardous Waste Management Program outlined in Article 2 include the regulatory burden of applicable standards for safe and proper management of hazardous waste applicable to hazardous waste generators and transporters, and owners and

	operators of hazardous waste treatment, storage and disposal facilities. The costs of the rules also include administrative costs in the form of registration, disposal, and permitting requirements and associated fees outlined in Article 2. The standards established in these rules provide public health benefits by ensuring hazardous waste is handled, stored, and disposed of in a safe and proper manner. The fees established in Article 2's rules provide revenue necessary for ADEQ to maintain EPA authorization for the Hazardous Waste Management Program, ensuring the state continues to manage hazardous waste regulations in Arizona, rather than the EPA. ADEQ believes the costs of the standards and fees outlined in Article 2 are outweighed by the benefits of ensuring the long-term viability of the Hazardous Waste Management Program, allowing the state to retain the technical, managerial, and financial capacity necessary to protect public health from hazardous waste risks.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Article 1 has no corresponding federal law.

Article 2 rules correspond with the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, and the associated federal Hazardous Waste Management program rules. Article 2 incorporates by reference several portions of the federal rules while being no more stringent, specifically 40 CFR § 124, 40 CFR 260, 40 CFR §§ 261 through 266, 40 CFR 268, 40 CFR 270, and 40 CFR 273.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Article 1 does not require issuance of a regulatory permit, license, or agency authorization.

The Article 2 rules require a regulatory permit for transportation, storage, and disposal (TSD) facilities. The rules comply with A.R.S. § 41-1037 because pursuant to A.R.S. § 41-1037(A)(2), a specific alternative permit is authorized by state statute under A.R.S. § 49-922(B)(5).

14. Proposed course of action:

ADEQ prioritizes rulemakings in terms of the greatest impact on public health and the environment. Rulemakings often require significant stakeholder input and public comment, and therefore ADEQ also prioritizes rulemakings to reduce confusion and maximize input. ADEQ's Waste Programs Division is currently engaged in several rulemakings which it has determined are necessary based on their impacts to public health and the environment.

Coal Combustion Residuals	High Priority	Will establish an Arizona coal combustion residuals (CCR) permit program that would be approved by the U.S. Environmental Protection Agency (EPA) to implement the federal regulations in Arizona in lieu of the federal government. Rule returned by GRRC December 4, 2024, ADEQ anticipates resubmitting this rulemaking in early 2025.
Transfer Stations	High Priority	Will amend A.A.C. Title 18, Chapter 13 to add and amend articles as necessary to implement design and operation rules and corresponding financial assurance

		mechanism rules for solid waste transfer facilities. Active rulemaking, anticipate final to GRRC June 2025.
Tier II Fees	High Priority	Will amend A.A.C. Title 18, Chapter 18 to update the Emergency Planning and Community Right to Know program rules and the Tier II Emergency and Hazardous Chemical Inventory Reporting fee structure. Pending rulemaking, submitting to the Governor for approval January, 2025.
Ch. 7 Technical Updates	Medium Priority	Implements technical fixes as part of five-year review commitments to GRRC. Active rulemaking, anticipate Final to GRRC January 2025.
Ch. 18 Technical Updates	Medium Priority	Implements technical fixes as part of five-year review commitments to GRRC. Active rulemaking, anticipate Final to GRRC January 2025.

In addition to the active rulemakings outlined above, Waste Programs Division has a docket of several pending rulemakings necessary to implement various unfulfilled statutory mandates. The chart below outlines those pending rulemakings and their associated statutory mandates, as well as ADEQs projected timeline for conducting the rulemakings, subject to the Division's rulemaking capacity.

Rulemaking	Timeframe
Solid Waste Non-Landfill Disposal/Treatment Requirements A.R.S. 49-761(G), (H) A.R.S. 49-761(G) and (H) require the Department to adopt design & operation rules, and best management practices for solid waste facilities. ADEQ intends to address this requirement over the course of rulemakings, each handling a different class of solid waste facilities, to be conducted in tandem with the financial assurance requirements in A.R.S. 49-761(J).	Ongoing pursuant to adoption of design and operation standards for each solid waste facility category, beginning with transfer facilities in 2025.
Financial Assurance Requirements for Solid Waste Facilities A.R.S. 49-761(J) A.R.S. §49-761(J) requires the Department to adopt various rules establishing financial assurance requirements for solid waste facilities. ADEQ intends to address this requirement over the course of multiple rulemakings, each handling a different class of solid waste facilities, to be conducted in tandem with the design and operating requirements in A.R.S. 49-761(G) and (H).	Ongoing pursuant to adoption of design and operation standards for each solid waste facility category, beginning with transfer facilities in 2025.
Recycling Facility Standards & Recycling Program A.R.S. 49-761(K); A.R.S. 49-832(B)(8). A.R.S. 49-761(K) requires the department to adopt rules establishing design and operating standards for self-certification recycling facilities. A.R.S. 49-832(B)(8) requires the Department to adopt rules for the administration of Title 49, Chapter 4, Article 8 (Arizona Recycling Program). ADEQ intends to address these requirements over the course of multiple rulemakings projected to begin in the fall of 2025.	Recycling rule(s) projected start fall 2025, to be completed fall 2026.

Rulemaking	Timeframe
Solid Waste Land Disposal Facilities Non-Municipal [Landfills] A.R.S. 49-761(C) A.R.S. 49-761(C) requires the Department to establish design and operating rules for non-municipal landfills pursuant to 40 CFR part 257. ADEQ intends to address this requirement in a rulemaking projected to begin in the fall of 2026.	Rulemaking projected to begin fall 2026 to be completed fall 2027.
Criteria for determining the category type of a proposed change to solid waste facility A.R.S. 49-762.06(A) A.R.S. 49-762.06(A) requires the Department to establish criteria for solid waste facility plan amendment category types as identified in A.R.S. 49-762.06. ADEQ intends to address this requirement in a rulemaking projected to begin in the fall of 2027.	Rulemaking projected to begin summer 2027 to be completed summer 2028.
Composting A.R.S. 49-761(M) A.R.S. 49-761(M) requires the Department to adopt facility design, construction, operation, closure and post closure maintenance rules for biosolids processing facilities and waste composting facilities that must obtain plan approval pursuant to A.R.S. 49-762. This rulemaking is contingent on a change to the definition of "solid waste facility" under A.R.S. 49-701(45). Currently, a "site that stores, treats or processes" vegetative waste is exempted from the definition of a solid waste facility. Vegetative waste is a major component of composting activities. Thus, removing the vegetative waste exemption would be required to ensure any related composting facility rulemaking applies to all composting facilities. ADEQ will proceed with a rulemaking to address the requirements of A.R.S. 49-761(M) once the necessary changes to the definition of "solid waste facility" are adopted.	Rulemaking will require statutory changes to definition of 'vegetative waste', ADEQ will proceed with rulemaking once necessary changes are adopted.

As the Waste Programs Division completes its current slate of rulemakings it will begin work on a Chapter 8 rulemaking to incorporate recommendations made in this report. Specifically, ADEQ will update the incorporations by reference outlined in section 4 of this report to incorporate the listed EPA rulemakings, and any subsequent EPA rulemakings, and will incorporate the changes listed in part 6 of this report to improve clarity of the rules. ADEQ anticipates conducting this rulemaking following updates to the Federal Register in July 2025, to be completed mid 2026.

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ADMINISTRATIVE RULES DIVISION

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of
January 1, 2023 through March 31, 2023

Questions about these rules? Contact:

Department: The Department of Environmental Quality
Division: Waste Programs Division
Address: 1110 W. Washington St.
Phoenix, AZ 85007
Fax: (602) 771-4272
Website: www.azdeq.gov/WPD

Contact: Mark Lewandowski
Telephone: (602) 771-2230
E-mail: lewandowski.mark@azdeq.gov

The release of this Chapter in Supp. 23-1 replaces Supp. 21-4, 1-30 pages.
Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. *"'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."*

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State's website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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Administrative Rules Division
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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

Supp. 23-1

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Editor's Note: Article 1 was exempt from the regular rulemaking process (Laws 1995, Ch. 232 § 5). However the Department was required to provide a notice of hearing and public hearing before adoption of this rule. The emergency rules were approved by the Attorney General. (Supp. 96-1). Editor's Note added to clarify exemptions of emergency adoption (Supp. 97-1). The Article was adopted permanently effective December 4, 1997 (Supp. 97-4).

ARTICLE 1. REMEDIAL ACTION REQUIREMENTS

Article 1, consisting of R18-8-101, adopted permanently through the regular rulemaking process, effective December 4, 1997 (Supp. 97-4).

Article 1, consisting of R18-8-101, adopted by emergency action effective March 22, 1996, pursuant to A.R.S. § 41-1026; in effect until permanent rules are adopted pursuant to Laws 1995, Chapter 232 § 5 (Supp. 96-1).

ARTICLE 2. HAZARDOUS WASTES

Article 2, reserved Sections R18-8-202 through R18-8-258, now listed in full, numerical order to maintain consistency in this Chapter.

Article 2 consisting of Section R18-8-273 adopted effective June 13, 1996 (Supp. 96-2).

Article 2 consisting of Sections R9-8-1860 through R9-8-1866, R9-8-1869 through R9-8-1871, and R9-8-1880 amended and renumbered as Article 2, Sections R18-8-260 through R18-8-266, R18-8-269 through R18-8-271, and R18-8-280 (Supp. 87-2).

ARTICLE 3. RECODIFIED

Title 18, Chapter 8, Article 3, consisting of Sections R18-8-301 through R18-8-305, R18-8-307, Table A, Exhibit 1, and Appendices A and B, recodified to Title 18, Chapter 13, Article 13, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 3, consisting of Sections R18-8-301 through R18-8-305, adopted effective August 16, 1993 (Supp. 93-3).

Article 3, consisting of Section R18-8-306, adopted again by emergency action effective May 26, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2).

Article 3, consisting of Section R18-8-306, adopted by emergency action effective February 22, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired.

ARTICLE 4. RECODIFIED

Title 18, Chapter 8, Article 4, consisting of Section R18-8-402, recodified to Title 18, Chapter 13, Article 9, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 17 consisting of Sections R9-8-1711 and R9-8-1717 renumbered as Article 4, Sections R18-8-401 and R18-8-402 (Supp. 87-3).

ARTICLE 5. RECODIFIED

Title 18, Chapter 8, Article 5, consisting of Sections R18-8-502 through R18-8-512, recodified to Title 18, Chapter 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 4 consisting of Sections R9-8-411 through R9-8-416, R9-8-421, R9-8-426 through R9-8-428, and R9-8-431 through R9-8-433 renumbered as Article 5, Sections R18-8-501 through R18-8-513 (Supp. 87-3).

ARTICLE 6. RECODIFIED

Existing Sections in Article 6 recodified to 18 A.A.C. 13, Article 11 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

Article 12 consisting of Sections R9-8-1211 through R9-8-1216, R9-8-1221 through R9-8-1225, R9-8-1231 through R9-8-1236, and R9-8-1241 through R9-8-1244 renumbered as Article 6, Sections R18-8-601 through R18-8-621 (Supp. 87-3).

ARTICLE 7. RECODIFIED

18 A.A.C. 8, Article 7, consisting of Sections R18-8-701 through R18-8-710, recodified to Title 18, Chapter 13, Article 12, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 7, consisting of Sections R18-8-701 through R18-8-708, adopted permanently with changes effective July 6, 1993 (Supp. 93-3).

Article 7, consisting of Sections R18-8-709 and R18-8-710, adopted again by emergency action effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired.

Article 7, consisting of Sections R18-8-709 and R18-8-710, adopted by emergency action effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1).

ARTICLE 1. REMEDIAL ACTION REQUIREMENTS

R18-8-101. Remedial Action Requirements; Level and Extent of Cleanup

A. This Article is applicable to Chapter 8 of this Title.

B. In any instance where soil remediation is done under this Chapter, it shall be conducted in accordance with 18 A.A.C. 7, Article 2.

Historical Note

Emergency rule adopted effective March 22, 1996, pursuant to A.R.S. §§ 49-152 and 41-1026; in effect until permanent rules are adopted (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1 & Supp. 97-3). Adopted permanently through the regular rulemaking process, effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

ARTICLE 2. HAZARDOUS WASTES

R18-8-201. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 846, effective July 1, 2010 (Supp. 10-2). Section expired pursuant to A.R.S. § 41-1056(J), at 22 A.A.R. 2983, effective September 15, 2016 (Supp. 16-2).

R18-8-202. Reserved

R18-8-203. Reserved

R18-8-204. Reserved

R18-8-205. Reserved

R18-8-206. Reserved

R18-8-207. Reserved

R18-8-208. Reserved

R18-8-209. Reserved

R18-8-210. Reserved

R18-8-211. Reserved

R18-8-212. Reserved

R18-8-213. Reserved

R18-8-214. Reserved

R18-8-215. Reserved

R18-8-216. Reserved

R18-8-217. Reserved

R18-8-218. Reserved

R18-8-219. Reserved

R18-8-220. Reserved

R18-8-221. Reserved

R18-8-222. Reserved

R18-8-223. Reserved

R18-8-224. Reserved

R18-8-225. Reserved

R18-8-226. Reserved

R18-8-227. Reserved

R18-8-228. Reserved

R18-8-229. Reserved

R18-8-230. Reserved

R18-8-231. Reserved

R18-8-232. Reserved

R18-8-233. Reserved

R18-8-234. Reserved

R18-8-235. Reserved

R18-8-236. Reserved

R18-8-237. Reserved

R18-8-238. Reserved

R18-8-239. Reserved

R18-8-240. Reserved

R18-8-241. Reserved

R18-8-242. Reserved

R18-8-243. Reserved

R18-8-244. Reserved

R18-8-245. Reserved

R18-8-246. Reserved

R18-8-247. Reserved

R18-8-248. Reserved

R18-8-249. Reserved

R18-8-250. Reserved

R18-8-251. Reserved

R18-8-252. Reserved

R18-8-253. Reserved

R18-8-254. Reserved

R18-8-255. Reserved

R18-8-256. Reserved

R18-8-257. Reserved

R18-8-258. Reserved

R18-8-259. Reserved

R18-8-260. Hazardous Waste Management System: General

A. All Federal regulations cited in this Article are those revised as of July 1, 2020 (and no future editions), unless otherwise noted, and are applicable only as incorporated by this Article. 40 CFR 124, 260 through 266, 268, 270 and 273 or portions of these regulations, are incorporated by reference, as noted in the text. Federal statutes and regulations that are cited within 40 CFR 124, 260 through 270, and 273 that are not incorporated by reference may be used as guidance in interpreting federal regulatory language.

B. Any reference or citation to 40 CFR 124, 260 through 266, 268, 270, and 273, or portions of these regulations, appearing in the body of this Article and regulations incorporated by reference, includes any modification to the CFR section made by this Article. When federal regulatory language that has been

incorporated by reference has been amended, brackets [ ] enclose the new language. The subsection labeling in this Article may or may not conform to the Secretary of State's formatting requirements, because the formatting reflects the structure of the incorporated federal regulations.

C. All of 40 CFR 260, revised as of July 1, 2020 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the Department of Environmental Quality (DEQ) with the exception of the following:

1. 40 CFR 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33; and
2. The revisions for standardized permits as published at 70 FR 53419. Copies of 40 CFR 260 are available at https://www.eCFR.gov. Copies of the Federal Register (FR) are available at https://www.federalregister.gov.

D. § 260.2, titled "Availability of information; confidentiality of information" is amended by the following:

1. § 260.2(a). Any information provided to [the DEQ] under [R18-8-260 through R18-8-266 and R18-8-268 shall] be made available to the public to the extent and in the manner authorized by the [Hazardous Waste Management Act (HWMA), A.R.S. § 49-921 et seq.; the Open Meeting Law, A.R.S. § 38-431 et seq.; the Public Records Statute, A.R.S. § 39-121 et seq.; the Administrative Procedure Act, A.R.S. § 41-1001 et seq.; and rules promulgated pursuant to the above-referenced statutes], as applicable.
2. § 260.2(b) is replaced with the following:
   a. The DEQ shall make a record or other information, such as a document, a writing, a photograph, a drawing, sound or a magnetic recording, furnished to or obtained by the DEQ pursuant to the HWMA and regulations promulgated thereunder, available to the public to the extent authorized by the Public Records Statute, A.R.S. §§ 39-121 et seq.; the Administrative Procedure Act, A.R.S. §§ 41-1001 et seq.; and the HWMA, A.R.S. §§ 49-921 et seq. Specifically, the DEQ shall disclose the records or other information to the public unless:
      i. A statutory exemption authorizes the withholding of the information; or
      ii. The record or other information contains a trade secret concerning processes, operations, style of work, or apparatus of a person, or other information that the Director determines is likely to cause substantial harm to the person's competitive position.
   b. Notwithstanding subsection (a):
      i. The DEQ shall make records and other information available to the EPA upon request without restriction;
      ii. As required by the HWMA and regulations promulgated thereunder the DEQ shall disclose the name and address of a person who applies for, or receives, a HWM facility permit;
      iii. The DEQ and any other appropriate governmental agency may publish quantitative and qualitative statistics pertaining to the generation, transportation, treatment, storage, or disposal of hazardous waste; and
      iv. An owner or operator may expressly agree to the publication or to the public availability of records or other information.
   c. A person submitting records or other information to the DEQ may claim that the information contains a confidential trade secret or other information likely to cause substantial harm to the person's competitive position. In the absence of such claim, the DEQ shall make the information available to the public on request without further notice. No claim of confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700–22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700–22A), or an electronic manifest format that may be prepared and used in accordance with 40 CFR 262.20(a)(3). EPA will make any electronic manifest that is prepared and used in accordance with § 262.20(a)(3), or any paper manifest that is submitted to the system under §§ 264.71(a)(6) or 265.71(a)(6) available to the public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest. A person making a claim of confidentiality shall assert the claim:
      i. At the time the information is submitted to, or otherwise obtained by, the DEQ;
      ii. By either stamping or clearly marking the words "confidential trade secret" or "confidential information" on each page of the material containing the information. The person may assert the claim only for those portions or pages that actually contain a confidential trade secret or confidential information; and
      iii. During the course of a DEQ inspection, or other observation, pursuant to the administration of the HWMA Program, by clearly indicating to the inspector which specific processes, operations, styles of work, or apparatus constitute a trade secret. The inspector shall record the claim on the inspection report and the claimant shall sign the report.
   d. The Director shall provide the claimant with an opportunity to submit written comments to demonstrate that the information constitutes a legitimate confidential trade secret or confidential information. The comments shall be limited to confidential use by the DEQ pursuant to A.R.S. § 49-928. Pertinent factors to be considered by the Director for making a determination of confidentiality, and that the claimant may address in the claimant's written comments, include the following:
      i. Whether the information is proprietary;
      ii. Whether the information has been disclosed to persons other than the employees, agents, or other representatives of the owner; and
      iii. Whether public disclosure would harm the competitive position of the claimant.
   e. The Director shall make a determination of each confidentiality claim using the following procedures:
      i. When a claim of confidentiality is asserted for information submitted as part of a HWM facility permit application:

(1) The claimant shall submit written comments demonstrating the legitimacy of the claim of confidentiality; and
(2) The Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination as part of the completeness review pursuant to R18-8-271(C).

ii. When a claim of confidentiality is asserted for information submitted or obtained during an inspection, or for any other information submitted to or obtained by the DEQ pursuant to this Article, but not as part of a HWM facility permit application:
(1) The claimant may submit written comments demonstrating the legitimacy of the claim of a confidential trade secret or other confidential information within 10 working days of asserting the confidentiality claim; and
(2) If a request for disclosure is made, the Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination. In all other instances, the Director may, on the Director's own initiative, evaluate the confidentiality claim and notify the claimant of the result of that determination within 20 working days after the time for submission of comments.

iii. When any person, hereinafter referred to as the "requestor," submits a request to the DEQ for public disclosure of records or information, the DEQ shall disclose the records or information to the requestor unless the information has been determined to be confidential by the Director, or is subject to a claim of confidentiality that is being considered for determination by the Director.
(1) If a confidentiality claim is under consideration by the Director, the requestor shall be notified that the information requested is under a confidentiality claim consideration and therefore is unavailable for public disclosure pending the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
(2) When a request for disclosure is made, the claimant shall be notified, within seven working days by certified mail with return receipt requested, that the information under a claim of confidentiality has been requested and is subject to the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
(3) If the Director disagrees with the confidentiality claim, the claimant shall have 20 working days to submit written comments either agreeing or disagreeing with the Director's evaluation.
(4) If a confidentiality claim is denied by the Director, the Director may request the attorney general to seek a court order authorizing disclosure pursuant to A.R.S. § 49-928.

f. Records or information determined by the Director to be legitimate confidential trade secrets or other confidential information shall not be disclosed by the DEQ at administrative proceedings pursuant to A.R.S. § 49-923(A) unless the following procedure is observed:
i. The DEQ shall notify both the claimant and the hearing officer of its intention to disclose the information at least 30 days prior to the hearing date. The DEQ shall send with the notice a copy of the confidential information that the DEQ intends to disclose;
ii. The claimant and the DEQ shall be allowed 10 days to present to the hearing officer comments concerning the disclosure of such information;
iii. The hearing officer shall determine whether the confidential information is relevant to the subject of the administrative proceeding and shall allow disclosure upon finding that the information is relevant to the subject of the administrative proceeding;
iv. The hearing officer may set conditions for disclosure of confidential and relevant information or the making of protective arrangements and commitments as warranted; and
v. The hearing officer shall give the claimant at least five days' notice before allowing disclosure of the information in the course of the administrative proceeding.

E. § 260.10, titled "Definitions," is amended by adding all definitions from § 270.2 to this Section, including the following changes, applicable throughout this Article unless specified otherwise:
1. ["Acute Hazardous Waste" means waste found to be fatal to humans in low doses or, in the absence of data on human toxicity, that has been shown in studies to have an oral lethal dose (LD) 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation lethal concentration (LC) 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or that is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness,] and therefore are either listed in § 261.31 with the assigned hazard code of (H) or are listed in § 261.33(e).
2. ["Application" means the standard United States Environmental Protection Agency forms for applying for a permit, including any additions, revisions or modifications to the forms. Application also includes the information required pursuant to §§ 270.14 through 270.29 (regarding the contents of a Part B HWM facility permit application).]
3. ["Chapter" means "Article" except in § 264.52(b), see R18-8-264, and § 265.52(b), see R18-8-265.]
4. "Closure" means [, for facilities with effective hazardous waste permits, the act of securing a HWM facility pursuant to the requirements of R18-8-264. For facilities subject to interim status requirements, "closure" means the act of securing a HWM facility pursuant to the requirements of R18-8-265.]
5. ["Concentration" means the amount of a substance in weight contained in a unit volume or weight.]

6. ["Department" or "the DEQ" means the Arizona Department of Environmental Quality.]
7. "Department of Transportation" or "DOT" means the U.S. Department of Transportation.
8. ["Director" or "state Director" means the Director of the Department of Environmental Quality or an authorized representative, except in §§ 262.80 through 262.84, 268.5 through 268.6, 268.42(b), and 268.44 which are non-delegable to the state of Arizona.]
9. ["Draft permit" means a document prepared under § 124.6 indicating the Director's tentative decision to issue, deny, modify, revoke, reissue, or terminate a permit. A denial of a request for modification, revocation, reissuance or termination, as discussed in § 124.5, is not a draft permit.]
10. ["Emergency permit" means a permit that is issued in accordance with § 270.61.]
11. ["EPA," "Environmental Protection Agency," "United States Environmental Protection Agency," "U.S. EPA," "EPA HQ," "EPA Regions," and "Agency" mean the DEQ with the following exceptions:
    a. Any references to EPA identification numbers;
    b. Any references to EPA hazardous waste numbers;
    c. Any reference to EPA test methods or documents;
    d. Any reference to EPA forms;
    e. Any reference to EPA publications;
    f. Any reference to EPA manuals;
    g. Any reference to EPA guidance;
    h. Any reference to EPA Acknowledgment of Consent;
    i. References in §§ 260.1(b);
       260.2(d);
       260.4(a)(4);
       260.10 (definitions of "Administrator," "EPA region," "Federal agency," "Person," and "Regional Administrator");
       260.11(a);
       260.34;
       261, Appendix IX;
       261.4(a)(24), but in § 261.24(a)(24)(v)(B)(2), "EPA" means "DEQ";
       261.4(a)(25);
       261.39(a)(5);
       261.41;
       262.21;
       262.24(a)(3);
       262.25;
       262.32(b);
       Part 262, subpart H;
       263.10(a) Note;
       264.12(a)(2), 264.71(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), 265.71(d);
       268.1(e)(3);
       268.5, 268.6, 268.42(b), and 268.44, which are non-delegable to the state of Arizona;
       270.1(a)(1);
       270.1(b);
       270.2 (definitions of "Administrator," "Approved program or Approved state," "Director," "Environmental Protection Agency," "EPA," "Final authorization," "Permit," "Person," "Regional Administrator," and "State/EPA agreement");
       270.3;
       270.5;
       270.10(e)(1) through (2);
       270.11(a)(3);
       270.32(a) and (c);
       270.51;
       270.72(a)(5) and (b)(5);
       273.32(a)(3);
       124.1(f);
       124.5(d);
       124.6(e);
       124.10(c)(1)(ii); and
       124.13.]
12. ["Federal Register" means a daily or weekly major local newspaper of general circulation, within the area affected by the facility or activity, except in §§ 260.11(b) and 270.10(e)(2).]
13. ["HWMA" or "State HWMA" means the State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended.]
14. ["Hazardous Waste Management facility" or "HWM facility" means any facility or activity, including land or appurtenances thereto, that is subject to regulation under this Article.]
15. ["Key employee" means any person employed by an applicant or permittee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the applicant or permittee. Key employee does not include an employee exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste.]
16. ["National" means "state" in §§ 264.1(a) and 265.1(a).]
17. ["Off-site" means any site that is not on-site.]
18. ["Permit" means an authorization, license, or equivalent control document issued by the DEQ to implement the requirements of this Article. Permit includes "permit-by-rule" in § 270.60 and "emergency permit" in § 270.61, and it does not include interim status as in § 270.70 or any permit which has not yet been the subject of final action, such as a "draft permit" or a "proposed permit."]
19. ["Permit-by-rule" means a provision of this Article stating that a facility or activity is considered to have a HWM facility permit if it meets the requirements of the provision.]
20. ["Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a HWM facility to accept hazardous waste.]
21. ["RCRA," "Resource Conservation and Recovery Act," "Subtitle C of RCRA," "RCRA Subtitle C," or "Subtitle C" when referring either to an operating permit or to the federal hazardous waste program as a whole, mean the "State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended" with the following exceptions:
    a. Any reference to a specific provision of "RCRA," "Resource Conservation and Recovery Act," "Subtitle C of RCRA," "RCRA Subtitle C," or "Subtitle C";
    b. References in §§ 260.10 (definition of "Act or RCRA"); 260, Appendix I,; 261, Appendix IX,; Part 262, subpart H, 270.1(a)(2); 270.2, definition of "RCRA,"; and 270.51, "EPA-issued RCRA permit,".]
22. [Following any references to a specific provision of "RCRA," "Resource Conservation and Recovery Act," or "Subtitle C," the phrase "or any comparable provisions of the state Hazardous Waste Management Act, A.R.S. § 49-

921 et seq., as amended" shall be deemed to be added except in §§ 270.72(a)(5) and (b)(5).]

23. ["RCRA § 3005(a) and (e)" means "A.R.S. § 49-922."]
24. ["RCRA § 3007" means "A.R.S. § 49-922."]
25. ["RCRA § 3008" means "A.R.S. §§ 49-921 through 49-926"]
26. ["RCRA § 3010" means "A.R.S. § 49-922."]
27. ["Recyclable Materials" mean hazardous wastes that are recycled.]
28. ["Region" or "Region IX" means "state" or "state of Arizona."]
29. ["Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, such as actions, operations, or milestone events, leading to compliance with the HWMA and this Article.]
30. ["Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.]
31. ["State," "authorized state," "approved state," or "approved program" means the state of Arizona with the following exceptions:
    References at §§ 260.10, definitions of "person," "state," and "United States,"; 262;
    264.143(e)(1);
    264.145(e)(1);
    264.147(a)(1)(ii);
    264.147(b)(1)(ii);
    264.147(g)(2);
    264.147(i)(4);
    265.143(d)(1);
    265.145(d)(1);
    265.147(a)(1)(ii);
    265.147(g)(2);
    265.147(i)(4); and
    270.2, definitions of "Approved program or Approved state," "Director," "Final authorization," "Person," and "state".]
32. ["The effective date of these regulations" means the following dates: "May 19, 1981," in §§ 265.112(a) and (d), 265.118(a) and (d), 265.142(a) and 265.144(a); "November 19, 1981," in §§ 265.112(d) and 265.118(d);.]
33. ["TSD facility" means a "Hazardous Waste Management facility" or "HWM facility."]

F. § 260.10, titled "Definitions," as amended by subsection (E) also is amended as follows, with all definitions in § 260.10, applicable throughout this Article unless specified otherwise.

1. "Act" or ["the Act" means the state Hazardous Waste Management Act or HWMA, except in R18-8-261(B) and R18-8-262(B).]
2. "Administrator," "Regional Administrator," "EPA Regional Administrator", "state Director," or "Assistant Administrator for Solid Waste and Emergency Response" mean the [Director or the Director's authorized representative, except in §§:
    260.10, in the definitions of "Administrator," "AES filing compliance date", "Electronic import-export reporting compliance date", "Regional Administrator," and "hazardous waste constituent";
    260.20
    260.40
    260.41;
    261, Appendix IX;
    262.11(c);
    262.41;
    262.43;
    262, Subpart H;
    264.12(a);
    264.71;
    265.12(a);
    265.71;
    268.2(j);
    268.5, 268.6, 268.42(b), and 268.44, which are non-delegable to the state of Arizona; 270.2, in the definitions of "Administrator", "Director", "Major facility", "Regional Administrator", and "State/EPA agreement";
    270.3;
    270.5;
    270.10(e)(1), (2), and (4);
    270.10(f) and (g);
    270.11(a)(3);
    270.14(b)(20);
    270.32(b)(2);
    270.51;
    124.5(d);
    124.6(e);
    124.10(b)].
3. "Facility" [or "activity" means:
    [a]. Any HWM facility or other facility or activity, including] all contiguous land, and structures, other appurtenances, and improvements on the land [which are] used for treating, storing, or disposing of hazardous waste, [that is subject to regulation under the HWMA program] or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units ([that is], one or more landfills, surface impoundments, or combinations of them).
    [b]. For the purpose of implementing corrective action under 40 CFR 264.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).
    [c]. Notwithstanding paragraph ([b]) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within such a facility.
4. "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under parts 264 and 265 of this chapter are no longer conducted at the facility unless subject to the provisions in [§§ 262.15 and 262.17.]
5. "New HWM facility" or "new facility" means a HWM facility which began operation, or for which construction commenced, [after November 19, 1980].
6. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, [or a limited liability corporation], partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, [state agency, or an agent or employee of a state agency].
7. "United States" or "U.S." means [Arizona except for the following:

a. The definitions of "CRT exporter" and "recognized trader" in § 260.10.
b. §§ 261.4(a)(23) and 261.4(a)(25).
c. § 261.4(d)(4) and (e)(4).
d. § 261.39(a)(5).
e. § 262.14(a)(5).
f. Part 262, subpart H.
g. All references in Part 263 except §§ 263.10(a) and 263.22(c).
h. § 266.80.]

G. § 260.20(a), titled "General" pertaining to rulemaking petitions, is replaced by the following:

Where the Administrator of EPA has granted a rulemaking petition pursuant to 40 CFR 260.20(a), 260.21, or 260.22, the Director may accept the Administrator's determination and amend the Arizona rules accordingly, if the Director determines the action to be consistent with the policies and purposes of the HWMA.

H. § 260.23, titled "Petitions to amend 40 CFR 273 to include additional hazardous wastes" pertaining to rulemaking petitions, is amended as follows: (a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of part 273 of this chapter may petition for a regulatory amendment under this Section, 40 CFR 260.20(b) through (e), and Subpart G of 40 CFR 273.

I. § 260.30, titled "Non-waste determinations and variances from classification as a solid waste," is replaced by the following: Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, 260.33, and 260.34, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.

J. § 260.32, titled "Variances to be classified as a boiler," is replaced by the following:

Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a boiler pursuant to 40 CFR 260.32 and 260.33, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.

K. 40 CFR 260.41, titled "Procedures for case-by-case regulation of hazardous waste recycling activities," is amended by deleting the following from the end of paragraph (a):

"or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal."

L. As required by A.R.S. § 49-929, generators and transporters of hazardous waste shall register annually with DEQ and submit the appropriate registration fee, prescribed below, with their registration. Registration shall be done through DEQ's myDEQ portal. For registration, go to http://www.azdeq.gov/mydeq.

1. A hazardous waste transporter that picks up or delivers hazardous waste in Arizona shall pay $200 by March 1 of the year following the date of the pick-up or delivery;
2. A large-quantity generator that generated 1,000 kilograms or more of hazardous waste in any month of the previous calendar year shall pay $300; or
3. A small-quantity generator that generated 100 kilograms or more but less than 1,000 kilograms of hazardous waste in any month of the previous year shall pay $100.

M. A person shall pay hazardous waste generation and disposal fees as required under A.R.S. § 49-931 after the rates are updated for the billing period. The billing period for large-quantity generators shall be quarterly and for small-quantity generators, including very small quantity generators who become a small quantity generator due to an episodic event, annually. The person shall pay the fee within 30 days of the close of the billing period. The following hazardous waste fees shall apply:

1. A person who generates hazardous waste in calendar year 2023 that is shipped off site shall pay $87.00 per ton but not more than $258,000 per generator site per year of hazardous waste generated. For each succeeding calendar year, these rates shall be adjusted according to subsection (4).
2. An owner or operator of a facility that disposes of hazardous waste in calendar year 2023 shall pay $348 per ton but not more than $6,245,000 per disposal site per year of hazardous waste disposed. For each succeeding calendar year, these rates shall be adjusted according to subsection (4).
3. A person who generates hazardous waste in calendar year 2023 that is retained on site for disposal or that is shipped off site for disposal to a facility that is owned and operated by that generator shall pay $34.83 per ton but not more than $206,000 per generator site per year of hazardous waste disposed. For each succeeding calendar year, these rates shall be adjusted according to subsection (4).
4. From and after January 1, 2024, the amounts in subsections (1), (2) and (3), and R18-8-270(G)(6) shall be updated annually before each April 1 by the following method:
   a. On or about January 15 after the calendar year to be updated, ADEQ shall use the United States Bureau of Labor Statistics CPI Inflation Calculator at bls.gov/data/inflation_calculator.htm, as follows unless updated:
      i. Insert the current maximum fee, per ton rate, or hourly rate in the first box.
      ii. Insert December of the calendar year 13 months previous in the before-inflation box. Insert the previous December in the after-inflation box.
      iii. Select "Calculate". The new maximum, per ton rate, or hourly rate for the billing period beginning January 1 will be shown.
   b. ADEQ shall post the new rates on its webpage and install them in the billing software as soon as practicable.

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsections (A), (C), and (E) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (C) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1860 renumbered as Section R18-8-260, and subsections (A) and (C) amended effective May 29, 1987 (Supp. 87-2). Amended subsections (D) and (E) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4).

Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998; R18-8-260 corrected, text was inadvertently omitted (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Subsections in R18-8-260(F)(2) reinstated at request of the Department after a clerical error in 9 A.A.C. 816 omitted the subsections from the rule text, Office File No. M10-288, filed July 20, 2010 (Supp. 10-2). Amended by final rulemaking at 18 A.A.R. 1202, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4). Subsection (J) published after subsection (M) removed; this clerical error was published in Supp. 20-4 and corrected in Supp. 21-4. Amended by final rulemaking at 29 A.A.R. 729 (March 17, 2023), with an immediate effective date of March 8, 2023 (Supp. 23-1).

R18-8-261. Identification and Listing of Hazardous Waste

A. All of 40 CFR 261 and accompanying appendices, revised as of July 1, 2020 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:

1. The revisions for standardized permits as published at 70 FR 53419; and
2. 40 CFR §§ 261.149, 261.400(a), 261.400(b), 261.410(e), 261.410(f), 261.411, and 261.420; Copies of 40 CFR 261 are available at https://www.eCFR.gov. Copies of the Federal Register (FR) are available at https://www.federalregister.gov.

B. In the above-adopted federal regulations "section 1004(5) of RCRA" or "section 1004(5) of the Act" means A.R.S. § 49-921(5).

C. § 261.4, titled "Exclusions," paragraph (b)(6)(i), is amended as follows:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in subpart D due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if [documentation is provided to the Director] by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

D. § 261.4, titled "Exclusions," paragraph (e)(1) is amended as follows:

(1) Except as provided in paragraphs (e)(2) and (4) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in 40 CFR 260.10, are not subject to any requirement of 40 CFR parts 261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of [40 CFR 262.13 and 262.16(b)] when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

E. § 261.4, titled "Exclusions," is amended by deleting the phrase "in the Region where the sample is collected" in paragraph (e)(3)iii.

F. § 261.6, titled "Requirements for recyclable materials," paragraphs (a)(1) through (a)(3) are amended as follows:

(a)(1)Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled [shall] be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under [40 CFR 266, subparts C through N] and all applicable provisions in parts 268, 270 and 124 of this chapter:

(i) Recyclable materials used in a manner constituting disposal (40 CFR part 266, subpart C);

(ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O] (40 CFR part 266, subpart H);

(iii) Recyclable materials from which precious metals are reclaimed (40 CFR part 266, subpart F);

(iv) Spent lead acid batteries that are being reclaimed (40 CFR part 266, subpart G).

(3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124] and are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials [shall] comply with the requirements of 40 CFR part 262, subpart H.

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, [shall] comply with the requirements applicable to a primary exporter in [§ 262.83(b), (g) and (i),] export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in [subpart H] of part 262, and provide a copy of the EPA Acknowledgment of Consent to the

shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under § 261.4(a)(13);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12);

(iv)(A)Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[,] production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801]; and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under [A.R.S. § 49-801].

G. § 261.11, titled "Criteria for listing hazardous waste," paragraph (a) is amended as follows:

(a) The [Director] shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(1) It exhibits any of the characteristics of hazardous waste identified in subpart C.

(2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria shall be designated Acute Hazardous Waste.)

(3) It contains any of the toxic constituents listed in Appendix VIII and, after considering the following factors, the [Director] concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed:

(i) The nature of the toxicity presented by the constituent.

(ii) The concentration of the constituent in the waste.

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in (a)(3)(vii) of this [subsection].

(iv) The persistence of the constituent or any toxic degradation product of the constituent.

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into nonharmful constituents and the rate of degradation.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) The plausible types of improper management to which the waste could be subjected.

(viii)The quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) Such other factors as may be appropriate.

H. § 261.11, titled "Criteria for listing hazardous waste," paragraph (c) is amended as follows:

(c) The Administrator will use the criteria for listing specified in this section to establish the exclusion limits referred to in [§ 262.13(c).]

I. § 261.30, titled "General", paragraph (d) is amended as follows:

(d) The following hazardous wastes listed in § 261.31 are subject to the exclusion limits for acutely hazardous wastes established in [§ 261.13:] EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

J. Notwithstanding the definitions of "EPA" and "EPA Regional Administrator" in R18-8-260(E)(11) and (F)(2):

1. In § 261.151(g), the third sentence is replaced by the following: "If the facilities covered by the mechanism are in more than one State, identical evidence of financial assurance must be submitted to and maintained with each state agency regulating hazardous waste or with the appropriate Regional Administrator if a facility is located in an unauthorized State."

2. § 261.151 is amended by adding at the end: "Whenever this section requires that the owner or operator of a reclamation or intermediate facility notify several Regional

Administrators of their financial obligations, the notice shall be to both DEQ and all Regional Administrators of the United States Environmental Protection Agency of Regions that are affected by the owner or operator's financial assurance mechanisms."

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (E) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1861 renumbered as Section R18-8-261, and subsections (A), (D) and (F) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4). Due to a clerical error, subsection (J) was inadvertently published with text underlined in Supp. 20-4; the underlining has been removed in Supp. 21-4.

R18-8-262. Standards Applicable to Generators of Hazardous Waste

A. All of 40 CFR 262, revised as of July 1, 2020 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 262 are available at https://www.eCFR.gov.

B. In 40 CFR 262:
1. ["Section 3008 of RCRA" means both section 3008 of RCRA and A.R.S. §§ 49-923, 49-924 and 49-925.]
2. ["Section 2002(a) of the Act" means A.R.S. § 49-922.]
3. ["Section 3002(6) of the Act" means A.R.S. § 49-922.]

C. § 262.10, titled "Purpose, scope, and applicability," paragraph (i) is amended as follows:

(i) [For the limited time period required to control, mitigate, or eliminate the immediate threat,] persons responding to an explosives or munitions emergency in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv), or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part. [As soon as the immediate response activities are completed, all standards of this part apply. For purposes of this rule, DEQ does not consider emergency response personnel to be generators of residuals resulting from immediate responses, unless they are also the owner of the object of an emergency response. The owner of the object of an emergency response, the owner of the property on which the object of an emergency rests or where the emergency response initiates, or the requestor for an emergency response is responsible for addressing any residual contamination that results from an emergency response.]

D. § 262.11, titled "Hazardous waste determination and recordkeeping," paragraphs (d)(1) and (d)(2) are amended by deleting the following:
", or an equivalent test method approved by the Administrator under 40 CFR 260.21,"

E. § 262.13, titled "Generator category determinations", paragraph (f)(1)(iii) is amended as follows:
(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279 [(as incorporated by A.R.S. § 49-802)]. Any material produced from such a mixture by processing, blending, or other treatment is also [so regulated].

F. § 262.16, titled "Conditions for exemption for a small quantity generator that accumulates hazardous waste", paragraph (b)(9)(iv)(C) is amended as follows:

(C) In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water [or when a spill has discharged into a storm sewer or dry well, or such an event has resulted in any other discharge that may reach groundwater], the small quantity generator immediately [shall] notify the National Response Center (using their 24-hour toll-free number 800/424-8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain] the following information:
(1) The name, address, and [the EPA Identification Number] of the generator;
(2) Date, time, [location,] and type of incident (for example, spill or fire);
(3) Quantity and type of hazardous waste involved in the incident;
(4) Extent of injuries, if any; and
(5) Estimated quantity and disposition of recovered materials, if any.

G. Any generator who must comply with 40 CFR 262.16 or 262.17 shall keep a written log of the inspections of container, tank, drip pad, and containment building areas and for the containers, tanks, and other equipment located in these storage areas in accordance with 40 CFR 265.174, 265.195, 265.444, and 265.1101(c)(4). The inspection log shall be kept by the generator for three years from the date of the inspection. The generator shall ensure that the inspection log is filled in after each inspection and includes the following information: inspection date, inspector's name and signature, and remarks or corrections.

H. §262.17, titled "Conditions for exemption for a large quantity generator that accumulates hazardous waste", paragraph (f)(1) is amended as follows:

(1) The large quantity generator notifies [DEQ] at least 30 days prior to receiving the first shipment from a very small quantity generator(s) using EPA Form 8700-12; and

I. § 262.18, titled "EPA identification numbers and re-notification for small quantity generators and large quantity generators," paragraphs (a), (b) and (d) are amended as follows:

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the [DEQ].

(b) A generator who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be submitted to DEQ through the myDEQ online portal.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the generator.

(d) Re-notification. (1) A small quantity generator must re-notify [DEQ] starting in 2021 and every four years thereafter using EPA Form 8700–12. This re-notification must be submitted through the myDEQ online portal by September 1 of each year in which re-notifications are required.

(2) A large quantity generator must re-notify [DEQ] by March 1 of each even numbered year thereafter using EPA Form 8700–12. A large quantity generator may submit this re-notification as part of its Report required under § 262.41.

J. § 262.20, titled "General requirements", paragraph (a)(2) is amended as follows:

(2) The revised manifest form and procedures in 40 CFR 260.10, 261.7, [262.16, 262.17, 262.20, 262.21, 262.27, 262.32, 262.83(c) through (e), 262.84,] shall not apply until September 5, 2006. The manifest form and procedures in 40 CFR 260.10, 261.7, [262.16, 262.17, 262.20, 262.21, 262.32, 262.83(c) through (e), 262.84,] contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

K. § 262.212, titled "Making the hazardous waste determination at an on-site interim status or permitted treatment, storage or disposal facility", paragraph (e)(3) is amended as follows:

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to [§ 262.13(c) and (d)] in the calendar month that the hazardous waste determination was made, and

L. § 262.265, titled "Emergency procedures", paragraph (d)(2) is amended as follows:

(2) The emergency coordinator [shall] immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424–8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain the following information:]

(i) The name, address, and [the EPA Identification Number] of the generator;

(ii) Date, time, [location,] and type of incident (for example, spill or fire);

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.]

M. A generator who accumulates ignitable, reactive, or incompatible waste shall comply with 40 CFR 265.17.

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (D) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1862 renumbered as R18-8-262, and amended effective May 29, 1987 (Supp. 87-2). Amended effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4).

R18-8-263. Standards Applicable to Transporters of Hazardous Waste

A. All of 40 CFR 263, revised as of July 1, 2020 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 263 are available at https://www.eCFR.gov.

B. § 263.11, titled "EPA identification numbers," is amended by the following:

(a) A transporter must not transport hazardous wastes without having received an EPA identification number from the [DEQ].

(b) A transporter who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be submitted to DEQ through the myDEQ online portal.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the transporter.

C. § 263.30, titled "Immediate action," paragraph (c)(2) is amended by the following:

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590 [and send a copy to the DEQ, Hazardous Waste Unit, 1110 W. Washington St., Phoenix, AZ 85007.]

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-5). Former Section R9-8-1863 renumbered as R18-8-263, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (A) effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective Novem-

ber 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4).

R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

A. All of 40 CFR 264 and accompanying appendices, revised as of July 1, 2020 (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149, 264.150, and 264.301(l), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 264 are available at https://www.eCFR.gov.

B. § 264.1, titled "Purpose, scope and applicability," paragraph (g)(1) is amended as follows:

(1) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-13-312, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-264] pursuant to § 262.14;

C. § 264.1, titled "Purpose, scope, and applicability," paragraph (g)(8)(i)(D) is amended as follows:

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677.]

D. § 264.11, titled "Identification number," is replaced by the following:

1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be submitted to DEQ through the myDEQ online portal. Upon receiving the request, the DEQ will assign an EPA identification number to the facility owner or operator.

E. § 264.18, titled "Location standards," paragraph (c) is amended by deleting the following:

(c) ", except for the Department of Energy Waste Isolation Pilot Project in New Mexico."

F. § 264.56, titled "Emergency procedures," paragraph (d)(2) is amended as follows:

(2) [The emergency coordinator, or designee, shall] immediately notify [the DEQ at (602) 771-2330 or (800) 234-5677, extension 771-2330, and notify] either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number (800) 424-8802). The report [shall include the following]:

(i) Name and telephone number of reporter;
(ii) Name and address of facility;
(iii) Time and type of incident (for example, release, fire);
(iv) Name and quantity of material(s) involved, to the extent known;
(v) The extent of injuries, if any; and
(vi) The possible hazards to human health, or the environment, outside the facility.

G. § 264.93, titled "Hazardous constituents," paragraph (c) is amended as follows:

(c) In making any determination under [§ 264.93(b)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] § 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].

H. § 264.94, titled "Concentration limits," paragraph (c) is amended as follows:

(c) In making any determination under [§ 264.94(b)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].

I. § 264.143, titled "Financial assurance for closure," paragraph (h), and 264.145, titled "Financial assurance for post-closure care," paragraph (h), are amended by replacing the third sentence in each citation with the following: "Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona."

J. § 264.147, titled "Liability requirements," paragraphs (a)(1)(i) and (b)(1)(i) are amended by deleting the following from the fourth sentence in each citation: ", or Regional Administrators if the facilities are located in more than one Region."

K. § 264.151, titled "Wording of the instruments," is adopted except any reference to "{of/for} the Regions in which the facilities are located" is deleted and "an agency of the United States Government" is deleted from the second paragraph of the Trust Agreements.

L. § 264.301, titled "Design and operating requirements," is amended by adding the following:

[The DEQ may require that hazardous waste disposed in a landfill operation be treated prior to landfilling to reduce the water content, water solubility, and toxicity of the waste. The decision by the DEQ shall be based upon the following criteria:

1. Whether the action is necessary to protect public health;
2. Whether the action is necessary to protect the groundwater, particularly where the groundwater is a source, or potential source, of a drinking water supply;
3. The type of hazardous waste involved and whether the waste may be made less hazardous through treatment;
4. The degree of water content, water solubility, and toxicity of the waste;
5. The existence or likelihood of other wastes in the landfill and the compatibility or incompati-

bility of the wastes with the wastes being considered for treatment;

6. Consistency with other laws, rules and regulations, but not necessarily limited to laws, rules, and regulations relating to landfills and solid wastes.]

M. § 264.1030, titled "Applicability", paragraph (b)(3) is amended as follows:

(3) A unit that is exempt from permitting under the provisions of [40 CFR 262.17(a)] (i.e., a "90-day" tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.

N. § 264.1050, titled "Applicability", paragraph (b)(2) is amended as follows:

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of [40 CFR 262.17(a)] (i.e., a hazardous waste recycling unit that is not a "90-day" tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1864 renumbered as Section R18-8-264, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4).

R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

A. All of 40 CFR 265 and accompanying appendices, revised as of July 1, 2020 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 265 are available at https://www.eCFR.gov

B. § 265.1, titled "Purpose, scope, and applicability," paragraph (c)(5) is amended as follows:

(5) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-13-312, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under § 261.5;

C. § 265.1, titled "Purpose, scope, and applicability," paragraph (c)(11)(i)(D) is amended as follows:

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677]

D. § 265.11, titled "Identification number," is replaced by the following:

[1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.

2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be submitted to DEQ through the myDEQ online portal. Upon receiving the request, the DEQ shall assign an EPA identification number to the facility owner or operator.]

E. § 265.18, titled "Location standards," is amended by deleting the following:

", except for the Department of Energy Waste Isolation Pilot Project in New Mexico."

F. § 265.56, titled "Emergency procedures," paragraph (d)(2) is amended as follows:

(2) [The emergency coordinator, or designee, immediately shall] notify [the DEQ at (602) 771-2330 or 800/234-5677, and notify] either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800/424-8802). The report [shall include the following]:

(i) Name and telephone number of the reporter;

(ii) Name and address of the facility;

(iii) Time and type of incident (for example, release, fire);

(iv) Name and quantity of material(s) involved, to the extent known:

(v) The extent of injuries, if any; and

(vi) The possible hazards to human health, or the environment, outside the facility.

G. § 265.71, titled "Use of the manifest system", is amended in the Comment following paragraph (c) as follows:

Comment: The provisions of [§§ 262.15, 262.16 and 262.17] are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of [§§ 262.15, 262.16 and 262.17] only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

H. § 265.90, titled "Applicability," paragraphs (a) and (d)(1), and § 265.93, titled "Preparation, evaluation, and response," paragraph (a), are amended by deleting the following phrase: "within one year"; and § 265.90, titled "Applicability," para-

graph (d)(2), is amended by deleting the following phrase: "Not later than one year."

I. § 265.112(d), titled "Notification of partial closure and final closure," subparagraph (1) is amended as follows:

1. The owner or operator must submit the closure plan to the [Director] at least 180 days prior to the date on which [the owner or operator] expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, [tank, container storage, or incinerator unit], or final closure if it involves such a unit, whichever [occurs earlier. The owner or operator with approved closure plans shall notify the Director] in writing at least 60 days prior to the date on which [the owner or operator expects] to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility [if it involves such a unit. The owner or operator] with approved closure plans must notify the [Director] in writing at least 45 days prior to the date on which [the owner or operator expects] to begin final closure of a facility with only tanks, container storage, or incinerator units.

J. §§ 265.143, titled "Financial assurance for closure," paragraph (g), and 265.145, titled "Financial assurance for post-closure care," paragraph (g), are amended by replacing the third sentence in each citation with the following: "Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona."

K. § 265.193, titled "Containment and detection of releases", is amended by adding the following:

[For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall ensure that:

1. A level is measured daily;
2. A material balance is calculated and recorded daily; and
3. A yearly test for leaks in the tank and piping system, using a method approved by the DEQ is performed.]

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1865 renumbered as Section R18-8-265, subsection (A) amended and a new subsection (I) added effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4).

R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities

A. All of 40 CFR 266 and accompanying appendices, revised as of July 1, 2020 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 266 are available at https://www.eCFR.gov.

B. § 266.100, titled "Applicability" paragraph (c) is amended as follows:

(c) The following hazardous wastes and facilities are not subject to regulation under this subpart:

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 of this chapter. Such used oil is subject to regulation under [A.R.S. §§ 49-801 through 49-818];

(2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;

(3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(iii) and (iv) of this chapter, and hazardous wastes that are subject to the special requirements for [very] small quantity generators under [§§ 262.13 and 262.14] of this chapter; and

(4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

C. § 266.108, titled "Small quantity on-site burner exemption" is amended in the Note following paragraph (c) as follows:

Note: Hazardous wastes that are subject to the special requirements for small quantity generators under [§§ 262.13 and 262.14] of this chapter may be burned in an off-site device under the exemption provided by § 266.108, but must be included in the quantity determination for the exemption.

Historical Note

Adopted effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1866 renumbered as Section R18-8-266, and amended effective May 29, 1987 (Supp. 87-2). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14

A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4).

R18-8-267. Reserved

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, revised as of July 1, 2020 (and no future editions), with the exception of Part 268, Subpart B, is incorporated by reference and on file with the DEQ. Copies of 40 CFR 268 are available at https://www.eCFR.gov.

Historical Note

Adopted effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4).

R18-8-269. Expired

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Former Section R9-8-1869 renumbered without change as Section R18-8-269 (Supp. 87-2). Amended subsections (A) and (B) effective December 1, 1988 (Supp. 88-4). Amended effective December 2, 1994 (Supp. 94-4). Section expired pursuant to A.R.S. § 41-1056(J), at 23 A.A.R. 3428, effective October 10, 2017 (Supp. 17-4).

R18-8-270. Hazardous Waste Permit Program

A. All of 40 CFR 270 and the accompanying appendices, revised as of July 1, 2020 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:

1. §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64; and
2. The revisions for standardized permits as published at 70 FR 53419. Copies of 40 CFR 270 are available at https://www.eCFR.gov. Copies of the Federal Register are available at https://www.federalregister.gov.

B. § 270.1, titled "Purpose and scope of these regulations," paragraph (b) is replaced by the following:

1. [After the effective date of these regulations the treatment, storage, or disposal of any hazardous waste is prohibited except as follows:
   a. As allowed under § 270.1(c)(2) and (3);
   b. Under the conditions of a permit issued pursuant to these regulations; or
   c. At an existing facility accorded interim status under the provisions of § 270.70.
2. The direct disposal or discharge of hazardous waste into or onto any of the following is prohibited:
   a. Waters of the state as defined in A.R.S. § 49-201, excluding surface impoundments as defined in § 260.10; and
   b. Injection well, ditch, alleyway, storm drain, leachfield, or roadway.]

C. § 270.1, titled "Purpose and scope of these regulations," paragraph (c)(3)(i)(D) is amended as follows:

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677.]

D. § 270.10, titled "General application requirements," paragraph (e)(2), is amended as follows:

(2) The [Director] may extend the date by which owners and operators of specified classes of existing [HWM facilities shall submit Part A of their permit application if the Administrator has published in the Federal Register that EPA is granting an extension under 40 CFR § 270.10(e)(2) for those classes of facilities.]

E. § 270.10(g), titled "Updating permit applications," subparagraph (1)(ii) is amended as follows:

(ii) With the [Director] no later than the effective date of regulatory provisions listing or designating wastes as hazardous in [the] state if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

F. § 270.10(g), titled "Updating permit applications," subparagraph (1)(iii), is amended as follows:

(iii) As necessary to comply with provisions of § 270.72 for changes during interim [status]. Revised Part A applications necessary to comply with the provisions of § 270.72 [shall be filed with the [Director.]

G. § 270.10, titled "General application requirements," is amended by adding the following:

1. When submitting an application for any of the license types in the Table below, an applicant shall remit to the DEQ an application fee as shown in the Table.

Table - Hazardous Waste Permitting Application and Maximum Fees For Various License Types

License Type	Application Fee	Maximum Fee
Permit for: Container Storage/Container Treatment	$20,000	$250,000
Permit for: Tank Storage/Tank Treatment	$20,000	$300,000
Permit for: Surface Impoundment	$20,000	$400,000
Permit for: Incinerator/Boiler and Industrial Furnace (BIF)/Landfill/Miscellaneous Unit	$20,000	$500,000

Permit for: Waste Pile/Land Treatment/Drip Pad/Containment Building/ Research, Development, and Demonstration	$20,000	$300,000
Corrective Action Permit/Remedial Action Plan (RAP) Approval	$20,000	$300,000
Post-Closure Permit	$20,000	$400,000
Closure of Container/Tank/Drip Pad/ Containment Building	$5,000/unit	$100,000
Closure of Miscellaneous Unit/Incinerator/BIF/Surface Impoundment/ Waste Pile/Land Treatment Unit/Landfill	$5,000/unit	$300,000
Class 1 Modification (requiring Director Approval)	$1,000	$50,000
Class 2 Modification	$5,000	$250,000
Class 3 Modification (for a permit with an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	$20,000	$400,000
Class 3 Modification (for a permit without an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	$10,000	$250,000

2. If the total cost of processing the application identified in the Table is less than the application fee listed in the Table, the DEQ shall refund the difference between the total cost and the amount listed in the Table to the applicant.
   a. Permits and permit modifications other than post-closure permits and closure plans. If the total cost of processing the application is greater than the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit approval. The applicant shall pay the difference in full before the DEQ issues the permit.
   b. Post-closure permits. If the total cost of processing the application is greater than the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit issuance. The applicant shall pay the difference in full within 45 days of the date of the bill.
   c. Withdrawals. In the event of a valid withdrawal of the permit application by the applicant, if the total costs of processing the application are less than the amount paid, the DEQ shall refund the difference. If the total costs are greater than the amount paid, the DEQ shall bill the applicant for the difference, and the applicant shall pay the difference within 45 days of the date of the bill.
3. With an application for a closure plan for a facility, the applicant shall remit to the DEQ an application fee of $5,000 for each hazardous waste management unit involved in the closure plan or $20,000, whichever is less. If the total cost of processing the application, including review and approval of the closure report, is more than the application fee paid, the applicant shall be billed for the difference, and the difference shall be paid in full after the DEQ completes review and approval of the closure report and within 30 days of notification by the Director. If the reasonable cost is less than the fee paid by the applicant, the DEQ shall refund the difference within 30 days of the closure report review and approval. The maximum fee for a closure plan is shown in the Table.
4. The fee for a land treatment demonstration permit issued under § 270.63 for hazardous waste applies toward the $20,000 permit fee for a Part B land treatment permit when the owner or operator seeks to treat or dispose of hazardous waste in land treatment units based on the successful treatment demonstration.
5. The DEQ shall provide the applicant itemized bills at least semiannually for the expenses associated with evaluating the application and approving or denying the permit or permit modification. The following information shall be included in each bill:
   a. The dates of the billing period;
   b. The date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing;
      i. Each review task performed;
      ii. The facility and operational unit involved;
      iii. The hourly rate;
   c. A description and amount of review-related costs as described in subsection (G)(6)(b); and
   d. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.
6. Fees shall consist of processing charges and review-related costs as follows:
   a. Processing charges. From and after April 1, 2023 until April 1, 2024, the DEQ shall calculate the processing charges using a rate of $175 per hour, multiplied by the number of review hours used to evaluate and approve or deny the permit or permit modification. From and after April 1, 2024, the hourly rate shall be adjusted annually each April 1 according to R18-8-260(M)(4).
   b. Review-related costs means any of the following costs applicable to a specific application:
      i. Per diem expenses,
      ii. Transportation costs,
      iii. Reproduction costs,
      iv. Laboratory analysis charges performed during the review of the permit or permit modification,
      v. Public notice advertising and mailing costs,
      vi. Presiding officer expenses for public hearings on a permitting decision,
      vii. Court reporter expenses for public hearings on a permitting decision,
      viii. Facility rentals for public hearings on a permitting decision, and
      ix. Other reasonable and necessary review-related expenses documented in writing by the DEQ and agreed to by the applicant.
   c. Total itemized billings for an application shall not exceed the maximum amounts listed in the Table in this Section.
7. A person may seek review of a bill by filing a written request for reconsideration with the Director.
   a. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation.
   b. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date or within 35 days of the invoice date, whichever is later.

8. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 working days after the date the Director receives the written request.
9. For the purposes of subsection (G), "review hours" means the hours or portions of hours that the DEQ's staff spends on a permit or permit modification. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.

H. § 270.12, titled "Confidentiality of information," paragraph (a) is amended as follows:

(a) In accordance with [R18-8-260(D)(2)], any information submitted to [the DEQ] pursuant to these regulations may be claimed as confidential by the submitter. [Such a claim shall] be asserted at the time of submission in the manner prescribed [in R18-8-260(D)(2)(c)(ii)]. If no [such] claim is made at the time of submission, [the DEQ] may make the information available to the public without further notice. If a claim is asserted, the information [shall] be treated in accordance with the procedures in [R18-8-260(D)(2)(d) and (e).]

I. § 270.13, titled "Contents of Part A of the permit application," paragraph (k)(9) is amended as follows:

(9) Other relevant environmental permits, including [any federal, state, county, city, or fire department] permits.

J. § 270.14, titled "Contents of Part B: General requirements," paragraph (b) is amended by adding the following:

[(23) Any additional information required by the DEQ to evaluate compliance with facility standards and informational requirements of R18-8-264 and R18-8-270.

(24)(i) A signed statement, submitted on a form supplied by the DEQ that demonstrates:

(A) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application; or

(B) In the case of a corporation or business entity, no officer, director, partner, key employee, other person, or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

(ii) Failure to comply with subsection (i), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 and §§ 124.3(d) and 124.5(a), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 and §§ 124.3(d) and 124.5(a).]

K. § 270.30, titled "Conditions applicable to all permits" paragraph (l)(10) is amended as follows:

(10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under [§ 270.30(l)(4),(5), and (6)] at the same time monitoring [(including annual)] reports are submitted. The reports shall contain the information listed in [§ 270.30(l)(6)].

L. § 270.30, titled "Conditions applicable to all permits" paragraph (l) is amended by adding the following:

[All reports listed above shall be submitted to the Director in such a manner that the reports are received within the time periods required under this Article.]

M. § 270.32, titled "Establishing permit conditions," paragraph (a), is amended by deleting the following:

"and 270.3 (considerations under Federal law)."

N. § 270.32, titled "Establishing permit conditions," paragraph (b) is amended by deleting the reference to 40 CFR 267.

O. § 270.32, titled "Establishing permit conditions," paragraph (c) is amended by deleting the second sentence.

P. § 270.42, titled "Permit modification at the request of permittee", paragraph (f)(3), is amended as follows:

(3) An automatic authorization that goes into effect under paragraph (b)(6)(iii) or (v) of this section may be appealed under [Title 41, Chapter 6, Article 10, Arizona Revised Statutes.]

Q. § 270.51, titled "Continuation of expiring permits," paragraph (a) is amended by deleting the following:

"under 5 USC 558(c)."

R. § 270.51, titled "Continuation of expiring permits," paragraph (d) is amended by replacing "EPA-issued" with "EPA, joint EPA/DEQ, or DEQ-issued."

S. § 270.65, titled "Research, development, and demonstration permits," is amended as follows:

(a) The [Director] may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under part 264 or 266. [A research, development, and demonstration] permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this section, and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the [Director] deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(3) Shall include such requirements as the [Director] deems necessary to protect human health and the environment [, including requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and such requirements as the Director] deems necessary regarding testing and providing of information [relevant] to the [Director] with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permits under this section, the [Director] may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements [, or add conditions to the permit in accordance with the permitting procedures set forth in R18-8-270 and R18-8-271,] except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

(c) The [Director] may order an immediate termination of all operations at the facility at any time [the Director] determines that termination is necessary to protect human health and the environment.

(d) Any permit issued under this section may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

T. § 270.110, titled "What must I include in my application for a RAP?," is amended by adding paragraphs (j) and (k) as follows:

[(j) A signed statement, submitted on a form supplied by DEQ that demonstrates:

(1) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.

(2) In the case of a corporation or business entity, no officer, director, partner, key employee, other person or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.

(k) Failure to comply with subsection (j), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 and §§ 124.3(d) and 124.5(a), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 and §§ 124.3(d) and 124.5(a).]

U. § 270.155 titled "May the decision to approve or deny my RAP application be administratively appealed?", paragraph (a), is amended as follows:

(a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny your RAP application [under Title 41, Chapter 6, Article 10, Arizona Revised Statutes.] Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under § 124.15 of this chapter (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit.)

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsections (A) and (K) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1870 renumbered as R18-8-270, subsection (A) amended and a new subsection (S) added effective May 29, 1987 (Supp. 87-2). Amended subsections (B) and (K) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 1202, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). R18-8-271(B)(2) corrected at the request of the Department to reflect the final rulemaking amendments made at 25 A.A.R. 435 (Supp. 19-2). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4). Amended by final rulemaking at 29 A.A.R. 729 (March 17, 2023), with an immediate effective date of March 8, 2023 (Supp. 23-1).

R18-8-271. Procedures for Permit Administration

A. All of 40 CFR 124, revised as of July 1, 2020 (and no future editions), with the exception of §§ 124.1 (b) through (e), 124.2, 124.4, 124.16, 124.20, 124.21, and subparts C, D, and G, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 124 are available at https://www.eCFR.gov. Copies of the Federal Register are available at https://www.federalregister.gov.

B. § 124.1, titled "Purpose and scope," paragraph (a) is replaced by the following:

[This Section contains the DEQ procedures for issuing, modifying, revoking and reissuing, or terminating all hazardous waste management facility permits. This Section describes the procedures the DEQ shall follow in reviewing permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. This Section also includes procedures for assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. The procedures of this Section also apply to denial of a permit for the active life of a RCRA HWM facility or unit under § 270.29.]

C. § 124.3, titled "Application for a permit," is replaced by the following:

[(a)(1)Any person who requires a permit under this Article shall complete, sign, and submit to the Director an application for each permit required under § 270.1. Applications are not required for RCRA permits-by-rule in § 270.60.

(2) The Director shall not begin processing a permit until the applicant has fully complied with the application requirements for that permit. (Refer to §§ 270.10 and 270.13).

(3) An applicant for a permit shall comply with the signature and certification requirements of § 270.11.

(b) Reserved.

(c) The Director shall review for completeness every application for a permit. Each application submitted by a new HWM facility shall be reviewed for completeness by the Director in the order of priority on the basis of hazardous waste capacity established in a list by the Director. The Director shall make the list available upon request. Upon completing the review, the Director shall notify the appli-

cant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing HWM facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for additional information do not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and the Director may take appropriate enforcement actions against an existing HWM facility pursuant to A.R.S. §§ 49-923, 49-924 and 49-925.

(e) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the Director shall notify the applicant and schedule a date for a site visit.

(f) The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in paragraph (c) of this subsection.

(g) For each application from a new HWM facility, the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to do the following:
(1) Prepare a draft permit or Notice of Intent to Deny;
(2) Give public notice;
(3) Complete the public comment period, including any public hearing;
(4) Make a decision to issue or deny a final permit; and
(5) Issue a final decision.

D. § 124.5, titled "Modification, revocation and reissuance, or termination of permits," is replaced by the following:

[(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §§ 270.41 or 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Director decides the request is not justified, the Director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(c) Modification, revocation or reissuance of permits procedures.
(1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 270.41 or 270.42(c), the Director shall prepare a draft permit under § 124.6, incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.
(2) In a permit modification under this [subsection], only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. The permit modification shall have the same expiration date as the unmodified permit. When a permit is revoked and reissued under this subsection, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
(3) "Classes 1 and 2 modifications" as defined in § 270.42 are not subject to the requirements of this subsection.

(d) If the Director tentatively decides to terminate a permit under § 270.43, the Director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6. In the case of permits that are processed or issued jointly by both the DEQ and the EPA, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibilities from the EPA to the state.

(e) The Director shall base all draft permits, including notices of intent to terminate, prepared under this subsection on the administrative record as defined in § 124.9.]

E. § 124.6, titled "Draft permits," is replaced by the following:

(a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Director tentatively decides to deny the permit application, the Director shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under (e) of this subsection.

(c) Reserved.

(d) If the Director decides to prepare a draft permit, the Director shall prepare a draft permit that contains the following information:
(1) All conditions under §§ 270.30 and 270.32, unless not required under 40 CFR 264 and 265;
(2) All compliance schedules under § 270.33;
(3) All monitoring requirements under § 270.31; and
(4) Standards for treatment, storage, and/or disposal and other permit conditions under § 270.30.

(e) All draft permits prepared by the DEQ under this subsection shall be accompanied by a statement of basis (§ 124.7,) or fact sheet (§ 124.8,), and shall be based on the administrative record (§ 124.9,), publicly noticed (§ 124.10,) and made available for public comment (§ 124.11,). The Director shall give notice of opportunity for a public hearing (§ 124.12,), issue a final decision (§ 124.15,) and respond to comments (§ 124.17,).

F. § 124.7, titled "Statement of basis," is replaced by the following:

The DEQ shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

G. § 124.8, titled "Fact sheet," is replaced by the following:

(a) The DEQ shall prepare a fact sheet for every draft permit for a new HWM facility, and for every draft permit that the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.
(b) The fact sheet shall include, when applicable:
(1) A brief description of the type of facility or activity that is the subject of the draft permit;
(2) The type and quantity of wastes, that are proposed to be or are being treated, stored, or disposed;
(3) Reserved.
(4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9;
(5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
(6) A description of the procedures for reaching a final decision on the draft permit including:
(i) The beginning and ending dates of the comment period under §§ 124.10 and the address where comments will be received;
(ii) Procedures for requesting a hearing and the nature of that hearing; and
(iii) Any other procedures by which the public may participate in the final decision; and
(7) Name and telephone number of a person to contact for additional information.
(8) Reserved.

H. § 124.9 titled "Administrative record for draft permits" is replaced by the following:
(a) The provisions of a draft permit prepared under § 124.6 shall be based on the administrative record defined in this subsection.
(b) For preparing a draft permit under § 124.6, the record consists of:
(1) The application, if required, and any supporting data furnished by the applicant, subject to paragraph (e) of this subsection;
(2) The draft permit or notice of intent to deny the application or to terminate the permit;
(3) The statement of basis under §§ 124.7 or fact sheet under § 124.8;
(4) All documents cited in the statement of basis or fact sheet; and
(5) Other documents contained in the supporting file for the draft permit.
(6) Reserved.
(c) Material readily available at the DEQ or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this subsection, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.
(d) This subsection applies to all draft permits when public notice was given after the effective date of these rules.
(e) All items deemed confidential pursuant to A.R.S. § 49-928 shall be maintained separately and not disclosed to the public.

I. § 124.10, titled "Public notice of permit actions and public comment period," is replaced by the following:
(a) Scope.
(1) The Director shall give public notice that the following actions have occurred:
(i) A permit application has been tentatively denied under § 124.6(b);
(ii) A draft permit has been prepared under § 124.6(d); and
(iii) A hearing has been scheduled under § 124.12.
(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b). Written notice of that denial shall be given to the requester and to the permittee.
(3) Public notices may describe more than one permit or permit actions.
(b) Timing.
(1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this subsection shall allow at least 45 days for public comment.
(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)
(c) Methods. Public notice of activities described in paragraph (a)(1) of this subsection shall be given by the following methods:
(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories of permits):
(i) An applicant;
(ii) Any other agency which the Director knows has issued or is required to issue a HWM facility permit or any other federal environmental permit for the same facility or activity;
(iii) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes). For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States;
(iv) Reserved.
(v) Reserved.
(vi) Reserved.
(vii) Reserved.
(viii)Reserved.
(ix) Persons on a mailing list developed by:
(A) Including those who request in writing to be on the list;
(B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state-funded

newsletters, environmental bulletins, or state law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to the request.); and

(x) (A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(B) To each state agency having any authority under state law with respect to the construction or operation of the facility;

(2) By newspaper publication and radio announcement broadcast, as follows:

(i) Reserved.

(ii) For all permits, publication of a notice in a daily or weekly major local newspaper of general circulation within the area affected by the facility or activity, at least once, and in accordance with the provisions of paragraph (b) of this subsection; and

(iii) For all permits, a radio announcement broadcast over two local radio stations serving the affected area at least once during the period two weeks prior to the public hearing. The announcement shall contain:

(A) A brief description of the nature and purpose of the hearing;

(B) The information described in items (i), (ii), (iii), (iv), and (vii) of subparagraph (d)(1) of this subsection;

(C) The date, time, and place of the hearing; and

(D) Any additional information considered necessary or proper; or

(3) Reserved.

(4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) (1) Each public notice issued under this Article shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by such permit;

(iii) A brief description of the business conducted at the facility or activity described in the permit application;

(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the statement of basis or fact sheet;

(v) A brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of any hearing that shall be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(vi) The location of the administrative record required by § 124.9, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant (except for confidential information pursuant to A.R.S. § 49-928) is available as part of the administrative record;

(vii) The locations where a copy of the application and the draft permit may be inspected and the times at which these documents are available for public review; and

(viii) Reserved.

(ix) Any additional information considered necessary or proper.

(2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this subsection, the public notice of a hearing under § 124.12 shall contain the following information:

(i) Reference to the date of previous public notices relating to the permit;

(ii) Date, time, and place of the hearing; and

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(iv) Reserved.

(e) In addition to the general public notice described in paragraph (d)(1) of this subsection, all persons identified in paragraphs (c)(1)(i), (ii), and (iii) of this subsection shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).

J. § 124.11, titled "Public comments and requests for public hearings," is replaced by the following:

During the public comment period provided under § 124.10, any person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 124.17.

K. § 124.12, titled "Public hearings," is replaced by the following:

[(a) (1) The Director shall hold a public hearing whenever the Director finds, on the basis of requests, a significant degree of public interest in a draft permit.

(2) The Director may also hold a public hearing at the Director's discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3) The Director shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing has been received within 45 days of public notice under § 124.10(b)(1). Whenever possible the Director shall schedule a hearing under this subsection at a location convenient to the nearest population center to the proposed facility.

(4) Public notice of the hearing shall be given as specified in § 124.10.

(b) Reserved.

(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may

be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 124.10 shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(e) Reserved.]

L. § 124.13, titled "Obligation to raise issues and provide information during the public comment period," is replaced by the following:

[All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10. Any supporting materials that a commenter submits shall be included in full and shall not be incorporated by reference, unless they are already part of the administrative record in the same proceeding or consist of state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the DEQ as directed by the Director.]

M. § 124.14, titled "Reopening of the public comment period," is replaced by the following:

(a) (1) The Director may order the public comment period reopened if the procedures of this paragraph could expedite the decision-making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than 60 days after public notice under paragraph (a)(2) of this subsection, set by the Director. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the Director.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) apply.

(3) On the Director's own motion or on the request of any person, the Director may direct that the requirements of paragraph (a)(1) of this subsection shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this subsection will substantially expedite the decision-making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this subsection. Commenters may request longer comment periods and they shall be granted under § 124.10 to the extent they appear necessary.

(b) If any data, information, or arguments submitted during the public comment period, including information or arguments required under § 124.13, appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under §§ 124.6;

(2) Prepare a revised statement of basis under § 124.7, a fact sheet or revised fact sheet under this § 124.8, and reopen the comment period under this subsection; or,

(3) Reopen or extend the comment period under § 124.10 to give interested persons an opportunity to comment on the information or arguments submitted.

(c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 shall define the scope of the reopening.

(d) Reserved.

(e) Public notice of any of the above actions shall be issued under §§ 124.10.

N. § 124.15, titled "Issuance and effective date of permit," is replaced by the following:

(a) After the close of the public comment period under § 124.10 on a draft permit, the Director shall issue a final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29. The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit or a decision to terminate a permit. For purposes of this subsection, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 becomes effective on the date specified by the Director in the final permit notice.

(1) Reserved.

(2) Reserved.

(3) Reserved.

O. § 124.17, titled "Response to comments," is replaced by the following:

(a) At the time that any final decision to issue a permit is made under § 124.15, the Director shall issue a response to comments. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18. If new points are raised or new material supplied during the public comment period, the DEQ may document its response to those matters by adding new materials to the administrative record.

(c) The response to comments shall be available to the public.

P. § 124.18, titled "Administrative record for final permit" is replaced by the following:

(a) The Director shall base final permit decisions under § 124.15 on the administrative record defined in this subsection.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit, and:

(1) All comments received during the public comment period provided under § 124.10, including any extension or reopening under § 124.14;

(2) The tape or transcript of any hearing(s) held under § 124.12;

(3) Any written materials submitted at such a hearing;

(4) The response to comments required by § 124.17 and any new material placed in the record under that subsection;

(5) Reserved.

(6) Other documents contained in the supporting file for the permit; and

(7) The final permit.

(c) The additional documents required under (b) of this subsection shall be added to the record as soon as possible after their receipt or publication by the DEQ. The record shall be complete on the date the final permit is issued.

(d) This subsection applies to all final permits when the draft permit was subject to the administrative record requirement of § 124.9.

(e) Material readily available at the DEQ, or published materials which are generally available and which are included in the administrative record under the standards of this subsection or of § 124.17, ("Response to comments"), need not be physically included in the same file as the rest of the record as long as the materials and their location are specifically identified in the statement of basis or fact sheet or in the response to comments.

Q. § 124.19, titled "Appeal of RCRA, UIC, and PSD permits," is replaced by the following:

A final permit decision (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit issued under § 124.15 is an appealable agency action as defined in A.R.S. § 41-1092 and is subject to appeal under A.R.S. Title 41, Ch. 6, Art. 10.

R. § 124.31(a) titled "Pre-application public meeting and notice" is amended by deleting the following sentence:

"For the purpose of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271."

S. § 124.32(a) titled "Public notice requirements at the application stage" is amended by deleting the following sentence:

"For the purpose of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271."

T. § 124.33(a) titled "Information repository" is amended by deleting the following sentence:

"For the purpose of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271."

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1871 renumbered as R18-8-271; subsections (A), (C), (E), (I), (L) and (M) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (C) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4).

R18-8-272. Reserved

R18-8-273. Standards for Universal Waste Management

A. All of 40 CFR 273, revised as of July 1, 2020 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 273 are available at https://www.eCFR.gov.

B. § 273.13, titled "Waste management", paragraphs (c)(2)(iii) and (c)(2)(iv) are amended as follows:

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]

C. § 273.33, titled "Waste management", paragraphs (c)(2)(iii) and (c)(2)(iv) are amended as follows:

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks [from] broken ampules from that containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]

Historical Note

Adopted effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4).

R18-8-274. Reserved

R18-8-275. Reserved

R18-8-276. Reserved

R18-8-277. Reserved

R18-8-278. Reserved

R18-8-279. Reserved

R18-8-280. Compliance

A. Inspection and entry. For purposes of ensuring compliance with the provisions of HWMA, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes, including used oil that may be classified as hazardous waste pursuant to A.R.S. Title 49, Chapter 4, Article 7, and hazardous secondary materials, shall, upon request of any officer, employee, or representative of the DEQ duly designated by the Director, furnish information pertaining to such wastes and permit such person at reasonable times:

1. To enter any establishment or other place maintained by such person where such wastes are or have been generated, stored, treated, disposed, or transported from;
2. To have access to, and to copy all records relating to such wastes;
3. To inspect any facilities, equipment (including monitoring and control equipment), practices, and operations, relating to such wastes;
4. To inspect, monitor, and obtain samples from such person of any such wastes and of any containers or labeling for such wastes; and
5. To record any inspection by use of written, electronic, magnetic and photographic media.

B. Penalties. A person who violates HWMA or any permit, rule, regulation, or order issued pursuant to HWMA is subject to civil and/or criminal penalties pursuant to A.R.S. §§ 49-923 through 49-925, as amended. Nothing in this Article shall be construed to limit the Director's or Attorney General's enforcement powers authorized by law including but not limited to the seeking or recovery of any civil or criminal penalties.

C. A certification statement may be required on written submittals to the DEQ in response to Compliance Orders or in response to information requested pursuant to subsection (A) of this Section. In addition, the DEQ may request in writing that a certification statement appear in any written submittal to the DEQ. The certification statement shall be signed by a person authorized to act on behalf of the company or empowered to make decisions on behalf of the company on the matter contained in the document.

D. Site assessment plan.

1. The requirement to develop a site assessment plan shall be contained in a Compliance Order. The Director may require an owner or operator to develop a site assessment plan based on one or more of the following conditions:
   a. Unauthorized disposal or discharges of hazardous waste or hazardous waste constituents which have not been remediated.
   b. Results of environmental sampling by the DEQ that indicate the presence of a hazardous waste or hazardous waste constituents.
   c. Visual observation of unauthorized disposal or discharges which cannot be verified pursuant to § 262.11, § 264.13, or § 265.13 as not containing a hazardous waste or hazardous waste constituents.
   d. Other evidence of disposal or discharges of hazardous waste or hazardous waste constituents into the environment which have not been remediated.
2. The site assessment plan shall describe in detail the procedures to determine the nature, extent and degree of hazardous waste contamination in the environment.
3. The site assessment plan shall be approved by the DEQ before implementation.
4. The site assessment shall be conducted and the results shall be submitted to the DEQ within the time limitations established by the DEQ.
5. The DEQ may request in writing that a site assessment plan be conducted. The DEQ will review a voluntarily submitted site assessment plan if the plan satisfies the requirements listed in subsections (D)(2) through (4).

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (B) effective June 27, 1985 (Supp. 85-3). Former Section R9-8-1880 renumbered as Section R18-8-280, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended October 11, 1989 (Supp. 89-4). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective June 13, 1996 (Supp. 96-2). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). Amended by final rulemaking at 26 A.A.R. 2949, with an immediate effective date of November 3, 2020 (Supp. 20-4).

ARTICLE 3. RECODIFIED

Title 18, Chapter 8, Article 3, consisting of Sections R18-8-301 through R18-8-305, R18-8-307, Table A, Exhibit 1, and Appendices A and B, recodified to Title 18, Chapter 13, Article 13, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-301. Recodified

Historical Note

Adopted effective August 16, 1993 (Supp. 93-3). Amended effective March 24, 1994 (Supp. 94-1). Section

recodified to A.A.C. R18-13-1301, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-302. Recodified

Historical Note

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-303. Recodified

Historical Note

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-304. Recodified

Historical Note

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-305. Recodified

Historical Note

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-306. Repealed

Historical Note

Emergency rule adopted effective February 22, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Emergency rule adopted again effective May 26, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired. Emergency rule adopted again effective August 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 2, 1993 (Supp. 93-4). The permanent rule that was adopted effective December 2, 1993, was inadvertently published without the changes the agency made. Those changes appear here. (Supp. 95-4). Section repealed by summary rulemaking with an interim effective date of July 16, 1999, filed in the Office of the Secretary of State June 25, 1999 (Supp. 99-2). Interim effective date of July 16, 1999 now the permanent effective date (Supp. 99-4).

R18-8-307. Recodified

Historical Note

Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Table A. Recodified

Historical Note

Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Table A recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Exhibit 1. Recodified

Historical Note

Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Exhibit 1 recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix A. Recodified

Historical Note

Adopted effective August 16, 1993 (Supp. 93-3). Appendix A recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix B. Recodified

Historical Note

Adopted effective August 16, 1993 (Supp. 93-3). Appendix B recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 4. RECODIFIED

Title 18, Chapter 8, Article 4, consisting of Section R18-8-402, recodified to Title 18, Chapter 13, Article 9, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-401. Expired

Historical Note

Adopted effective December 21, 1977 (Supp. 77-6). Former Section R9-8-1711 renumbered without change as Section R18-8-401 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-402. Recodified

Historical Note

Adopted effective December 21, 1977 (Supp. 77-6). Former Section R9-8-1717 renumbered without change as Section R18-8-402 (Supp. 87-3). Section recodified to A.A.C. R18-13-902, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 5. RECODIFIED

Title 18, Chapter 8, Article 5, consisting of Sections R18-8-502 through R18-8-512, recodified to Title 18, Chapter 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-501. Expired

Historical Note

Former Section R9-8-411 renumbered without change as Section R18-8-501 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-502. Recodified

Historical Note

Former Section R9-8-412 renumbered without change as Section R18-8-502 (Supp. 87-3). Section recodified to

A.A.C. R18-13-302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-503. Recodified

Historical Note

Former Section R9-8-413 renumbered without change as Section R18-8-503 (Supp. 87-3). Section recodified to A.A.C. R18-13-303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-504. Recodified

Historical Note

Former Section R9-8-414 renumbered without change as Section R18-8-504 (Supp. 87-3). Section recodified to A.A.C. R18-13-304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-505. Recodified

Historical Note

Former Section R9-8-415 renumbered without change as Section R18-8-505 (Supp. 87-3). Section recodified to A.A.C. R18-13-305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-506. Recodified

Historical Note

Former Section R9-8-416 renumbered without change as Section R18-8-506 (Supp. 87-3). Section recodified to A.A.C. R18-13-306, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-507. Recodified

Historical Note

Former Section R9-8-421 renumbered without change as Section R18-8-507 (Supp. 87-3). Section recodified to A.A.C. R18-13-307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-508. Recodified

Historical Note

Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-8-426 renumbered without change as Section R18-8-508 (Supp. 87-3). Section recodified to A.A.C. R18-13-308, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-509. Recodified

Historical Note

Former Section R9-8-427 renumbered without change as Section R18-8-509 (Supp. 87-3). Section recodified to A.A.C. R18-13-309, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-510. Recodified

Historical Note

Former Section R9-8-428 renumbered without change as Section R18-8-510 (Supp. 87-3). Section recodified to A.A.C. R18-13-310, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-511. Recodified

Historical Note

Former Section R9-8-431 renumbered without change as Section R18-8-511 (Supp. 87-3). Section recodified to A.A.C. R18-13-311, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-512. Recodified

Historical Note

Amended effective August 6, 1976 (Supp. 76-4). Correction in spelling, paragraph (5), “feeding”; former Section R9-8-432 renumbered without change as Section R18-8-512 (Supp. 87-3). Section recodified to A.A.C. R18-13-312, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-513. Expired

Historical Note

Adopted effective March 14, 1979 (Supp. 79-2). Former Section R9-8-433 renumbered without change as Section R18-8-513 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

ARTICLE 6. RECODIFIED

Existing Sections in Article 6 recodified to 18 A.A.C. 13, Article 11 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-601. Expired

Historical Note

Former Section R9-8-1211 renumbered without change as Section R18-8-601 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-602. Recodified

Historical Note

Former Section R9-8-1212 renumbered without change as Section R18-8-602 (Supp. 87-3). Section R18-8-602 recodified to R18-13-1102 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-603. Recodified

Historical Note

Former Section R9-8-1213 renumbered without change as Section R18-8-603 (Supp. 87-3). Section R18-8-603 recodified to R18-13-1103 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-604. Recodified

Historical Note

Former Section R9-8-1214 renumbered without change as Section R18-8-604 (Supp. 87-3). Section R18-8-604 recodified to R18-13-1104 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-605. Expired

Historical Note

Former Section R9-8-1215 renumbered without change as Section R18-8-605 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-606. Recodified

Historical Note

Former Section R9-8-1216 renumbered without change as Section R18-8-606 (Supp. 87-3). Section R18-8-606

recodified to R18-13-1106 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-607. Expired

Historical Note
Former Section R9-8-1221 renumbered without change as Section R18-8-607 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-608. Recodified

Historical Note
Former Section R9-8-1222 renumbered without change as Section R18-8-608 (Supp. 87-3). Section R18-8-608 recodified to R18-13-1108 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-609. Expired

Historical Note
Former Section R9-8-1223 renumbered without change as Section R18-8-609 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-610. Expired

Historical Note
Former Section R9-8-1224 renumbered without change as Section R18-8-610 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-611. Expired

Historical Note
Former Section R9-8-1225 renumbered without change as Section R18-8-611 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-612. Recodified

Historical Note
Former Section R9-8-1231 renumbered without change as Section R18-8-612 (Supp. 87-3). Section R18-8-612 recodified to R18-13-1112 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-613. Recodified

Historical Note
Former Section R9-8-1232 renumbered without change as Section R18-8-613 (Supp. 87-3). Section R18-8-613 recodified to R18-13-1113 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-614. Recodified

Historical Note
Former Section R9-8-1233 renumbered without change as Section R18-8-614 (Supp. 87-3). Section R18-8-614 recodified to R18-13-1114 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-615. Recodified

Historical Note
Former Section R9-8-1234 renumbered without change as Section R18-8-615 (Supp. 87-3). Section R18-8-615 recodified to R18-13-1115 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-616. Recodified

Historical Note
Former Section R9-8-1235 renumbered without change as Section R18-8-616 (Supp. 87-3). Section R18-8-616 recodified to R18-13-1116 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-617. Recodified

Historical Note
Former Section R9-8-1236 renumbered without change as Section R18-8-617 (Supp. 87-3). Section R18-8-617 recodified to R18-13-1117 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-618. Recodified

Historical Note
Former Section R9-8-1241 renumbered without change as Section R18-8-618 (Supp. 87-3). Section R18-8-618 recodified to R18-13-1118 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-619. Recodified

Historical Note
Former Section R9-8-1242 renumbered without change as Section R18-8-619 (Supp. 87-3). Section R18-8-619 recodified to R18-13-1119 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-620. Recodified

Historical Note
Former Section R9-8-1243 renumbered without change as Section R18-8-620 (Supp. 87-3). Section R18-8-620 recodified to R18-13-1120 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-621. Expired

Historical Note
Former Section R9-8-1244 renumbered without change as Section R18-8-621 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

ARTICLE 7. RECODIFIED

18 A.A.C. 8, Article 7, consisting of Sections R18-8-701 through R18-8-710, recodified to Title 18, Chapter 13, Article 12, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-701. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1201, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-702. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1202, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-703. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1203, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-704. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1204, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-705. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1205, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-706. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1206, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-707. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1207, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-708. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1208, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-709. Recodified

Historical Note
Emergency rule adopted effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency rule adopted again effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired (Supp. 93-3). Emergency rule permanently adopted without change effective February 1, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1209, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-710. Recodified

Historical Note
Emergency rule adopted effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency rule adopted again effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired (Supp. 93-3). Emergency rule permanently adopted without change effective February 1, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1210, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 8. RESERVED

ARTICLE 9. RESERVED

ARTICLE 10. RESERVED

ARTICLE 11. RESERVED

ARTICLE 12. RESERVED

ARTICLE 13. RESERVED

ARTICLE 14. RESERVED

ARTICLE 15. RESERVED

ARTICLE 16. RECODIFIED

Article 16, consisting of Sections R18-8-1601 through R18-8-1614, recodified to 18 A.A.C. 13, Article 16 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1601. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1601 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1602. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1603. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1604. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1605. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1605 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1606. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1607. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1607 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1608. Recodified

Historical note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1609. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1609 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1610. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1610 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1611. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1611 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1612. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1613. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1614. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through regulating the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

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

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and not more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Use any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department shall establish by rule a fee as a condition of licensure, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, articles 8 and 9 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on the direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203 except that state agencies are exempt from paying the fees.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-152. Soil remediation standards; restrictions on property use

A. Notwithstanding any other remediation levels established under this title, the director shall approve remediation levels calculated in accordance with this subsection and shall accomplish the following for remediation of contaminated soil to protect public health and the environment in accordance with the applicable provisions of this title and section 33-434.01:

1. Establish predetermined risk based standards by rule. At a minimum, separate standards shall be established for residential and nonresidential exposure assumptions. Until risk based remediation standards are formally established by rule, the director shall establish interim standards adopting:

(a) The Arizona health based guidance levels developed by the department of health services to include a health based standard for total petroleum hydrocarbons as the standards for residential uses.

(b) The guidance levels in subdivision (a) of this paragraph modified to reflect the United States environmental protection agency published assumptions for exposures that are not residential as the standards for nonresidential uses. The initial adoption of these interim standards shall be effective by December 15, 1995 and shall be deemed emergency rules pursuant to section 41-1026.

2. Issue guidance on methods for calculating case-by-case, site specific risk based remediation levels in accordance with risk assessment methodologies that are accepted in the scientific community and shall not preclude the use of newly developed risk assessment methodologies that are accepted in the scientific community.

B. The owner of a property may elect to remediate the property to meet a site specific residential or nonresidential risk based remediation standard or a predetermined residential or nonresidential risk based remediation standard. The property is suitable for unrestricted use if it has been remediated without the use of engineering or institutional controls to meet either of the following:

1. The predetermined residential risk based remediation standard.

2. A site specific risk based hazard index equal to or less than one or a risk of carcinogenic health effects that is less than or equal to the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(i)(A)(2), based on residential exposure.

C. If the owner has elected to use an engineering or institutional control to meet the standards prescribed in subsection B of this section, or if the owner has elected to leave contamination on the property that exceeds the applicable residential standard for the property at a site remediated under programs, settlements or orders administered by the department under this title, the owner shall record in each county where the property is located an institutional control that consists of a restrictive covenant that is labeled "declaration of environmental use restriction" pertaining to the area of the property necessary to protect the public health and the environment. A person who is conducting a remedial action, remediation, corrective action or response action that requires an institutional or engineering control and who is not the owner of the property shall obtain written consent from the owner before implementing the institutional control or constructing the engineering control. On implementation of the institutional or engineering control, the owner shall record a declaration of environmental use restriction in each county where the property is located. If the institutional control or engineering control will affect right-of-way that is owned, maintained or controlled by a public entity for public benefit, the person shall also obtain the public entity's written consent before implementing the institutional control or constructing the engineering control. The declaration of environmental use restriction shall limit by legal description:

1. The area of the property where the institutional control or engineering control shall be maintained.

2. The area of the property to be restricted to nonresidential use, because contamination remains on the property above the standards prescribed in subsection B, paragraph 1 or 2 of this section.

D. At the written request of the owner of property that is subject to a declaration of environmental use restriction, the director shall determine whether release or modification of the declaration of environmental use restriction is appropriate. If a release has been requested, the director shall make this determination within sixty days after the date of the property owner's request. If the director determines that release of the declaration of environmental use restriction is appropriate, the director shall record in each county where the property is located a notice releasing the declaration of environmental use restriction. The declaration of environmental use restriction is perpetual unless released pursuant to this section. The director shall determine that release of a declaration of environmental use restriction is appropriate if the property has been remediated, without the use of institutional controls or engineering controls, to either:

1. Meet predetermined risk based remedial standards for residential exposure assumptions.

2. Present a risk based hazard index equal to or less than one from noncancer health effects and a risk estimate of carcinogenic health effects equal to or less than the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(i)(A)(2).

E. The department shall establish a repository in the department listing sites remediated under programs administered by the department under this title. The repository shall include the name and address of the owner of the property, when the remediation was conducted, the legal description and street address of the property, the applicability of section 33-434.01, the type of financial assurance mechanism that is being used, if applicable, and a description of the purpose of the declaration of environmental use restriction.

F. When recorded, an owner's declaration of environmental use restriction under subsection B of this section is a covenant that runs with and burdens the property, binds the owner and the owner's heirs, successors and assigns and inures to the benefit of the department and the state. If notice of the declaration of environmental use restriction that includes a specific description of the area of the property that is subject to the declaration of environmental use restriction is contained in the repository maintained by the department pursuant to subsection E of this section, a declaration of environmental use restriction may not be extinguished, limited or impaired through any of the following:

1. Sale of a real property tax lien.

2. Foreclosure of a tax lien.

3. Foreclosure of any mortgage, deed of trust or other encumbrance or lien on the property.

4. Adverse possession.

5. Exercise of eminent domain.

6. Application of the doctrine of abandonment, the doctrine of waiver or any other common law doctrine.

G. Each party to a declaration of environmental use restriction shall incorporate the terms of the declaration of environmental use restriction into any lease, license or other agreement that is signed by the party and that grants a right with respect to the property that is subject to the declaration of environmental use restriction. The incorporation may be in full or by reference.

H. A declaration of environmental use restriction is sufficient if it contains all of the following information:

1. A legal description and the address of the area of the property that is subject to the declaration.

2. The date that remediation was completed and a map of the area of the property that is subject to the declaration.

3. A description of the environmental contaminants that were the subject of the remediation, remedial action, corrective action or response action.

4. A statement that more detailed information is available at the department, including the address at which that information will be maintained.

5. A notarized signature of a department official indicating approval of the declaration of environmental use restriction.

6. The notarized signature of the owner.

I. If institutional controls are used in addition to a declaration of environmental use restriction to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection H of this section, shall include all of the following:

1. A statement documenting any requirements for maintenance of the institutional control, including a description of the institutional control and the reason it must remain in place to protect public health and the environment.

2. A statement indicating that if any person desires to cancel or modify the institutional control in the future, the person must obtain prior written approval from the department pursuant to this section.

3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that institutional controls are being maintained.

J. If engineering controls are used to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection H of this section, shall include all of the following:

1. A statement of all requirements for maintenance of the engineering control including a description of the control, the date it was constructed and the reason it must remain in place to protect public health and the environment.

2. A statement that if any person desires to change the engineering controls in the future that person shall obtain prior written approval from the department.

3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that engineering controls are being maintained.

4. A brief description of the engineering control plan and financial assurance mechanism prescribed by section 49-152.01, if applicable.

K. When the declaration of environmental use restriction is recorded or modified, an owner electing to use institutional or engineering controls to satisfy the requirements of this section shall pay the department a fee established by rule. If the control is an institutional control, the owner shall submit to the department a written report once each calendar year regarding the status of the institutional control. If the control is an engineering control, the owner shall maintain the engineering control on the property to ensure that it continues to protect public health and the environment and shall inspect each engineering control at least once each calendar year. Within thirty days after each inspection, the owner shall submit to the department a written report that:

1. Describes the condition of the engineering control.

2. States the nature and cost of all restoration made to the engineering control during the calendar year.

3. Includes current photographs of the engineering control.

4. Describes the status of the financial assurance mechanism prescribed by section 49-152.01, if applicable, and a certification that the financial assurance mechanism is being maintained.

L. The department shall provide a copy of the declaration of environmental use restriction to the local jurisdiction with zoning and development plan approval for the property. The receipt of this copy does not create any new obligation or confer additional powers on the local jurisdiction. A declaration of environmental use restriction does not authorize a use of property that is otherwise prohibited by zoning ordinances or other ordinances or laws. A declaration of environmental use restriction may include activity limitations and use restrictions that would otherwise be permitted by zoning ordinances or other ordinances or laws.

M. The department shall adopt rules as necessary to implement this section. These rules may be combined with any rules necessary to implement section 49-158.

N. The department may enter on the property at all reasonable times to assess the condition of each engineering control. When the department enters on property to assess the condition of an engineering control, the department shall:

1. Provide twenty-four hours' advance notice of the entry to the property owner, if practicable.

2. Allow the owner or an authorized representative of the owner to accompany the department representative.

3. Present photographic identification on entry of the property.

4. Provide the owner or an authorized representative of the owner with notice of the right to have a duplicate sample or split of any sample taken during the inspection if the duplicate or split of any sample would not prohibit an analysis from being conducted or render an analysis inconclusive.

O. Nothing in this section shall preclude the department from initiating an action under other provisions of state or federal law.

49-922. Department rules and standards; prohibited permittees

A. The director shall adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of the federal act. Federal hazardous waste regulations may be adopted by reference. The director shall not adopt a nonprocedural standard that is more stringent than or conflicts with those found in 40 Code of Federal Regulations parts 260 through 268, 270 through 272, 279 and 124. The director shall not identify a waste as hazardous if not so identified in the federal hazardous waste regulations unless the director finds, based on all the factors in 40 Code of Federal Regulations section 261.11(a)(1), (2), or (3), that the waste may cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed or otherwise managed.

B. These rules shall establish criteria and standards for the characteristics, identification, listing, generation, transportation, treatment, storage and disposal of hazardous waste within this state. In establishing the standards the director shall, where appropriate, distinguish between new and existing facilities. The criteria and standards shall include requirements respecting:

1. Maintaining records of hazardous waste identified under this article and the manner in which the waste is generated, transported, treated, stored or disposed.

2. Submitting reports, data, manifests and other information necessary to ensure compliance with such standards.

3. Transporting hazardous waste, including appropriate packaging, labeling and marking requirements and requirements respecting the use of a manifest system, which are consistent with the regulations of the state and United States departments of transportation governing transporting hazardous materials.

4. The operation, maintenance, location, design and construction of hazardous waste treatment, storage or disposal facilities, including such additional qualifications as to ownership, continuity of operation, contingency plans, corrective actions and abatement of continuing releases, monitoring and inspection programs, personnel training, closure and postclosure requirements and financial responsibility as may be necessary and appropriate.

5. Requiring a permit for a hazardous waste treatment, storage or disposal facility including the modification and termination of permits, the authority to continue activities and permits existing on July 27, 1983 consistent with the federal hazardous waste regulations and the payment of reasonable fees. The director shall establish and collect reasonable fees from the applicant to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit. The director shall establish by rule an application fee to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the hazardous waste management fund established by section 49-927.

6. Providing the right of entry for inspection and sampling to ensure compliance with the standards.

7. Providing for appropriate public participation in developing, revising, implementing, amending and enforcing any rule, guideline, information or program under this article consistent with the federal hazardous waste program.

C. The director may refuse to issue a permit for a facility for storage, treatment or disposal of hazardous waste to a person if any of the following applies:

1. The person fails to demonstrate sufficient reliability, expertise, integrity and competence to operate a hazardous waste facility.

2. The person has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

3. In the case of a corporation or business entity, if any of its officers, directors, partners, key employees or persons or business entities holding ten percent or more of its equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

D. This article does not affect the validity of any existing rules adopted by the director that are equivalent to and consistent with the federal hazardous waste regulations until new rules for hazardous waste are adopted.

E. This article does not authorize the regulation of small quantity generators as defined by 40 Code Of Federal Regulations part 262 in a manner inconsistent with the federal hazardous waste regulations. However, the director may require reports of any small quantity generator or group of small quantity generators regarding the treatment, storage, transportation, disposal or management of hazardous waste if the hazardous waste of such generator or generators may pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed or otherwise managed.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 16

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: March 13, 2025

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 16

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to one (1) rule in Title 9, Chapter 22, Article 16 regarding Hospital Presumptive Eligibility. The Hospital Presumptive Eligibility (HPE) process that allows qualified hospitals to temporarily enroll persons who meet specific federal criteria for full Medicaid benefits in AHCCCS immediately. Rule R9-22-1601 provides the eligibility bases for the hospital presumptive eligibility program.

In the prior 5YRR for this rule, which was approved by the Council in April 2020, AHCCCS indicates there was no proposed course of action.

Proposed Action

In the current report, AHCCCS does not propose to take any action regarding this rule.

1. Has the agency analyzed whether the rules are authorized by statute?

AHCCCS cites both general and specific statutory authority for this rule.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

AHCCCS states that when this rulemaking was enacted in 2015, AHCCCS was unable to calculate the cost to the State, businesses, or the public and in 2019, there was no utilization by any of the six hospitals registered in the program. The Agency indicates that all six hospitals allowed their system credential to lapse and were terminated from the program over four years ago. The Agency states, currently, AHCCCS has no hospitals registered in the HPE program.

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

AHCCCS states that in 2015, the HPE program was enacted by AHCCCS pursuant to the Affordable Care Act (ACA). AHCCCS states, when the rulemaking for Article 16 was enacted, AHCCCS was unable to estimate any costs due to a knowledge gap regarding how many AHCCCS members might be found eligible through this new initiative. AHCCCS indicates that hospitals found the risk of bearing the cost of member's care for any patient found ineligible after the quality check completed by AHCCCS to outweigh the benefits of the program and have been encouraging patients to apply for benefits by more traditional means through the use of community assistors. The HPE program continues to be an option for hospitals to register as required under the ACA.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS indicates it has not received any written criticisms of the rule in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

AHCCCS indicates the rule is clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

AHCCCS indicates the rule is consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

AHCCCS indicates the rule is effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

AHCCCS indicates the rule is currently enforced as written.

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

AHCCCS indicates the rule is not more stringent than corresponding federal law, specifically, 42 U.S.C. § 1396a(a)(47)(B) and 42 C.F.R. § 435.1110.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

AHCCCS indicates the rule does not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR from the AHCCCS relates to one (1) rule in Title 9, Chapter 22, Article 16 regarding Hospital Presumptive Eligibility. AHCCCS indicates the rule is clear, concise, understandable, consistent, effective, and enforced as written. As such, AHCCCS does not propose to take any action regarding this rule.

Council staff recommends approval of this report.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

801 E. Jefferson Street
Phoenix, AZ 85034
602.417.4000

KATIE HOBBS
GOVERNOR

CARMEN HEREDIA
DIRECTOR

December 31, 2024

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 16

Dear Ms. Klein,

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 16 due on December 31, 2024.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4116 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,

Nicole Fries
Chief Deputy General Counsel

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 16

December 2024

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 36-2903 and 36-2903.01

Specific Statutory Authority: A.R.S. § 36-2901

2. **The objective of each rule:**

Rule	Objective
R9-22-1601	This rule provides the eligibility bases for the hospital presumptive eligibility program.

3. **Are the rules effective in achieving their objectives?** **Yes _X__** **No ___**

4. **Are the rules consistent with other rules and statutes?** **Yes _X_** **No __**

5. **Are the rules enforced as written?** **Yes _X__** **No ___**

6. **Are the rules clear, concise, and understandable?** **Yes _X__** **No __**

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___** **No _X_**

8. **Economic, small business, and consumer impact comparison:**

When the rulemaking was enacted in 2015, AHCCCS was unable to calculate the cost to the State, businesses, or the public and in 2019, there was no utilization by any of the six hospitals registered in the program. All six hospitals allowed their system credentials to lapse and were terminated from the program over four years ago. Currently, AHCCCS has no hospitals registers in the Hospital Presumptive Eligibility (HPE) program.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes ___** **No _X_**

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

There were no proposed changes in the previous five-year-review report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

In 2015, the Hospital Presumptive Eligibility program was enacted by AHCCCS pursuant to the Affordable Care Act. When the rulemaking for R9-22-Article 16 was enacted, AHCCCS was unable to estimate any costs due to a knowledge gap regarding how many AHCCCS members might be found eligible through this new initiative. Hospitals found the risk of bearing the cost of member's care for any patient found ineligible after the quality check completed by AHCCCS to outweigh

the benefits of the program and have been encouraging patients to apply for benefits by more traditional means through the use of community assistors. The HPE program continues to be an option for hospitals to register as required under the ACA.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

It is not more stringent than 42 U.S.C. § 1396a(a)(47)(B); 42 C.F.R. § 435.1110.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

These rules do not require an issuance of a regulatory permit, license, or agency authorization, therefore, compliance with the general permit requirements of A.R.S. 41-1037 or explanation why the agency believes an exception applies is not applicable.

14. Proposed course of action:

There are no proposed changes.

b. Lost SSI cash benefits effective July 1, 1997, or later, due to a disability determination under Section 211(d) of Subtitle B of P.L. 104-193;
c. Continues to meet the disability requirements for a child that were in effect on August 21, 1996; and
d. Meets the requirements under this Article;

3. A disabled adult child (DAC), under 42 U.S.C. 1383c(c) who:
a. Was determined disabled by the Social Security Administration before attaining the age of 22 years,
b. Became entitled to or received an increase in child's insurance benefits under Title II of the Act on the basis of blindness or disability,
c. Was terminated from SSI cash benefits due to entitlement to or an increase in income under Title II of the Act,
d. Meets the requirements under this Article, and
e. Is 18 years of age or older;

4. A disabled widow or widower (DWW) under 42 U.S.C. 1383c(b) and (d) who:
a. Is blind or disabled,
b. Is ineligible for Medicare Part A benefits,
c. Received SSI cash benefits the month before Title II of the Act benefit payments began,
d. Meets the requirements under this Article;
e. Is at least 50 years of age but under age 65; and
f. Is unmarried.

5. Under 42 CFR 435.135, a person who:
a. Is aged, blind, or disabled;
b. Receives benefits under Title II of the Act;
c. Received SSI cash benefits in the past;
d. Received SSI cash benefits and Title II of the Social Security Act benefits concurrently for at least one month anytime after April 1977;
e. Became ineligible for SSI cash benefits while receiving SSI and benefits under Title II of the Act concurrently; and
f. Meets the requirements under this Article.

B. Income for special groups.
1. Except as provided in subsection (B)(2), income eligibility is determined using the income criteria in R9-22-1503.
2. Exceptions to income for special groups.
a. For a person in the DAC coverage group under subsection (A)(3), the applicant's Title II of the Social Security Act benefits are disregarded in determining income eligibility under 42 U.S.C. 1383c(c).
b. For a person in the DWW coverage group, under subsection (A)(4), the applicant's Title II of the Social Security Act benefits are disregarded in determining income eligibility under 42 U.S.C. 1383c(b) and (d).
c. For an applicant or member in the coverage group under subsection (A)(5), the portion of the applicant's or member's Title II of the Social Security Act benefits attributed to cost-of-living adjustments received by the applicant since the effective date of SSI ineligibility is disregarded in determining income eligibility under 42 CFR 435.135.

C. 100 percent FBR. As a condition of eligibility for all special groups, countable income shall be equal to or less than 100 percent of the SSI FBR, as adjusted annually.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1506. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1507. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1508. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

ARTICLE 16. HOSPITAL PRESUMPTIVE ELIGIBILITY

R9-22-1601. General Eligibility Requirements

A. Notwithstanding Article 3, a qualified hospital may determine Hospital Presumptive Eligibility (HPE), on the basis of preliminary information, that an individual is eligible for AHCCCS medical coverage during the presumptive eligibility period described in this section, if the individual is a United States citizen or eligible qualified alien, and the individual is:
1. Pregnant with gross household income that does not exceed 156% of the FPL;
2. An adult who meets the requirements of R9-22-1427(E);
3. A caretaker relative as defined in R9-22-1401(B) with gross household income that does not exceed 106% of the FPL;
4. Under age 19 with gross household income that does not exceed the limit set in R9-22-1427(D) for the child's age;
5. A woman screened for breast or cervical cancer by an Arizona program of the National Breast and Cervical Cancer Early Detection Program who meets the requirements of R9-22-2003(A); or
6. A former foster care child who meets the requirements of R9-22-1432.

B. Definitions. In addition to definitions contained in R9-22-101 and A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning: "Qualified hospital" means a hospital that has signed an agreement with the Administration to process HPE applications and has not been disqualified.

C. Application Process:
1. Right to apply. A person may apply for presumptive eligibility for AHCCCS medical coverage by submitting an Administration-approved application to the qualified hospital.

2. Application. To initiate the application process, the qualified hospital will accept an application from the applicant, an adult who is in the applicant's household, as defined in 42 CFR 435.603(f), or family, as defined in section 36B(d)(1) of the Internal Revenue Service (IRS) Code, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant by submitting a written or online application under 42 CFR 435.907.

D. To establish presumptive eligibility, an applicant must complete and submit an AHCCCS-approved presumptive eligibility application signed under penalty of perjury to a qualified hospital. The applicant must attest to the name(s), relationship(s), and income of all persons in the household. In addition, the applicant must provide and attest to the following information regarding each household member on whose behalf AHCCCS medical coverage is sought:

1. The individual's date of birth;
2. Whether the individual is pregnant;
3. Whether the individual has been determined eligible for Breast and Cervical Cancer Treatment Program, described under Article 20;
4. Whether the individual is a former foster child, described under R9-22-1432;
5. The U.S. citizenship status or eligible qualified alien status under A.R.S. 36-2903.03 of the individual; and
6. The individual's permanent and mailing addresses;
7. The individual's Arizona residency status; and
8. Whether the individual has Medicare coverage.

E. Presumptive eligibility begins on the date the hospital determines an individual's presumptive eligibility and ends with the earlier of:

1. In the case of an individual on whose behalf an application has been submitted to AHCCCS or its designee under Article 3, the day on which AHCCCS or its designee makes a determination on that application; or
2. In the case of an individual on whose behalf an application has not been submitted to AHCCCS or its designee under Article 3, on the last day of the following month in which the determination of presumptive eligibility was made by the qualified hospital.

F. An individual may not be determined presumptively eligible more often than once every two years.

G. Coverage and reimbursement of services.

1. The Administration shall provide coverage of medically necessary services described under Article 2 to persons determined eligible for HPE on a fee-for-service basis.
2. Providers shall submit claims for services provided to persons determined eligible for HPE to the Administration as described under Article 7.

H. A member may withdraw from HPE coverage by notifying the Administration or its designee.

I. Upon determining an individual presumptively eligible, the qualified hospital shall:

1. Notify the applicant at the time a determination regarding presumptive eligibility is made, in writing and orally if appropriate, of the determination for each individual on whose behalf presumptive eligibility was requested and the effective date of the presumptive eligibility;
2. Provide the applicant with a regular AHCCCS-approved application form and inform the applicant that the applicant may file an application for Medicaid with the Administration or its designee;
3. Notify AHCCCS of the presumptive eligibility determination;
4. Notify the applicant at the time the determination is made that presumptive eligibility ends with the earlier of:
   a. In the case of an individual on whose behalf an application has been submitted to AHCCCS or its designee under Article 3, the day on which AHCCCS or its designee makes a determination on that application; or
   b. In the case of an individual on whose behalf an application has not been submitted to AHCCCS or its designee under Article 3, on the last day of the following month in which the determination of presumptive eligibility was made by the qualified hospital.

J. A determination by a qualified hospital that an individual is not presumptively eligible is not appealable under Chapter 34. If a qualified hospital denies an individual presumptive eligibility, the individual may apply for coverage by submitting an application to the Administration or its designee.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4). New Section made by final rulemaking at 20 A.A.R. 3436, effective January 1, 2015 (Supp. 14-4).

R9-22-1602. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1603. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1604. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1605. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1606. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1607. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1608. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1609. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1610. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1611. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1612. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1613. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1614. Expired

Historical Note

New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1615. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1616. Expired

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section

expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1617. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1618. Expired

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1619. Expired

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

R9-22-1620. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1621. Reserved

R9-22-1622. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1623. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1624. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1625. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1626. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1627. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1628. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1629. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1630. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1631. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1632. Reserved

R9-22-1633. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1634. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1635. Reserved

R9-22-1636. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

ARTICLE 17. ENROLLMENT

R9-22-1701. Enrollment-Related Definitions

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

"Annual enrollment choice" means the annual opportunity for a person to change contractors.

"Auto-assignment algorithm" or "Algorithm" means a formula used by the Administration to assign to a contractor a member who did not make a timely choice under R9-22-1702.

"CMDP" means Comprehensive Medical and Dental Program.

"Disenrollment" means the discontinuance of a person's entitlement to receive covered services from a contractor of record.

"Enrollment" means the process by which an eligible person becomes a member of a contractor's plan.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended to correct a typographical error, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

R9-22-1702. Enrollment of a Member with an AHCCCS Contractor

A. General enrollment requirements. The Administration shall enroll a member with a contractor as described in this Section, unless the member has pre-selected a contractor on the application:

1. Except as provided in subsections (A)(3), (A)(5), and (C), a member who is determined to be eligible under this Chapter and resides in an area served by more than one contractor, may choose an available contractor serving the member's GSA within 30 days from the date of notice of enrollment. A Native American member may select IHS or another available contractor.
2. If the member does not make a choice under subsection (A)(1), the Administration shall immediately auto-assign the member to:
   a. IHS if the member is a Native American living on a reservation,
   b. A contractor based on family continuity, or
   c. A contractor by using the auto-assignment algorithm.
3. If the member's period of ineligibility and disenrollment from the contractor of record is for a period of less than 90 days, the Administration shall enroll the member with the member's most recent contractor of record, if available, except if:
   a. The member no longer resides in the contractor's GSA;
   b. The contractor's contract is suspended or terminated;
   c. The member was previously enrolled with CMDP but at the time of re-enrollment the member is not a foster care child;
   d. The member chooses another contractor or chooses IHS, if available to the member, during the annual enrollment choice period; or
   e. The member was previously enrolled with a contractor but at the time of re-enrollment the member is a foster care child.
4. When the member's disenrollment period is more than 90 days, the member may select a contractor as described in subsection (A)(1).
5. The Administration shall not enroll a member with a contractor if a member:
   a. Is eligible for the FESP under R9-22-1419;
   b. Is eligible for less than 30 days from the date the Administration receives notification of a member's eligibility, except for a member who is enrolled with CMDP or IHS;
   c. Is eligible only for a retroactive period of eligibility, except for a member who is enrolled with CMDP or IHS; or
   d. Resides in an area not served by a contractor.

B. Fee-for-service coverage. A member not enrolled with a contractor under subsection (A)(5) shall obtain covered medical services from an AHCCCS-registered provider on a fee-for-service basis under Article 7.

C. Foster care child. The Administration shall enroll a member with CMDP if the member is a foster care child under A.R.S. § 8-512.

D. Family Planning Services Extension Program. A member eligible for the Family Planning Services Extension Program under R9-22-1431, shall remain enrolled with the member's contractor of record or IHS.

E. Contractor or IHS enrollment change for a member.

1. The Administration shall change a member's enrollment if the member requests a change to an available contractor or IHS during an annual enrollment period. A Native American may change from an available contractor to IHS or from IHS to an available contractor at any time.
2. The Administration shall approve a change in enrollment for any member if the change is a result of the final outcome of a grievance under 9 A.A.C. 34.
3. A member may choose a different contractor if the member moves into a GSA not served by the current contractor or if the contractor is no longer available. If the member does not select a contractor, the Administration shall auto-assign the member as provided in subsection (A)(2).
4. The Administration shall provide the member 60-day advance notice of the member's option to change plans by the member's annual enrollment date.
5. A member may disenroll from a plan if:
   a. The member moves out of the GSA;
   b. The plan does not, because of moral or religious objections, cover the service a member seeks; or

36-2901. Definitions

In this article, unless the context otherwise requires:

1. "Administration" means the Arizona health care cost containment system administration.

2. "Administrator" means the administrator of the Arizona health care cost containment system.

3. "Contractor" means a person or entity that has a prepaid capitated contract with the administration pursuant to section 36-2904 or chapter 34 of this title to provide health care to members under this article or persons under chapter 34 of this title either directly or through subcontracts with providers.

4. "Department" means the department of economic security.

5. "Director" means the director of the Arizona health care cost containment system administration.

6. "Eligible person" means any person who is:

(a) Any of the following:

(i) Defined as mandatorily or optionally eligible pursuant to title XIX of the social security act as authorized by the state plan.

(ii) Defined in title XIX of the social security act as an eligible pregnant woman or a woman who is less than one year postpartum with a family income that does not exceed one hundred fifty percent of the federal poverty guidelines, as a child under the age of six years and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines or as children who have not attained nineteen years of age and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines.

(iii) Under twenty-six years of age and who was in the custody of the department of child safety pursuant to title 8, chapter 4 when the person became eighteen years of age.

(iv) Defined as eligible pursuant to section 36-2901.01.

(v) Defined as eligible pursuant to section 36-2901.04.

(vi) Defined as eligible pursuant to section 36-2901.07.

(b) A full-time officer or employee of this state or of a city, town or school district of this state or other person who is eligible for hospitalization and medical care under title 38, chapter 4, article 4.

(c) A full-time officer or employee of any county in this state or other persons authorized by the county to participate in county medical care and hospitalization programs if the county in which such officer or employee is employed has authorized participation in the system by resolution of the county board of supervisors.

(d) An employee of a business within this state.

(e) A dependent of an officer or employee who is participating in the system.

(f) Not enrolled in the Arizona long-term care system pursuant to article 2 of this chapter.

(g) Defined as eligible pursuant to section 1902(a)(10)(A)(ii)(XV) and (XVI) of title XIX of the social security act and who meets the income requirements of section 36-2929.

7. "Graduate medical education" means a program, including an approved fellowship, that prepares a physician for the independent practice of medicine by providing didactic and clinical education in a medical discipline to a

medical student who has completed a recognized undergraduate medical education program.

8. "Malice" means evil intent and outrageous, oppressive or intolerable conduct that creates a substantial risk of tremendous harm to others.

9. "Member" means an eligible person who enrolls in the system.

10. "Modified adjusted gross income" has the same meaning prescribed in 42 United States Code section 1396a(e)(14).

11. "Noncontracting provider" means a person who provides health care to members pursuant to this article but not pursuant to a subcontract with a contractor.

12. "Physician" means a person who is licensed pursuant to title 32, chapter 13 or 17.

13. "Prepaid capitated" means a mode of payment by which a health care contractor directly delivers health care services for the duration of a contract to a maximum specified number of members based on a fixed rate per member notwithstanding:

(a) The actual number of members who receive care from the contractor.

(b) The amount of health care services provided to any member.

14. "Primary care physician" means a physician who is a family practitioner, general practitioner, pediatrician, general internist, or obstetrician or gynecologist.

15. "Primary care practitioner" means a nurse practitioner or certified nurse midwife who is certified pursuant to title 32, chapter 15 or a physician assistant who is licensed pursuant to title 32, chapter 25. This paragraph does not expand the scope of practice for nurse practitioners or certified nurse midwives as defined pursuant to title 32, chapter 15 or for physician assistants as defined pursuant to title 32, chapter 25.

16. "Regional behavioral health authority" has the same meaning prescribed in section 36-3401.

17. "Section 1115 waiver" means the research and demonstration waiver granted by the United States department of health and human services.

18. "Special health care district" means a special health care district organized pursuant to title 48, chapter 31.

19. "State plan" has the same meaning prescribed in section 36-2931.

20. "System" means the Arizona health care cost containment system established by this article.

36-2903. Arizona health care cost containment system; administrator; powers and duties of director and administrator; exemption from attorney general representation; definition

A. The Arizona health care cost containment system is established consisting of contracts with contractors for the provision of hospitalization and medical care coverage to members. Except as specifically required by federal law and by section 36-2909, the system is only responsible for providing care on or after the date that the person has been determined eligible for the system, and is only responsible for reimbursing the cost of care rendered on or after the date that the person was determined eligible for the system.

B. An agreement may be entered into with an independent contractor, subject to title 41, chapter 23, to serve as the statewide administrator of the system. The administrator has full operational responsibility, subject to supervision by the director, for the system, which may include any or all of the following:

1. Development of county-by-county implementation and operation plans for the system that include reasonable access to hospitalization and medical care services for members.

2. Contract administration and oversight of contractors, including certification instead of licensure for title XVIII and title XIX purposes.

3. Provision of technical assistance services to contractors and potential contractors.

4. Development of a complete system of accounts and controls for the system including provisions designed to ensure that covered health and medical services provided through the system are not used unnecessarily or unreasonably including but not limited to inpatient behavioral health services provided in a hospital. Periodically the administrator shall compare the scope, utilization rates, utilization control methods and unit prices of major health and medical services provided in this state in comparison with other states' health care services to identify any unnecessary or unreasonable utilization within the system. The administrator shall periodically assess the cost effectiveness and health implications of alternate approaches to the provision of covered health and medical services through the system in order to reduce unnecessary or unreasonable utilization.

5. Establishment of peer review and utilization review functions for all contractors.

6. Assistance in the formation of medical care consortiums to provide covered health and medical services under the system for a county.

7. Development and management of a contractor payment system.

8. Establishment and management of a comprehensive system for assuring the quality of care delivered by the system.

9. Establishment and management of a system to prevent fraud by members, subcontracted providers of care, contractors and noncontracting providers.

10. Coordination of benefits provided under this article to any member. The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage.

11. Development of a health education and information program.

12. Development and management of an enrollment system.

13. Establishment and maintenance of a claims resolution procedure to ensure that ninety per cent of the clean claims shall be paid within thirty days of receipt and ninety-nine per cent of the remaining clean claims shall be

paid within ninety days of receipt. For the purposes of this paragraph, "clean claims" has the same meaning prescribed in section 36-2904, subsection G.

14. Establishment of standards for the coordination of medical care and patient transfers pursuant to section 36-2909, subsection B.

15. Establishment of a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishment of an employee recognition fund.

17. Establishment of an eligibility process to determine whether a medicare low income subsidy is available to persons who want to apply for a subsidy as authorized by title XVIII.

C. If an agreement is not entered into with an independent contractor to serve as statewide administrator of the system pursuant to subsection B of this section, the director shall ensure that the operational responsibilities set forth in subsection B of this section are fulfilled by the administration and other contractors as necessary.

D. If the director determines that the administrator will fulfill some but not all of the responsibilities set forth in subsection B of this section, the director shall ensure that the remaining responsibilities are fulfilled by the administration and other contractors as necessary.

E. The administrator or any direct or indirect subsidiary of the administrator is not eligible to serve as a contractor.

F. Except for reinsurance obtained by contractors, the administrator shall coordinate benefits provided under this article to any eligible person who is covered by workers' compensation, disability insurance, a hospital and medical service corporation, a health care services organization, an accountable health plan or any other health or medical or disability insurance plan including coverage made available to persons defined as eligible by section 36-2901, paragraph 6, subdivisions (b), (c), (d) and (e), or who receives payments for accident-related injuries, so that any costs for hospitalization and medical care paid by the system are recovered from any other available third party payors. The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage. The system shall act as payor of last resort for persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2974 or section 36-2981, paragraph 6 unless specifically prohibited by federal law. By operation of law, eligible persons assign to the system and a county rights to all types of medical benefits to which the person is entitled, including first party medical benefits under automobile insurance policies based on the order of priorities established pursuant to section 36-2915. The state has a right to subrogation against any other person or firm to enforce the assignment of medical benefits. The provisions of this subsection are controlling over the provisions of any insurance policy that provides benefits to an eligible person if the policy is inconsistent with the provisions of this subsection.

G. Notwithstanding subsection E of this section, the administrator may subcontract distinct administrative functions to one or more persons who may be contractors within the system.

H. The director shall require as a condition of a contract with any contractor that all records relating to contract compliance are available for inspection by the administrator and the director subject to subsection I of this section and that such records be maintained by the contractor for five years. The director shall also require that these records be made available by a contractor on request of the secretary of the United States department of health and human services, or its successor agency.

I. Subject to existing law relating to privilege and protection, the director shall prescribe by rule the types of information that are confidential and circumstances under which such information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other provision of law, such rules shall be designed to provide for the exchange of necessary information among the counties, the administration and the department of economic security for the purposes of eligibility determination under this article. Notwithstanding any law to the contrary, a member's medical record shall be released without the member's consent in situations or suspected cases of fraud or abuse relating to the system to an officer of the state's certified Arizona health care cost containment system fraud control unit who has submitted a written request for the medical record.

J. The director shall prescribe rules that specify methods for:

1. The transition of members between system contractors and noncontracting providers.

2. The transfer of members and persons who have been determined eligible from hospitals that do not have contracts to care for such persons.

K. The director shall adopt rules that set forth procedures and standards for use by the system in requesting county long-term care for members or persons determined eligible.

L. To the extent that services are furnished pursuant to this article, and unless otherwise required pursuant to this chapter, a contractor is not subject to title 20.

M. As a condition of the contract with any contractor, the director shall require contract terms as necessary in the judgment of the director to ensure adequate performance and compliance with all applicable federal laws by the contractor of the provisions of each contract executed pursuant to this chapter. Contract provisions required by the director shall include at a minimum the maintenance of deposits, performance bonds, financial reserves or other financial security. The director may waive requirements for the posting of bonds or security for contractors that have posted other security, equal to or greater than that required by the system, with a state agency for the performance of health service contracts if funds would be available from such security for the system on default by the contractor. The director may also adopt rules for the withholding or forfeiture of payments to be made to a contractor by the system for the failure of the contractor to comply with a provision of the contractor's contract with the system or with the adopted rules. The director may also require contract terms allowing the administration to operate a contractor directly under circumstances specified in the contract. The administration shall operate the contractor only as long as it is necessary to assure delivery of uninterrupted care to members enrolled with the contractor and accomplish the orderly transition of those members to other system contractors, or until the contractor reorganizes or otherwise corrects the contract performance failure. The administration shall not operate a contractor unless, before that action, the administration delivers notice to the contractor and provides an opportunity for a hearing in accordance with procedures established by the director. Notwithstanding the provisions of a contract, if the administration finds that the public health, safety or welfare requires emergency action, it may operate as the contractor on notice to the contractor and pending an administrative hearing, which it shall promptly institute.

N. The administration for the sole purpose of matters concerning and directly related to the Arizona health care cost containment system and the Arizona long-term care system is exempt from section 41-192.

O. Notwithstanding subsection F of this section, if the administration determines that according to federal guidelines it is more cost-effective for a person defined as eligible under section 36-2901, paragraph 6, subdivision (a) to be enrolled in a group health insurance plan in which the person is entitled to be enrolled, the administration may pay all of that person's premiums, deductibles, coinsurance and other cost sharing obligations for services covered under section 36-2907. The person shall apply for enrollment in the group health insurance plan as a condition of eligibility under section 36-2901, paragraph 6, subdivision (a).

P. The total amount of state monies that may be spent in any fiscal year by the administration for health care shall not exceed the amount appropriated or authorized by section 35-173 for all health care purposes. This

article does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

Q. Notwithstanding section 36-470, a contractor or program contractor may receive laboratory tests from a laboratory or hospital-based laboratory for a system member enrolled with the contractor or program contractor subject to all of the following requirements:

1. The contractor or program contractor shall provide a written request to the laboratory in a format mutually agreed to by the laboratory and the requesting health plan or program contractor. The request shall include the member's name, the member's plan identification number, the specific test results that are being requested and the time periods and the quality improvement activity that prompted the request.

2. The laboratory data may be provided in written or electronic format based on the agreement between the laboratory and the contractor or program contractor. If there is no contract between the laboratory and the contractor or program contractor, the laboratory shall provide the requested data in a format agreed to by the noncontracted laboratory.

3. The laboratory test results provided to the member's contractor or program contractor shall only be used for quality improvement activities authorized by the administration and health care outcome studies required by the administration. The contractors and program contractors shall maintain strict confidentiality about the test results and identity of the member as specified in contractual arrangements with the administration and pursuant to state and federal law.

4. The administration, after collaboration with the department of health services regarding quality improvement activities, may prohibit the contractors and program contractors from receiving certain test results if the administration determines that a serious potential exists that the results may be used for purposes other than those intended for the quality improvement activities. The department of health services shall consult with the clinical laboratory licensure advisory committee established by section 36-465 before providing recommendations to the administration on certain test results and quality improvement activities.

5. The administration shall provide contracted laboratories and the department of health services with an annual report listing the quality improvement activities that will require laboratory data. The report shall be updated and distributed to the contracting laboratories and the department of health services when laboratory data is needed for new quality improvement activities.

6. A laboratory that complies with a request from the contractor or program contractor for laboratory results pursuant to this section is not subject to civil liability for providing the data to the contractor or program contractor. The administration, the contractor or a program contractor that uses data for reasons other than quality improvement activities is subject to civil liability for this improper use.

R. For the purposes of this section, "quality improvement activities" means those requirements, including health care outcome studies specified in federal law or required by the centers for medicare and medicaid services or the administration, to improve health care outcomes.

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

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

B. The director shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

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

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

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

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

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

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

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

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

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

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

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

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.

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

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

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

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

9. For graduate medical education programs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The type of third-party payments to be monitored pursuant to this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E-4.

INDUSTRIAL COMMISSION OF ARIZONA
Title 20, Chapter 5, Articles 8 & 10

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 13, 2025

SUBJECT: **INDUSTRIAL COMMISSION OF ARIZONA**
Title 20, Chapter 5, Articles 8 & 10

Summary

This Five-Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to twenty-seven (27) rules in Title 20, Chapter 5, Article 8 regarding Occupational Safety and Health Rules of Procedure and nine (9) rules in Title 20, Chapter 5, Article 10 regarding Wage Claims.

In the previous 5YRR for Article 8, which was approved by the Council in August 2020, the Commission proposed to amend rules to clarify and update their language. The Commission indicates it completed the proposed course of action, amending rules by rulemaking which was completed in 2024.

In the previous 5YRR for Article 10, which was also approved by the Council in August 2020, the Commission proposed to amend rules to improve their clarity, conciseness, understandability, consistency and enforcement. The Commission indicates it completed the proposed course of action, amending rules by rulemaking which was completed in 2021.

Proposed Action

In the current report, the Commission proposes to amend three (3) rules in Article 10 that are not clear, concise, and understandable as outlined in more detail below. The Commission intends to submit a rulemaking to the Council to address these issues by December 2026.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Commission states that the 2024 rulemaking for Article 8 did not have an adverse economic impact on either small businesses or consumers. Further, the Commission states the rulemaking was intended to reduce regulatory burden by clarifying, modernizing and eliminating antiquated language in the prior rules to allow for the affected stakeholders to have a clearer understanding of what is required. The Commission believes the current rules' impact on consumers and businesses was as anticipated by the 2024 rulemaking. Employers, as defined in A.R.S. § 23-401, are covered by the rules within Article 8 and will be directly affected by the proposed rulemaking.

The Commission states that the most recent Economic Impact Statement related to Article 10 was in 2021. The Commission does not believe that the current estimated economic, small business, and consumer impact of the rules is substantially different from that set out in the 2021 Economic Impact Statement. The Commission states the economic impact of the rules has been consistent with the economic impact predicted in the 2021 Economic Impact Statement. The Department states the amendment primarily benefits all persons and businesses that have a wage claim under Title 20, Chapter 5, Article 10 and the Labor Department Investigators.

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

The Commission believes the probable benefits of the rules in both Article 8 and Article 10 outweigh the probable costs. The Commission states that in addition, it believes that the rules impose the least burden and costs on the regulated community.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission indicates it has not received any written criticisms of the rule in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Commission indicates the rules in Articles 8 and 10 are mostly clear, concise, and understandable except for the following rules in Article 10:

- **R20-5-1002**
  - Simplify the language in this section to include nonwage compensation.
- **R20-5-1003(F)**
  - Delete redundant language and processes to simplify the handling of incomplete wage claims and reduce administrative burden.
- **R20-5-1004**
  - (A) Extend Employer response time from 14 to 21 days.
  - (B) Delete section to streamline the rule, as remedies are addressed in Section D.
  - (C) Extend the Claimant's reply time from 14 to 21 days

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Commission indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Commission indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Commission indicates the rules are currently enforced as written.

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

The Commission indicates the rules in Article 8 implement the procedures for occupational safety and health hearings and are not more stringent than corresponding federal law. The Commission indicates the rules in Article 10 implement state law and there is no corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Commission indicates there have been no rules adopted in either Article 8 or 10 after July 29, 2010, which require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Commission relates to twenty-seven (27) rules in Title 20, Chapter 5, Article 8 regarding Occupational Safety and Health Rules of Procedure and nine (9) rules in Title 20, Chapter 5, Article 10 regarding Wage Claims. The Commission proposes to amend three rules in Article 10 to improve their clarity, conciseness, and understandability. The Commission anticipates submitting a rulemaking to the Council to address these issues by December 2026.

Council staff recommends approval of this report.

THE INDUSTRIAL COMMISSION OF ARIZONA

LEGAL DIVISION

DENNIS P. KAVANAUGH, CHAIRMAN
JOSEPH M. HENNELLY, JR., VICE CHAIR
D. ALAN EVERETT, MEMBER
MARIA CECILIA VALDEZ, MEMBER
ORION J. GODFREY, MEMBER

GAETANO TESTINI, DIRECTOR

AFSHAN PEIMANI
CHIEF COUNSEL
P.O. BOX 19070
PHOENIX, AZ 85005-9070
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January 30, 2025

Sent via e-mail to grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
l00North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: A.A.C. Title 20, Chapter 5, Article 8, Five-year Review Report

Dear Ms. Klein:

The Industrial Commission of Arizona ("Commission"), through its Director, submits for approval by the Governor's Regulatory Review Council ("Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 8. The Commission has timely filed this report on or before Friday, January 31, 2025.

An electronic copy of this cover letter, the report, general and specific statutes, rules reviewed, and most recent economic impact statement are concurrently submitted by email to Simon Larscheidt. The Commission believes that the report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 8 and has complied with A.R.S. § 41-1091, which requires the Commission to annually publish a directory summarizing the subject matter of all currently applicable rules and substantive policy statements, by posting directories of its current rules and substantive policy statements on the Commission's website, as required by A.R.S. § 41-1091.01(1) & (2). Should you have any questions concerning the report, please contact Chief Counsel Afshan Peimani at (602) 542-5905 or Staff Attorney Robert Irani at (602) 542-5293.

Sincerely,

Gaetano Testini
Director

THE INDUSTRIAL COMMISSION OF ARIZONA

LEGAL DIVISION

DENNIS P. KAVANAUGH, CHAIRMAN
JOSEPH M. HENNELLY, JR., VICE CHAIR
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January 30, 2025

Sent via e-mail to grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
l00North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: A.A.C. Title 20, Chapter 5, Article 10, Five-year Review Report

Dear Ms. Klein:

The Industrial Commission of Arizona ("Commission"), through its Director, submits for approval by the Governor's Regulatory Review Council ("Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 10. The Commission has timely filed this report on or before Friday, January 31, 2025.

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The Commission has reviewed all rules in Article 10 and has complied with A.R.S. § 41-1091, which requires the Commission to annually publish a directory summarizing the subject matter of all currently applicable rules and substantive policy statements, by posting directories of its current rules and substantive policy statements on the Commission's website, as required by A.R.S. § 41-1091.01(1) & (2). Should you have any questions concerning the report, please contact Chief Counsel Afshan Peimani at (602) 542-5905 or Staff Attorney Christina Lopez at (602) 542-5948.

Sincerely,

Gaetano Testini
Director

FIVE-YEAR REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE

FIVE -YEAR REVIEW REPORT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE

FIVE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the "Commission") was created in 1925 as a result of legislation implementing the constitutional provisions establishing a workers' compensation system. From 1925 to 1969, the workers' compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers, which generally comprised the mining and the railroad companies. In 1969, the workers' compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers' compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers' compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment laws, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers' compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission's Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 8, as well as other substantive policy statements and all rules, which are available on the Commission's website.

About Article 8 Generally:

A.R.S. §§ 23-420 & 23-423 establish the right to a hearing, the right to review, and basic procedures for cases involving a disputed occupational safety and health citation, penalty, and/or abatement period issued under A.R.S. §§ 23-415, 23-417, or 23-418.01. Pursuant to A.R.S. § 23-405(4), the Commission is authorized to "promulgate […] rules and regulations as are necessary for the efficient functioning of the division." Article 8 establishes rules of procedures for occupational safety and health hearings before an Administrative Law Judge or before the Commission (in the case of a variance hearing).

Recent Article 8 Rulemaking:

The Commission conducted the following rulemaking to amend Article 8 in 2024.

- R20-5-801 (effective June 6, 2024). Amended to clarify and modernize.
- R20-5-802 Repealed (effective June 6, 2024). Repealed by final rulemaking at 30 A.A.R. 2122 (June 28, 2024).
- R20-5-803 (effective June 6, 2024). Amended to remove gender-specific pronouns. This change was proposed in the previous five year review report.
- R20-5-804 (effective June 6, 2024).
- R20-5-805 (effective June 6, 2024). Amended to remove gender-specific pronouns. This change was proposed in the previous five year review report.
- R20-5-806 (effective June 6, 2024). Amended to clarify and modernize.
- R20-5-807 (effective June 6, 2024). Amended to replace outdated terms (hearing officer). This change was proposed in the previous five year review report.
- R20-5-808 (effective June 6, 2024). Amended to replace outdated terms (hearing officer). This change was proposed in the previous five year review report.
- R20-5-809 (effective June 6, 2024). Amended to clarify and modernize.
- R20-5-810 (effective June 6, 2024). Amended to fix a spelling error. This change was proposed in the previous five year review report.
- R20-5-811 (effective June 6, 2024). Amended to remove gender-specific pronouns and modernize. These changes were proposed in the previous five year review report.
- R20-5-812 (effective June 6, 2024). Amended to eliminate antiquated language.
- R20-5-813 (effective June 6, 2024). Amended to clarify and modernize.
- R20-5-814 (effective June 6, 2024). Amended to replace outdated terms (hearing officer), and to remove gender-specific pronouns. These changes were proposed in the previous five year review report.
- R20-5-815 (effective June 6, 2024). Amended to replace outdated terms (hearing officer). This change was proposed in the previous five year review report.

- R20-5-817 (effective June 6, 2024). Amended to replace outdated terms (hearing officer). This change was proposed in the previous five year review report.
- R20-5-818 (effective June 6, 2024). Amended to replace outdated terms (title and rule - hearing officer), and to remove gender-specific pronouns. These changes were proposed in the previous five year review report.
- R20-5-819 (effective June 6, 2024). Amended to replace outdated terms (hearing officer). This change was proposed in the previous five year review report.
- R20-5-820 (effective June 6, 2024). Amended to replace outdated terms (hearing officer), to remove gender-specific pronouns, to include the addition of R20-5-819 before the reference to subsections (A), (D), (E), and (F), and R20-5-820(D) amended to eliminate outdated and unnecessary practices. These changes were proposed in the previous five year review report.
- R20-5-821 (effective June 6, 2024). R20-5-821(A) amended to eliminate outdated and unnecessary practices. This change was proposed in the previous five year review report.
- R20-5-822 (effective June 6, 2024). Amended to replace outdated terms (hearing officer), to remove gender-specific pronouns, and to eliminate outdated and unnecessary practices. These changes were proposed in the previous five year review report.
- R20-5-823 (effective June 6, 2024). Amended to clarify and modernize.
- R20-5-824 (effective June 6, 2024). Amended to replace outdated terms (title and rule - hearing officer). This change was proposed in the previous five year review report.
- R20-5-825 (effective June 6, 2024). Amended to replace outdated terms (hearing officer). This change was proposed in the previous five year review report.
- R20-5-826 (effective June 6, 2024). Amended to replace outdated terms (title and rule - hearing officer), and to provide clarification as to the jurisdictional responsibilities of the Commission and the Office of Administrative Hearings. These changes were proposed in the previous five year review report.

- R20-5-827 (effective June 6, 2024). Amended to replace outdated terms (hearing officer and chief hearing officer). This change was proposed in the previous five year review report.
- R20-5-828 (effective June 6, 2024). Amended to replace outdated terms (hearing officer), and to remove gender-specific pronouns. These changes were proposed in the previous five year review report.
- R20-5-829 (effective June 6, 2024). Amended to eliminate antiquated language.

FIVE-YEAR REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in Article 8 have general and specific authority in A.R.S. §§ 23-107 and 23-405(4). A.R.S. § 23-107(A)(1) generally provides that the Commission "has full power, jurisdiction, and authority to formulate and adopt rules . . . for effecting the purposes of [A.R.S. Title 23, Chapter 1, Article 1]." A.R.S. §23-405(4) specifically provides that the Commission has authority to "promulgate such other rules and regulations as are necessary for the efficient functioning of the division." *See also* A.R.S. § 23-420(F) (referencing rules of procedure adopted by ADOSH under A.R.S. § 23-405(4)).

2. Objective of the rules, including the purposes for the existence of the rules.

The overarching objective of Article 8 is to establish rules of procedure for cases involving a disputed occupational safety and health citation, penalty, and/or abatement period issued under A.R.S. §§ 23-415, 23-417, or 23-418.01.

R20-5-801. Notice of Rules
This rule defines the scope of application of the rules of procedure found in Article 8.

R20-5-802. Repealed

R20-5-803. Definitions
This rule defines seven terms used in Article 8.

R20-5-804. Computation of Time
This rule outlines how periods of time prescribed in Article 8 are to be calculated.

R20-5-805. Record Address

This rule sets forth the requirement to include a name, address and telephone number in an initial pleading, and the requirement to notify the Commission and all other parties of a change in such information. This rule additionally sets forth the consequences associated with failing to keep the Commission and all other parties notified of a change.

R20-5-806. Service and Notice

This rule sets forth the service and notice requirements for filings, and the service, notice, and posting requirements for a Notice of Hearing.

R20-5-807. Consolidation

This rule allows for consolidation of cases in which there are common questions of law or fact.

R20-5-808. Severance

This rule allows issues and parties to be severed in a proceeding.

R20-5-809. Election to Appear

This rule advises affected employees of their right to appear at the hearing and procedures for providing notice of intent to appear.

R20-5-810. Employee Representatives

This rule allows for authorized employee representatives and outlines the authority that is given to such representatives.

R20-5-811. Form of Pleadings

This rule advises parties of the requirements for pleadings filed with the Commission.

R20-5-812. Caption; Titles of Cases

This rule advises the parties of the caption requirements for pleadings.

R20-5-813. Requests for Hearing

This rule describes the requirements for the filing of a request for hearing.

R20-5-814. Pre-hearing Conference

This rule provides for the scheduling of prehearing conferences to facilitate the exchange of information, simplify issues, or expedite the hearing process.

R20-5-815. Payment of Witness Fees and Mileage

This rule allows for compensation for witnesses "summoned" by the administrative law judge for their time and travel to the hearing, to be borne by the party requesting the witness.

R20-5-816. Expired

R20-5-817. Failure to Appear – Withdrawal of Request for Hearing

This rule advises parties of the consequences of failing to appear at a scheduled hearing and the consequences of the withdrawal of their request for hearing.

R20-5-818. Duties and Powers of Administrative Law Judges

This rule advises parties of the duties and powers of the administrative law judge presiding over contested matters and defines the parameters of the judge's authority.

R20-5-819. Witness Deposition; In State

This rule describes the procedures for the taking of depositions of persons residing in the State of Arizona.

R20-5-820. Witness Deposition; Out-of-State

This rule describes the procedures for the taking of depositions of persons residing outside the State of Arizona.

R20-5-821. Written Interrogatories and Request for Production of Documents

This rule describes the procedural and substantive requirements for the use of written interrogatories.

R20-5-822. Refusal to Answer; Refusal to Attend

This rule describes the procedure for compelling parties to cooperate with discovery and describes the consequences of refusing to cooperate when ordered by an administrative law judge.

R20-5-823. Burden of Proof

This rule describes with whom the burden of proof lies with regard to contested matters.

R20-5-824. Intermediary Rulings or Orders by the Administrative Law Judge

This rule advises the parties that rulings or orders issued by an administrative law judge prior to a final disposition of a case cannot be

immediately appealed to the Review Board but shall become a part of the record.

R20-5-825. Legal Memoranda

This rule permits the filing of legal memoranda to fully advise an administrative law judge of the factual and legal arguments raised by the parties.

R20-5-826. Administrative Law Judge Decisions

This rule describes the form and substantive requirements of decisions issued by administrative law judges.

R20-5-827. Settlement

This rule describes the parameters and requirements of settlement agreements.

R20-5-828. Special Circumstances; Waiver of Rules

This rule authorizes the administrative law judge to waive any rule or enter such orders as justice requires.

R20-5-829. Variances

This rule describes one component of the variance process and advises that hearings regarding variances shall be before the Commission.

3. Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached.

The rules reviewed are effective in achieving their respective objectives.

4. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rules are consistent with state and federal statutes and rules, including A.R.S. §§ 23-401 through 23-433.

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement.

The rules reviewed are enforced as written.

6. Clarity, conciseness, and understandability of the rules.

The rules in Article 8 are clear, concise, and understandable.

7. Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report.

The Commission has not received any written criticisms of the rules within the five years immediately preceding this report.

8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules.

The 2024 rulemaking did not have an adverse economic impact on either small businesses or consumers. The rulemaking was intended to reduce regulatory burden by clarifying, modernizing and eliminating antiquated language in the prior rules to allow for the affected stakeholders to have a clearer understanding of what is required. The current rules impact on consumers and businesses was as anticipated by the 2024 rulemaking.

9. Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No business competitiveness analysis has been submitted to the Commission regarding Article 8.

10. If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report.

The previous Five-Year-Review Report outlined proposed amendments to the rules that sought to clarify and update some of the language in the rules. All of the suggested updates were addressed in 2024.

11. A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated.

The probable benefits of the rules in Article 8 outweigh the probable costs. In addition, the Commission believes that the rules impose the least burden and costs on regulated community.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

The rules in Article 8 implement the procedures for occupational safety and health hearings and are not more stringent than corresponding federal law.

13. For rules adopted after July 29, 2010, that require issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

There have been no rules adopted after July 29, 2010, in Article 8 which require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

Given the Commission engaged in extensive review and rulemaking in 2024, there is no proposed course of action at this time.

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 10. WAGE CLAIMS

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
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FIVE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the "Commission") was created in 1925 as a result of legislation implementing the constitutional provisions establishing a workers' compensation system. From 1925 to 1969, the workers' compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers, which generally comprised the mining and the railroad companies. In 1969, the workers' compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers' compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers' compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment laws, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers' compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission's Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 10, as well as other substantive policy statements and all rules, which are available on the Commission's website.

About Article 10

Pursuant to A.R.S. 23-356, an employee may file a claim with the Commission's Labor Department (the "Department") for unpaid wages of $5,000.00 or less in lieu of pursuing a civil action against an employer. Article 10 establishes the administrative process for wage claims, including the procedure an employee must follow to submit a wage claim, the procedure an employer must follow in responding to a wage claim, and the Department's process for investigating and rendering a determination on a claim. The

Department processed 3,646 wage claims in fiscal year 2024, the latest year for which complete data is available.

Recent Article 10 Rulemaking

The Commission conducted the following rulemaking in 2021 to amend Article 10.

• R20-5-1001(8), R20-5-1002, R20-5-1003(F), R20-5-1004, R20-5-1008(B), R20-5-1009- Modernize rules to authorize service of documents by electronic means, with a party's consent.

• R20-5-1002 – Correct website address of Commission, clarify information that must be provided by parties to a wage claim, and specifically authorize electronic signatures on wage claim and employer response forms.

• R20-5-1003(E) – Delete antiquated and unnecessary language regarding forms being completed in "ink or type."

• R20-5-1003(F) – Extend time for a claimant's response to a deficiency notice from 10 to 14 calendar days.

• R20-5-1004(A) – Delete unnecessary and burdensome requirement that the Labor Department serve wage claims "within 10 days" of the Department's receipt and extend time period for an employer's response from 10 to 14 calendar days.

• R20-5-1004(B) - Extend time period for an employer's response from 10 to 14 calendar days.

• R20-5-1004(C) – Delete redundant and unnecessary provision that requires additional Labor Department action when an employer's response is incomplete. Pursuant to R20-5-1004(F), the Labor Department already has authority to request additional information from a claimant or employer.

• R20-5-1004(D) – Streamline the wage claim investigation process to always provide a claimant with an opportunity to reply to an employer's response to a wage claim and extend the time period for a claimant's reply from 10 to 14 days.

• R20-5-1004(F) – Allow, rather than require, the Department to administer oaths for the purpose of taking affidavits and allow, rather than require, the Department to record interviews or discussions with a claimant or employer.

• R20-5-1006(A)(3) – Update jurisdictional limit for wage claims filed with the Department to be consistent with A.R.S. § 23-356.

• R20-5-1007(B) – Delete the provision, as it is redundant of R20-5-1005(G).

• R20-5-1008(A) – Authorize a wage claimant to pick up a wage payment in person from the Department.

• R20-5-1008(B) – Streamline the process where an employer claims to have paid wages due directly to the claimant by authorizing dismissal of a wage claim either where the claimant confirms receipt of the wages or where the claimant does not timely respond to a notice of wage payment from the Department. Extend the time period for a claimant to respond to such a notice from 10 to 14 calendar days.

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 10. WAGE CLAIMS

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in Article 10 have general and specific authorization under A.R.S. §§ 23-107 and 23-361. A.R.S. § 23-107(A)(1) provides that the Commission "has full power, jurisdiction, and authority to formulate and adopt rules . . . for effecting the purposes of [A.R.S. Title 23, Chapter 1, Article 1]." A.R.S. § 23-361 provides that "[t]he commission may adopt such rules and regulations as necessary for the purpose of administering and enforcing [A.R.S. Title 23, Chapter 2, Article 7]."

2. Objective of the rules, including the purposes for the existence of the rules.

The objective of Article 10 is to set forth clear procedures for filing, processing, investigating, and rendering decisions on wage claims.

R20-5-1001. Definitions

This rule sets forth the definitions for Article 10.

R20-5-1002. Forms

This rule establishes the wage claim and employer response forms and sets forth the information required in the forms.

R20-5-1003. Filing Requirements; Time for Filing; Computation of Time

This rule outlines the procedure for filing a wage claim, time for filing a wage claim, how time is calculated under the rule, and the consequences of not providing all required information in a wage claim.

R20-5-1004. Investigation of Claim

This rule outlines the procedures used by the Labor Department to conduct a wage investigation and gather information from a claimant and an employer. The rule also outlines the consequences of an employer's failure to respond to a wage claim or provide complete information.

R20-5-1005. Mediation of Disputes

This rule outlines the Labor Department's authority to mediate and conciliate wage-related disputes.

R20-5-1006. Dismissal of Claim

This rule outlines the circumstances under which the Labor Department will dismiss a wage claim.

R20-5-1007. Notice of Right of Review

This rule establishes review rights following issuance of a determination under A.R.S. § 23-357.

R20-5-1008. Payment of Claim

This rule outlines procedures the Labor Department follows regarding payment of wages.

R20-5-1009. Service of Determinations, Notices, and Other Documents

This rule describes the manner of service of determinations and when service is completed.

3. Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached.

The rules reviewed are effective in achieving their respective objectives. This determination is based on the Commission's experience using the rules and the significant number of wage claims processed by the Labor Division. The Department processed 3,646 wage claims in fiscal year 2024, the latest year for which complete data is available.

4. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rules are consistent with state and federal statutes and rules, including A.R.S. §§ 23-350 through 23-362. The Commission is not aware of any conflicting or duplicative statutes or rules.

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement.

The rules reviewed are enforced as written.

6. Clarity, conciseness, and understandability of the rules.

Except as noted below, the rules in Article 10 are clear, concise, and understandable.

- R20-5-1002 -Simplify the language in this section to include nonwage compensation.
- R20-5-1003 (F)-Delete redundant language and processes to simplify the handling of incomplete wage claims and reduce administrative burden.
- R20-5-1004(A)- Extend Employer response time from 14 to 21 days.
- R20-5-1004(B)-Delete this section to streamline the rule, as remedies are addressed in Section D.
- R20-5-1004(C)-Extend the Claimant's reply time from 14 to 21 days.

7. Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report.

The Commission has not received any written criticisms of the rules within the five years immediately preceding this report.

8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules.

The most recent Economic Impact Statement related to Article 10 was in 2021. The Commission does not believe that the current estimated economic, small business, and consumer impact of the rules is substantially different from that set out in the 2021

Economic Impact Statement. The economic impact of the rules has been consistent with the economic impact predicted in the 2021 Economic Impact Statement.

9. Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No business competitiveness analysis has been submitted to the Commission regarding Article 10.

10. If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report.

The previous Five-Year-Review Report on Article 10 was approved by the Governor's Regulatory Review Council ("GRRC") on August 4, 2020. All the proposed changes identified in the previous five-year-review report were addressed in the Article 10 2021 Rulemaking.

11. A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated.

The probable benefits of the rules in Article 10 outweigh the probable costs. In addition, the Commission believes that the rules impose the least burden and costs on the regulated community.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

The rules in Article 10 implement state law. There is no corresponding federal law.

13. For rules adopted after July 29, 2010, that require issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

There have been no rules adopted after July 29, 2010, which require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action.

The Commission plans to review and complete any necessary rulemaking to address the possible changes outlined in section six (6) by the end of 2026.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE ~~BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA~~

1. Identification of the proposed rulemaking:

The Commission is proposing to amend A.A.C. R20-5-801 (Notice of Rules), A.A.C. R20-5-802 (~~Location of Office and Office Hours~~ Expire), A.A.C. R20-5-803 (Definitions), A.A.C. R20-5-804 (Computation of Time), A.A.C. R20-5-805 (Record Address), A.A.C. R20-5-806 (Service and Notice), A.A.C. R20-5-807 (Consolidation), A.A.C. R20-5-808 (Severance), A.A.C. R20-5-809 (Election to Appear), A.A.C. R20-5-810 (Employee Representatives), A.A.C. R20-5-811 (Form of Pleadings), A.A.C. R20-5-812 (Caption; Titles of Cases), A.A.C. R20-5-813 (Requests for Hearing), A.A.C. R20-5-814 (Pre-hearing Conference), A.A.C. R20-5-815 (Payment of Witness Fees and Mileage), A.A.C. R20-5-817 (Failure to Appear -- Withdrawal of Request for Hearing), A.A.C. R20-5-818 (Duties and Powers of ~~Hearing Officers~~ Administrative Law Judges), A.A.C. R20-5-819 (Witness~~es' Oral~~ Deposition; In State), A.A.C. R20-5-820 (Witness~~es' Oral~~ Deposition; Out-of-State), A.A.C. R20-5-821 (~~Parties' Disposition upon~~ Written Interrogatories and Request for Production of Documents), A.A.C. R20-5-822 (Refusal to Answer; Refusal to Attend), A.A.C. R20-5-823 (Burden of Proof), A.A.C. R20-5-824 (Intermediary Rulings or Orders by the ~~Hearing Officer~~ Administrative Law Judge), A.A.C. R20-5-825 (Legal Memoranda), A.A.C. R20-5-826 (Administrative Law Judge Decisions ~~of Hearing Officers~~), A.A.C. R20-5-827 (Settlement), A.A.C. R20-5-828 (Special Circumstances; Waiver of Rules), A.A.C. R20-5-829 (Variances).

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:

Employers, as defined in A.R.S. § 23-401 are covered by the rules within Article 8 and will be directly affected by the proposed rulemaking.

3. A cost benefit analysis of the following:

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

The Commission does not anticipate an increase in costs from the new rulemaking. The Commission will not need to hire additional staff to enforce the new rules.

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

Political subdivisions would enjoy the same benefits as outlined below to businesses affected by the proposed amendments.

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

The Industrial Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce regulatory burden by amending antiquated language and achieving the regulatory objectives as prescribed by the Arizona Occupational Safety and Health Act of 1972.

4. Impact on private and public employment in businesses, agencies and political subdivisions:

There is no anticipated impact on private and public employment in businesses, agencies and political subdivisions.

5. Impact on small businesses:

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

Arizona small businesses who are employers, as defined in A.R.S. § 23-401 will be directly affected by the proposed rulemaking.

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

The proposed rules do not place new obligations, costs, or time constraints on employers. Adoption of the final rules is not expected to impose administrative or other costs required for compliance in Arizona.

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

The Commission did not consider methods of reducing the impact on small businesses.

d. Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

Private Persons and consumers are not directly affected by this rulemaking.

6. Probable effect on state revenues:

The Commission anticipates state revenues remaining neutral.

7. Less intrusive or less costly alternative methods considered:

The Commission did not consider alternative methods.

8. Data on which the rule is based:

The Commission did not perform any studies as a basis for the rulemaking.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 5. WAGE CLAIMS

1. **Identification of the proposed rulemaking:**

Title 20, Chapter 5, Article 10 of the Arizona Administrative Code contains rules related to wage claims filed with the Industrial Commission of Arizona (the "Commission"), Labor Department ("Labor Department" or "Department"). The amendments will modernize the rules, including by: (1) allowing for service of documents by electronic means; (2) streamlining and eliminating redundancies in the wage claim investigation process to both reduce burdens on the parties involved in wage claim disputes and accelerate the processing of wage claims; and (3) bringing R20-5-1006(A)(3) into compliance with A.R.S. § 23-356. Specifically, the rulemaking includes following rule changes:

- R20-5-1001(8), R20-5-1002, R20-5-1003(F), R20-5-1004, R20-5-1008(B), R20-5-1009 - Modernize rules to authorize service of documents by electronic means, with a party's consent.
- R20-5-1002 – Correct website address of Commission, clarify information that must be provided by parties to a wage claim, and specifically authorize electronic signatures on wage claim and employer response forms.
- R20-5-1003(E) – Delete antiquated and unnecessary language regarding forms being completed in "ink or type."
- R20-5-1003(F) – Extend time for a claimant's response to a deficiency notice from 10 to 14 calendar days.
- R20-5-1004(A) – Delete unnecessary and burdensome requirement that the Labor Department serve wage claims "within 10 days" of the Department's receipt and extend time period for an employer's response from 10 to 14 calendar days.
- R20-5-1004(B) - Extend time period for an employer's response from 10 to 14 calendar days.
- R20-5-1004(C) – Delete redundant and unnecessary provision that requires

additional Labor Department action when an employer's response is incomplete. Pursuant to R20-5-1004(F), the Labor Department already has authority to request additional information from a claimant or employer.

- R20-5-1004(D) – Streamline the wage claim investigation process to always provide a claimant with an opportunity to reply to an employer's response to a wage claim and extend the time period for a claimant's reply from 10 to 14 days.
- R20-5-1004(F) – Allow, rather than require, the Department to administer oaths for the purpose of taking affidavits and allow, rather than require, the Department to record interviews or discussions with a claimant or employer.
- R20-5-1006(A)(3) – Update jurisdictional limit for wage claims filed with the Department to be consistent with A.R.S. § 23-356.
- R20-5-1007(B) – Delete the provision, as it is redundant of R20-5-1005(G).
- R20-5-1008(A) – Authorize a wage claimant to pick up a wage payment in person from the Department.
- R20-5-1008(B) – Streamline the process where an employer claims to have paid wages due directly to the claimant by authorizing dismissal of a wage claim either where the claimant confirms receipt of the wages or where the claimant does not timely respond to a notice of wage payment from the Department. Extend the time period for a claimant to respond to such a notice from 10 to 14 calendar days.

2. <u>Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:</u>

The proposed changes to Article 10: (1) authorize service of documents by electronic means; (2) clarify information that must be provided by parties to a wage claim: (3) authorize electronic signatures on wage claim and employer response forms; (4) extend time periods for claimants and employers to respond to the Labor Department; (5) delete unnecessary and burdensome requirement that the Labor Department serve wage claims "within 10 days" of the Department's receipt; (6) streamline the wage claim investigation process to always provide a claimant with an opportunity to reply to an employer's response to a wage claim; (7) allow, rather than require, the Department to administer oaths

for the purpose of taking affidavits; (8) allow, rather than require, the Department to record interviews or discussions with a claimant or employer; (9) authorize a wage claimant to pick up a payment in person from the Department; and (10) streamline the wage process when an employer claims to have paid wages due directly to the claimant by authorizing dismissal of a wage claim either where the claimant confirms receipt of the wages or where the claimant does not timely respond to a notice of wage payment from the Department. The Commission anticipates that each of the amendments will reduce regulatory burden on participants in wage claim proceedings (without impacting the regulatory objective) and will serve to accelerate the efficient processing of wage claims. The Commission anticipates that the rulemaking will have no adverse economic impact on businesses or consumers. The amendments will primarily benefit all persons and businesses that have a wage claim under A.A.C. Title 20, Chapter 5, Article 10 and the Labor Department Investigators.

3. A cost benefit analysis of the following:

(a) Costs and benefits to state agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Commission is the only state agency directly affected by the rulemaking. However, no new full-time employees will be required as a result of the rulemaking. The amendments should benefit the Commission by: (1) authorizing service of documents by electronic means; (2) clarifying information that must be provided by parties to a wage claim: (3) authorizing electronic signatures on wage claim and employer response forms; (4) deleting unnecessary and burdensome requirement that the Labor Department serve wage claims "within 10 days" of the Department's receipt; (5) streamlining the wage claim investigation process to always provide a claimant with an opportunity to reply to an employer's response to a wage claim; (6) allowing, rather than requiring, the Department to administer oaths for the purpose of taking affidavits; (7) allowing, rather than requiring, the Department to record interviews or discussions with a claimant or employer; (8) authorizing a wage claimant to pick up a payment in person from the Department; and (9) streamlining the wage process when an employer claims to have paid wages due directly to the claimant by authorizing dismissal of a wage claim either where the claimant confirms

receipt of the wages or where the claimant does not timely respond to a notice of wage payment from the Department. The Commission anticipates that each of the amendments will serve to accelerate the efficient processing of wage claims.

(b) Costs and benefits to political subdivisions directly affected by the rulemaking;

The rulemaking applies to political subdivisions subject to Title 23, Chapter 2, Article 7. For further discussion regarding the anticipated benefits to entities affected by the rulemaking, *see supra* Section 2.

(c) Costs and benefits to businesses directly affected by the rulemaking:

See supra Section 2.

4. Impact on private and public employment in businesses, agencies and political subdivisions:

The Commission anticipates that each of the amendments will reduce regulatory burden on participants in wage claim proceedings and will serve to accelerate the efficient processing of wage claims. The Commission anticipates that the rulemaking will have no adverse economic impact on private and public employment in businesses, agencies, and political subdivisions. The amendments will primarily benefit all persons and businesses that have a wage claim under A.A.C. Title 20, Chapter 5, Article 10.

5. Impact on small businesses:

(a) Identification of the small businesses subject to the rulemaking:

Title 20, Chapter 5, Article 10 of the Arizona Administrative Code contains rules related to wage claims filed with the Labor Department. As such, Article 10 and the proposed amendments to Article 10 apply to all persons and businesses (including small businesses) that have a wage claim under A.A.C. Title 20, Chapter 5, Article 10.

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

The rulemaking is not intended to impose new costs for compliance on employers or employees. Instead, the amendments are intended to reduce regulatory burden. *See supra* Section 2.

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

Not applicable.

(d) Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

The amendments are not anticipated to increase any costs on private persons and instead are expected to benefit individuals by providing clear, streamlined, and modern rules.

6. Probable effect on state revenues:

The Commission does not anticipate that the amendments will have an effect on state revenues.

7. Less intrusive or less costly alternative methods considered:

Not applicable. The Commission crafted the amendments to reduce regulatory burden. *See supra* Section 2

8. Data on which the rule is based:

The Commission did not perform any studies or review data as a basis for the rulemaking.

RULES REVIEWED

ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE

A.A.C. R20-5-801
R20-5-801. Notice of Rules

This Article applies to all actions and proceedings before an administrative law judge pertaining to those issues arising out of Title 23, Chapter 2, Article 10. In the event of a conflict between A.R.S. §§ 23-401 through 23-433 or this Article and the rules of procedure pertaining to OAH, A.R.S. §§ 23-401 through 23-433 and this Article control.

A.A.C. R20-5-802
R20-5-802. [Repealed]

A.A.C. R20-5-803
R20-5-803. Definitions

In addition to the definitions provided in A.R.S. § 23-401, the following definitions apply to this Article:
"Act" means the Arizona Occupational Safety and Health Act of 1972.
"Affected employee" means an employee of a cited employer who is exposed to the alleged hazard described in a citation, as a result of assigned duties.
"Authorized employee representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.
"Citation" means a written communication issued by the Division of Occupational Safety and Health of the Industrial Commission of Arizona pursuant to A.R.S. § 23-415.
"OAH" means the Arizona Office of Administrative Hearings.
"Party" shall have the same meaning as "interested party," as defined in A.R.S. § 23-401.
"Representative" means any person, including an authorized employee representative, authorized by a party to represent the party under A.R.S. § 23-429 in a proceeding.

A.A.C. R20-5-804
R20-5-804. Computation of Time

In computing any period of time prescribed or allowed in this Article, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

A.A.C. R20-5-805
R20-5-805. Record Address

The initial pleading filed by any interested party shall contain the party's name, address, e-mail address, and telephone number. Any change in such information must be communicated promptly in writing to the Commission, OAH, and all other interested parties. An interested party who fails to furnish such correct and current information shall be deemed to have waived the right to object to the validity of any notice and/or service which has been made to the last known address of the party as shown by the records of the Commission.

A.A.C. R20-5-806
R20-5-806. Service and Notice

A. At the time of filing pleadings or other documents a copy thereof shall be served by the filing party on every other interested party.

B. Service upon an interested party who has appeared through a representative shall be made only upon such representative.

C. Unless otherwise herein indicated, service may be accomplished by (1) postage prepaid first class mail; (2) by personal delivery; or (3) with an interested party's consent, transmission by e-mail. Service is deemed effected at the time of mailing or e-mailing (if by mail or e-mail) or at the time of personal delivery (if by personal delivery).

D. Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

E. Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the authorized employee representative in the manner prescribed in subsection (C).

F. In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the time and place of hearing, post, where the citation is required to be posted, a copy of the notice of the time and place of hearing and a notice informing such affected employees of their right to appear at the hearing and state their position and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subsection:
(Name of employer)

> Your employer has been cited by the Arizona Division of Occupational Safety and Health for violating the Arizona Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Arizona Office of Administrative Hearings. Affected employees are entitled to appear in this hearing under the terms and conditions established by the Industrial Commission and the Arizona Office of Administrative Hearings in published rules of procedure. Notice of Intent to Participate should be sent to:
>
> Arizona Office of Administrative Hearings 1740 West Adams Street, Lower Level, Phoenix, Arizona 85007.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above Notice may be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Industrial Commission for abatement of the violation has been contested and will be the subject of a hearing before the Arizona Office of Administrative Hearings.

G. Where service is accomplished by posting, proof of such posting shall be filed with OAH not later than five days following the posting.

H. The authorized employee representative, if any, shall be served with the proof of posting set forth in subsection (G) and with a copy of the notice of time and place of hearing.

I. A copy of the notice of time and place of hearing shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in subsection (C) of this Section, if the employer has not been informed that the authorized employee representative has entered an appearance with OAH as of the date such notice is received by the employer.

J. Where a request for hearing is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the notice of time and place of hearing, serve a copy thereof on such authorized employee representative in the manner prescribed in subsection (C) of this Section and shall file proof of such service with OAH.

K. Where a request for hearing is filed by an affected employee or an authorized employee representative, a copy of the request for hearing shall be provided to the employer for posting by the employer at the place the citation is required to be posted.

L. An authorized employee representative who files a request for hearing shall be responsible for serving any other authorized employee representative whose members are affected employees.

M. Where posting is required by this Section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

A.A.C. R20-5-807
R20-5-807. Consolidation

Cases may be consolidated on the motion of any interested party, or on the administrative law judge's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

A.A.C. R20-5-808
R20-5-808. Severance

Upon an administrative law judge's own motion, or upon motion of any party, the administrative law judge may, for good cause, order any part of a proceeding severed with respect to some or all issues or parties.

A.A.C. R20-5-809
R20-5-809. Election to Appear

A. Affected employees may elect to appear at a hearing for the purpose of testifying or stating their position concerning the subject matter of a hearing.

B. An affected employee desiring to appear at a hearing must notify the administrative law judge in writing.

A.A.C. R20-5-810
R20-5-810. Employee Representatives

A. Affected employees may appear in person or through a representative.

B. An authorized employee representative shall be deemed to control all matters respecting the interest of represented employees during the proceedings.

C. Affected employees who are represented by an authorized employee representative may appear only through the authorized employee representative.

D. Any representative may withdraw from representation by filing a written notice of withdrawal with the administrative law judge and by serving a copy thereof on all interested parties.

A.A.C. R20-5-811
R20-5-811. Form of Pleadings

A. Except as provided in A.R.S. § 23-420 and this Article, there are no specific requirements as to the form of any pleading or filing. All pleading and filings shall contain a caption sufficient to identify the parties in accordance with R20-5-812. All pleadings and motions shall include the citation number and a clear and plain statement of the relief that is sought, together with the grounds therefor.

B. Pleadings and other filings (other than exhibits and petitions for hearing) shall be typewritten and double spaced, on standard letter size paper.

C. Pleadings and motions shall be signed or electronically signed by the party filing or by the representative. Such signing constitutes a representation by the signer that the signer has read the

pleading or motion, that to the best of the signer's knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

D. OAH may refuse for filing any pleading or document which does not comply with the requirements of subsections (A), (B), and (C) of this Section.

A.A.C. R20-5-812
R20-5-812. Caption; Titles of Cases

A. Cases initiated by a cited employer filing a request for hearing contesting citations and/or proposed penalties shall be titled:
Arizona Division of Occupational Safety and Health, Complainant, vs. (name of employer), Respondent.

B. Cases initiated by a cited employer filing a request for hearing for modification of the abatement period shall be titled:

(name of employer), Petitioner vs. Arizona Division of Occupational Safety and Health, Respondent.

C. Cases initiated by an affected employee filing a request for hearing for modification of the abatement period shall be titled:

(name of affected employee or authorized employee representative), Petitioner vs. Arizona Division of Occupational Safety and Health, Respondent, and (employer), Respondent.

D. The case titles listed in subsections (A), (B), and (C) of this Section shall appear in the left upper portion of the initial page of any pleading, motion, or filing (other than exhibits).

E. The initial page of any pleading, motion, or filing (other than exhibits and requests for hearing) shall show the citation number at the upper right of the page, opposite the title.

A.A.C. R20-5-813
R20-5-813. Requests for Hearing

A. Requests for hearing shall be filed with the Arizona Division of Occupational Safety and Health.

B. Requests for hearing shall be in writing and contain a clear and plain statement of the relief that is sought, together with the grounds thereof.

C. The Commission shall, after receipt of a request for hearing, refer the file to OAH for hearing and determination.

A.A.C. R20-5-814
R20-5-814. Pre-hearing Conference

A. At any time before a hearing, the administrative law judge, sua sponte or on motion of an interested party, may direct the parties, or their representatives, to exchange information or to participate in a pre-hearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

B. The administrative law judge may issue a pre-hearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be part of the record.

A.A.C. R20-5-815
R20-5-815. Payment of Witness Fees and Mileage

Witnesses summoned before OAH shall be paid the same fees and mileage that are paid to witnesses in the courts of Arizona. Witness fees and mileage shall be paid by the party at whose request the witness appears.

A.A.C. R20-5-816
R20-5-816. Notice of Hearing--Expired

A.A.C. R20-5-817
R20-5-817. Failure to Appear -- Withdrawal of Request for Hearing

A. The failure of an interested party who has requested a hearing to appear at such scheduled hearing shall be deemed to be an admission of the validity of any citation, abatement period, or penalty issued pursuant to A.R.S. § 23-417(A), and additionally a waiver of all rights except the right to be served with a copy of the decision of the administrative law judge and to request review.

B. Withdrawal of a request for hearing shall be construed as an admission of the validity of any citation, abatement period or penalty issued pursuant to A.R.S. § 23-417(A). No decision need be issued in this case, as the subject instrument is deemed to be admitted.

A.A.C. R20-5-818
R20-5-818. Duties and Powers of Administrative Law Judges

It shall be the duty of the administrative law judge to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The administrative law judge shall have authority with respect to assigned cases, between the time a case is assigned and the time a decision is issued, subject to the rules and regulations of the Commission and OAH, to:

1. Administer oaths and affirmations;

2. Rule upon admissibility of exhibits;

3. Rule upon applications for depositions;

4. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

5. Call and examine witnesses;

6. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

7. Adjourn the hearing as the needs of justice and good administration require;

8. Issue appropriate orders for protection of trade secrets;

9. Take any other action necessary under the foregoing and authorized by the rules and regulations of the Commission and OAH.

A.A.C. R20-5-819
R20-5-819. Witness Deposition; In State

A. After a request for hearing has been filed with the Commission, any party desiring to take the deposition of any other interested party or witness residing within the State of Arizona shall file with the administrative law judge, a notice of deposition. Copies of such notice shall be served at least five days prior to the date of the deposition upon the deponent and upon every interested party by the party desiring to take the deposition.

B. If any interested party or the deponent has any objection to the taking of a deposition, the objecting party shall file with the administrative law judge and serve on all interested parties written objections thereto setting forth the basis of the opposition to the deposition. Such objection shall be filed with the administrative law judge within two days after the notice of deposition by is received.

C. If objections to the taking of the deposition are filed with the administrative law judge as provided in subsection (B), the administrative law judge shall rule on the objections within five days of the filing of the objections. The taking of the deposition shall be held in abeyance pending the ruling of the administrative law judge. The administrative law judge shall either order the deposition to proceed, order that the deposition not be taken, or enter such other protective order as may be appropriate.

D. The party taking a deposition shall comply with the Arizona Rules of Civil Procedure governing the taking of depositions.

E. The expense of any deposition shall be borne by the party taking the deposition but shall not include the expense of any other interested party.

F. A scheduled hearing shall not be cancelled or continued for failure to timely take or complete a deposition pursuant to the provisions of this Section.

G. Depositions taken pursuant to the provisions of this Section shall only be used at the time of a hearing for impeachment of a witness, unless the deponent is deceased or a non-party witness is unavailable at the time of the scheduled hearing, in which event the deposition transcript may be admitted into evidence. The transcript shall be filed with the administrative law judge at least 15 days prior to the hearing date if an interested party intends to introduce it into evidence. If the deposition transcript is not filed within the time prescribed herein, it shall not be considered for any purpose except by stipulation of all interested parties, and then only with the concurrence of the administrative law judge.

A.A.C. R20-5-820
R20-5-820. Witness Deposition; Out-of-State

A. After a request for hearing is filed with the Commission, any interested party desiring to take the deposition of any other interested party or witness residing outside the State of Arizona shall file with the administrative law judge, a request for permission to take the deposition. The request shall include the name and address of the witness and set forth the reason why the witness's testimony is necessary for an adjudication of the case. Copies of the request shall be served upon each interested party by the party requesting permission to take the deposition. If no objection to the request for permission to take the deposition is filed as provided in subsection (B), the administrative law judge may, within 10 days, in the administrative law judge's discretion, grant or deny the permission to take the deposition. If the administrative law judge permits the taking of the deposition, the requesting party may proceed in the manner provided by and subject to the limitations of R20-5-819, subsections (A), (D), (E), and (F).

B. If any interested party objects to the taking of the deposition of an interested party or witness, the objecting party shall file with the administrative law judge and serve on all other interested parties written objections thereto setting forth the basis for the opposition to the deposition. Such objection shall be filed with the administrative law judge within five days after the request to take the deposition is served.

C. If objections to the taking of a deposition are filed with the administrative law judge as provided in subsection (B), the hearing officer shall rule on the objections within five days after the filing of the objections. The taking of the deposition shall be held in abeyance pending the ruling of the administrative law judge. The administrative law judge shall either order the deposition to proceed, order that the deposition not be taken, or enter such other protective order as may be appropriate. If the administrative law judge orders that the deposition proceed, the party may proceed to take the deposition in the manner provided by and subject to the limitation of R20-5-819, subsections (A), (D), (E), and (F).

D. The transcript of any deposition taken pursuant to this Section shall be filed with the administrative law judge at least 15 days prior to the hearing date and may be admitted into evidence. If the transcript is not filed within the time prescribed herein, it shall not be considered for any purpose except by stipulation of all interested parties, and then only with the concurrence of the administrative law judge.

A.A.C. R20-5-821
R20-5-821. Written Interrogatories and Request for Production of Documents

A. After a request for hearing is filed with the Commission, any interested party desiring to issue written interrogatories or a request for production of documents to another interested party shall be limited to 25 in number, inclusive of sub-parts.

B. Answers to written interrogatories or a request for production of documents shall be served on all interested parties by the answering party within 30 days after service of the interrogatories or a request for production of documents, or within 30 days after a ruling by the administrative law judge that the interrogatories must be answered or documents must be produced.

C. No scheduled hearing shall be cancelled or continued for failure of a party to timely issue interrogatories or a request for production of documents to another interested party.

D. Written interrogatories issued pursuant to the provisions of this Section may only be used at the time of hearing for impeachment of a witness unless the answering party is deceased at the time of the scheduled hearing in which event the interrogatory answers may be admitted into evidence.

A.A.C. R20-5-822
R20-5-822. Refusal to Answer; Refusal to Attend

A. If an interested party or witness refuses to answer any question propounded during deposition pursuant to R20-5-819 and R20-5-820, the deposition shall be completed in other matters, as the proponent of the question may prefer. Thereafter on reasonable notice to all parties and persons affected thereby the proponent of the question may apply to the administrative law judge for an order compelling an answer. Upon the refusal of an interested party to answer any interrogatory submitted under R20-5-821, or produce a document requested under R20-5-821, the proponent of the interrogatory or requestor of the document may on like notice make like application for such an order from the administrative law judge. If the motion is granted and if the administrative law judge finds that the refusal was without substantial justification, the administrative law judge shall require the refusing party, witness, or representative advising the refusal or either of them to pay to the party propounding the interrogatory or requesting the document the amount of the reasonable attorney's fees incurred in obtaining the order and the reasonable expenses which will be incurred to obtain the requested answers or documents. If the motion is denied and if the administrative law judge finds that the motion was made without substantial justification, the administrative law judge shall require the party filing the motion or the representative advising the party to file the motion, or both, to pay to the refusing party or witness the amount of the reasonable attorney's fees incurred in opposing the motion.

B. If an interested party or a representative of an interested party willfully fails to appear for deposition after being served with the proper notice, or fails to serve answers to interrogatories or produce requested documents after proper service of such interrogatories or request for production of documents, the administrative law judge, on motion and notice, may strike out all or any part of any pleading of that party, dismiss the action or proceeding or any part thereof, or preclude the introduction of evidence.

A.A.C. R20-5-823
R20-5-823. Burden of Proof

A. In all proceedings other than those stated in subsection (B) commenced by the filing of a request for hearing, the burden of proof shall rest with the Arizona Division of Occupational Safety and Health.

B. In proceedings commenced by a request for hearing requesting modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

A.A.C. R20-5-824
R20-5-824. Intermediary Rulings or Orders by the Administrative Law Judge

No intermediary rulings or orders by the administrative law judge may be appealed to the Review Board, but shall become a part of the record.

A.A.C. R20-5-825
R20-5-825. Legal Memoranda

Legal memoranda may be filed if authorized by the applicable rules of procedure or the administrative law judge. When authorized, the administrative law judge shall establish reasonable briefing deadlines for all interested parties.

A.A.C. R20-5-826
R20-5-826. Administrative Law Judge Decisions

A. The decision of the administrative law judge shall be signed, include findings and conclusions of fact and law, and include an order.

B. OAH shall retain jurisdiction to require compliance with the order, or to determine a breach of an approved settlement agreement.

C. A request to determine breach of a settlement agreement shall be filed with the administrative law judge and served upon all interested parties.

D. A request for review by the Review Board shall be filed with the administrative law judge and served upon all interested parties and the Commission.

A.A.C. R20-5-827
R20-5-827. Settlement

A. Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

B. A settlement agreement submitted by interested parties shall be accompanied by a proposed order which, if appropriate, shall be approved and signed by the administrative law judge.

C. Where parties enter into a settlement agreement, the settlement agreement shall be served upon represented and unrepresented affected employees in the manner set forth in R20-5-806. Proof of such service shall accompany the proposed settlement when submitted to the administrative law judge.

A.A.C. R20-5-828
R20-5-828. Special Circumstances; Waiver of Rules

In special circumstances, or for good cause shown, the administrative law judge may, upon application by any interested party, or on sua sponte, waive any rule or make such orders as justice or the administration of the Act requires.

A.A.C. R20-5-829
R20-5-829. Variances

A. Any hearing concerning variances shall be filed with the Commission and shall be heard by the Commission at a time set by the Commission.

B. Such proceeding shall be informal but shall be transcribed at the expense of the person seeking the variance if a written record of the proceeding is requested.

RULES REVIEWED

ARTICLE 10. WAGE CLAIMS

R20-5-1001. Definitions

In this Article, unless the context otherwise requires:

1. "Claim" means a wage claim pursuant to A.R.S. § 23-356.
2. "Claimant" means an individual who files a claim.
3. "Day" means calendar day.
4. "Department" means the Labor Department of the Industrial Commission of Arizona.
5. "Determination" means a finding by the Department under A.R.S. § 23-357 that a claim is either valid or invalid or that the Department cannot resolve the dispute.
6. "Director" means the Director of the Department.
7. "Dismissal" means an action by the Department in which the Department dismisses the claim and refers the claimant to other statutory remedies.
8. "Notice" or "notification" when made by the Department or the Director means a written communication served on the employer or claimant, or both.

R20-5-1002. Forms

The following forms are available upon request from the Department or from the Industrial Commission of Arizona's website at www.azica.gov:

1. Wage claim. When making a claim, a claimant shall provide the following information to the Department:

    a. Claimant's name, mailing address, e-mail address, telephone number, and date of birth;

    b. Employer's name, address, telephone number, and description of business;

    c. Claimant's dates of employment, position, and pay;

    d. The amount of the wages owed and the time period worked related to the unpaid wages; and

    e. Claimant's signature or electronic signature and signature date.

2. Employer response. The employer responding to a claim shall provide the following information to the Department:

    a. Employer's legal name, including any trade names, legal domicile state, address, telephone number, description of business, and an e-mail address for the designated representative of employer;

    b. Claimant's dates of employment, position, and pay;

c. Whether claimant is owed any wages, and, if so, employer's reason for nonpayment; and

d. Employer's signature or electronic signature and signature date.

R20-5-1003. Filing Requirements; Time for Filing; Computation of Time

A. A claimant shall file a claim with the Department within one year of the date of the accrual of the claim.

B. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period and Saturdays, Sundays, and legal holidays are included in the computation of time.

C. The date of filing of the claim is the date the claimant's wage claim form is received by the Department.

D. The Department shall deem a form, document, instrument, or other written record filed at the Tucson office as filed at the Phoenix office for the purpose of computing time.

E. An individual filing a form or document related to a claim shall legibly fill out the form or document.

F. If the wage claim form received from a claimant does not include the information required by R20-5-1002(1), the Department shall return the wage claim form to the claimant with a request that the claimant provide the required information and return the completed wage claim form to the Department within 14 days of the date of service of the Department's request. If the Department does not receive the completed wage claim form within 14 days, the Department shall not initiate an investigation of the claim and the Department shall consider the claim withdrawn without prejudice. The claimant may re-file a withdrawn wage claim with the information required by R20-5-1002(1), if the claim is re-filed within one year of the date of the accrual of the claim.

R20-5-1004. Investigation of Claim

A. The Department shall serve a copy of a claimant's wage claim form on the employer listed on the wage claim, with a request that the employer complete and file the employer response form within 14 days of the date of service of the Department's request.

B. If the Department does not receive the employer response form under subsection (A), the Department shall serve written notice on the employer stating that the employer must pay the amount claimed or file a written response to the wage claim within 14 days of the date of service of the Department's written notice.

C. The Department shall serve a copy of the employer's response on the claimant and offer the claimant the opportunity to file a written reply to the employer's response within 14 days from the date of service. If the Department does not receive claimant's reply within 14 days, the Department shall make a determination of the claim based on the evidence in the file.

D. If the employer fails or refuses to pay the amount claimed or submit a written response to the claim in accordance with subsection (B), the Department shall make a determination of the claim based on the evidence in the file.

E. Upon request from the Department, and if necessary to complete the Department's investigation, the claimant, the employer, or both, shall submit further written information or meet with the Director or the Director's designee. Except for statements made during settlement, mediation, or an informal conference, the Director or the Director's designee may administer oaths for the purpose of taking affidavits and may record the meeting.

F. Upon completion of its investigation, the Department shall serve the Department's determination in writing on the parties.

R20-5-1005. Mediation of Disputes

A. During the investigation of a claim, the Department may mediate and conciliate a dispute between the claimant and the employer.

B. If mediation results in an informal resolution of the claim, the Director or the Director's designee shall prepare and ensure execution of documents providing for the resolution of the claim.

R20-5-1006. Dismissal of Claim

A. The Department shall dismiss a claim if:

1. The claim is filed more than one year after the date of the accrual of the claim,

2. The claimant does not comply with R20-5-1003(F),

3. The amount of wages owed exceeds $5,000.00,

4. The Department's investigation of the claimant's evidence reveals no possible violation of A.R.S. § 23-350 et seq.,

5. The claimant has filed a civil action regarding the same claim,

6. The employer listed on the claim is in bankruptcy,

7. The Department is unable to locate the employer based on the information provided by the claimant, or

8. The wages in question have been withheld from the claimant pursuant to the claimant's prior written authorization.

B. The Department shall send a notice of dismissal to the claimant and, except as provided in subsections (A)(1) through (A)(3) and (7), the Department shall send a notice of dismissal to the employer. Notices of dismissal shall notify the claimant of the availability of other remedies.

R20-5-1007. Notice of Right of Review

A determination issued under A.R.S. § 23-357 shall include a notice informing the parties of their right to seek review under A.R.S. § 23-358 and § 12-901 et seq.

R20-5-1008. Payment of Claim

A. The Department shall send any payment of a wage claim received by the Department to the claimant by certified mail, return receipt requested, unless the claimant elects to pick up the check in person at the Department.

B. If the Department discovers that payment of a wage claim is alleged to have been made directly to the claimant, the Department shall verify the payment by serving the claimant with notice that payment of the wage claim is alleged to have been made directly to the claimant. If the claimant confirms that payment of the wage claim was made directly to the claimant or does not respond to the Department's notice within 14 days of the date of service of the Department's notice, the Department shall deem the claim to have been paid and shall dismiss the wage claim.

C. Payment of a partial amount of a wage claim does not preclude the Department from completing its investigation of the balance of the claim.

D. In the case of a determination and directive for payment issued by the Department under A.R.S. § 23-357, the Department shall, if the employer agrees and with the written consent of the claimant, enter into a payment agreement with the employer for payment of the amount of wages found to be owed the claimant.

R20-5-1009. Service of Determinations, Notices, and Other Documents

A. A determination, notice, or other document required by this Article or other law to be served upon a party, shall be made upon the party, or, if represented by legal counsel, the party's legal counsel. Service upon legal counsel is considered service upon the party.

B. Service may be made and is deemed complete by:

1. Depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, or by personal delivery upon the party.
2. With a party's consent, transmission by e-mail to the e-mail address shown in the records of the Department.

GENERAL AND SPECIFIC STATUTES

A.R.S. 23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.

2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.

3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.

4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.

5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.

6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.

7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.

8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

A.R.S. 23-405. Duties and powers of the industrial commission relative to occupational safety and health

The commission shall:

1. Administer the provisions of this article through the division of occupational safety and health.

2. Appoint the director of the division of occupational safety and health.

3. Cooperate with the federal government to establish and maintain an occupational safety and health program as effective as the federal occupational safety and health program.

4. Promulgate standards and regulations as required, pursuant to section 23-410, and promulgate such other rules and regulations as are necessary for the efficient functioning of the division.

5. Have the authority to issue reasonable temporary, experimental and permanent variances pursuant to sections 23-411 and 23-412.

6. Exercise such other powers as are necessary to carry out the duties and requirements of this article.

A.R.S. 23-420. Hearing rights and procedures

A. Subject to section 23-417, an interested party may request a hearing.

B. A request for hearing shall be made in writing, signed by or on behalf of the interested party and including the requesting party's address and e-mail address, stating that a hearing is desired, and mailed or e-mailed to the commission. The request shall also state with particularity the violation, abatement period or penalty that is being protested. Any violation, abatement period or penalty not protested within the time limit specified on the citation or penalty notice will be deemed admitted.

C. The commission shall refer the request for hearing to the office of administrative hearings for determination as expeditiously as possible. The administrative law judge assigned to hear a case arising out of this article shall either be employed or contracted by the office of administrative hearings.

D. At least five days before any hearing, notice of the time and place of the hearing shall be given to all parties in interest by mail at their last known address. The hearing shall be held in the county where the violation has occurred or such other place as selected by the administrative law judge.

E. A record of all proceedings at the hearing shall be kept but need not be transcribed unless a party requests a review of the decision of the administrative law judge.

F. Except as otherwise provided in this section and by rules of procedure promulgated by the commission pursuant to section 23-405, paragraph 4, the administrative law judge is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and shall conduct the hearing in any manner that will achieve substantial justice.

G. An interested party is entitled to the issuance of subpoenas for the attendance of witnesses, parties and the production of reports, papers, contracts, books, accounts, documents and testimony that are relevant and material to the issue. The commission or the administrative law judge shall issue such subpoenas. The commission may initiate contempt proceedings against any person who refuses to comply with a duly issued subpoena, on application to the superior court. Any person held in contempt may be punished by a fine of not more than one thousand dollars.

GENERAL AND SPECIFIC STATUTES

A.R.S. § 23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.

2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.

3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.

4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.

5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.

6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.1

7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.

8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that

renews its self-insurance plan pursuant to § 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

A.R.S. § 23-361. Rules and regulations

The commission may adopt such rules and regulations as necessary for the purpose of administering and enforcing this article.

E-5.

ARIZONA GAME AND FISH COMMISSION
Title 12, Chapter 4, Article 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 13, 2025

SUBJECT: **ARIZONA GAME AND FISH COMMISSION**
Title 12, Chapter 4, Article 8

Summary

This Five-Year Review Report (5YRR) from the Arizona Game and Fish Commission (Commission) relates to three (3) rules in Title 12, Chapter 4, Article 8 regarding Wildlife Areas and Department Property. Specifically, the rules establish the purposes for wildlife areas, specify the types of Commission-owned or managed property that may be designated as a wildlife area, and provide notice to the public of restrictions that apply to each specific wildlife area.

In the previous 5YRR for these rules, which was approved by the Council in April 2020, the Commission proposed to amend rule R12-4-802 to establish camping time-frames applicable to all wildlife areas that are less restrictive, reduce confusion, and increase consistency between the Commission's wildlife area rules. Additionally, the Commission proposed to amend rule R12-4-801 to establish the Department may post signs placing additional restrictions on the use of wildlife areas related to timing, type, duration, nature of use, or to prohibit access. The Commission indicates it completed the prior proposed course of action through an exempt rulemaking which became effective in February 2021

Proposed Action

In the current report, the Commission indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. Nevertheless, the Commission states it typically amends the Article 8 rules on a biennial basis to implement recommendations resulting from the most recent data/research for specific wildlife areas and boundary descriptions which includes adjusting wildlife boundary descriptions for properties acquired and sold by the Commission, increasing consistency between wildlife areas regarding camping, recreational shooting, and travel; and ensuring public safety. Every five years, recommendations are submitted to the Compliance and Strategies Section by Commission wildlife managers and biologists after the previous years wildlife, harvest, and habitat data are collected and evaluated. Recommendations are intended to promote and maintain public safety and protect and enhance Arizona's diverse wildlife. As such, the Commission proposes to amend the rules to implement recommendations resulting from data and research gathered over the last five years for specific wildlife areas. Additionally, while the Commission has determined the rules are enforceable, the Commission proposes to amend Rl2-4-801 and Rl2-4-802, based on comments submitted by regional personnel to reduce confusion and lessen burdens and costs wherever practical, and make other changes supported by data gathered over the last five years. The Commission anticipates submitting the Notice of Final Exempt Rulemaking for actions proposed in this report to the Secretary of State's office and a copy of the final exempt rules to the Council in compliance with A.R.S. §41-1024(G) by February 2026.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Commission states that it promulgated the rules in Article 8 under exemption from the Administrative Procedure Act (Act). The Commission states there are no previous economic impact statements for the rulemaking associated with Article 8 rules because the Commission promulgated the rules under an exemption from the Act. The Commission indicates that the Act does not apply to any rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.

The Commission states that with respect to the Article 8 rules, the rules do not impose any direct or indirect costs on the regulated community, other state agencies, political subdivisions, private business, or the public. The Commission states the recreational use of wildlife areas by members of the public is a voluntary activity; and the authorized uses and restrictions are intended to promote and maintain public safety and protect and enhance Arizona's diverse wildlife.

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

The Commission states that the Arizona Game and Fish Department tasked a team of employees to review the rules contained within Article 8. The Department prepared a report of its findings based on Council standards. In its report, the review team addressed all internal comments from agency staff; and the one comment received from the public over the last five years. The Commission states that the team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

The Commission states that wildlife areas are comprised of lands owned or leased by the Commission, federally-owned lands of unique wildlife habitat where cooperative agreements provide wildlife management and research implementation, and any lands with property interest conveyed to the Commission through an approved land use agreement, where said property interest is sufficient for management of the lands consistent with the objectives of the wildlife area. The Commission states that the rules provide balance to protect and ensure public access to and use of these properties, while also affording protection to wildlife. The Department believes that once the proposed amendments indicated in the report are made, the rules will impose the least burden and costs to persons regulated by the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission indicates it received comments on November 8 and 11, 2020 from an individual who had concerns about the Department's management of their wildlife areas (WLA) and in particular the Lamar Haines WLA. The individual's concerns and the Commission's response are outlined in Section 7 of the Commission's report. Council staff believes the Commission has adequately addressed the written criticisms received in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Commission indicates that the rules are clear, concise, and understandable. The Commission acknowledges that the legal descriptions of the wildlife areas provided under R12-4-803 are complex, but are necessary from a legal standpoint as they identify the areas in a manner consistent with real property standards and facilitate enforcement of restrictions established under R12-4-802.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Commission indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Commission indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Commission indicates the rules are currently enforced as written.

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

The Commission indicates the rules are based on state law and no federal law is directly applicable to the subject of the rules.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Commission indicates that the rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Commission relates to three (3) rules in Title 12, Chapter 4, Article 8 regarding Wildlife Areas and Department Property. The Commission indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. Nevertheless, the Commission states it typically amends the Article 8 rules on a biennial basis to implement recommendations resulting from the most recent data/research for specific wildlife areas and boundary descriptions which includes adjusting wildlife boundary descriptions for properties acquired and sold by the Commission, increasing consistency between wildlife areas regarding camping, recreational shooting, and travel; and ensuring public safety. Additionally, while the Commission has determined the rules are enforceable, the Commission proposes to amend Rl2-4-801 and Rl2-4-802, based on comments submitted by regional personnel to reduce confusion and lessen burdens and costs wherever practical, and make other changes supported by data gathered over the last five years. The Commission anticipates submitting the Notice of Final Exempt Rulemaking for actions proposed in this report to the Secretary of State's office and a copy of the final exempt rules to the Council in compliance with A.R.S. §41-1024(G) by February 2026.

Council staff recommends approval of this report.

January 24, 2025

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

RE: Arizona Game and Fish Commission, 12 A.A.C, Ch 4, Article 8 Wildlife Areas and Department Property Five-year Review Report

Dear Jessica Klein:

Please find enclosed the Five-year Review Report of Arizona Game and Fish Department (AZGFD) for 12 A.A.C, Ch 4, Article 8 which is due on March 31, 2025.

AZGFD hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Celeste Cook at (623) 236-7390 or ccook@azgfd.gov.

Sincerely,

Tom Finley, Director

GOVERNOR: KATIE HOBBS **COMMISSIONERS:** CHAIRMAN CLAY HERNANDEZ, TUCSON | MARSHA PETRIE SUE, SCOTTSDALE | JEFF BUCHANAN, PATAGONIA
JAMES E. GOUGHNOUR, PAYSON | TODD G. GEILER, PRESCOTT **DIRECTOR:** TOM P. FINLEY **DEPUTY DIRECTOR:** JOSHUA W. HURST

ARIZONA GAME AND FISH COMMISSION

2024 FIVE-YEAR REVIEW REPORT

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 8. WILDLIFE AREAS AND DEPARTMENT PROPERTY

PREPARED FOR THE

GOVERNOR'S REGULATORY REVIEW COUNCIL

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (G.R.R.C.).

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 8, Wildlife Areas and Department Property, are scheduled to be reviewed by March 2025.

This five-year-review report covers three rules in A.A.C. Title 12, Chapter 4, Article 8 that relate to wildlife areas and Department property:

- R12-4-801. General Provisions
- R12-4-802. Wildlife Area and Other Department Managed Property Restrictions
- Rl2-4-803. Wildlife Area and Other Department Managed Property Boundary Descriptions

The Commission promulgated the rules in Article 8 under an exemption from the Administrative Procedure Act (Act). Under A.R.S. § 41-1005(A)(l), the Act does not apply to any "[r]ule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals." The term "public works" is not defined under Title 17, but the ordinary dictionary definition is '[a]ny building or structure on land ... built by the government for public use and paid for by public funds." The rules identify public usage requirements for public works under the Department's jurisdiction.

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   For all of the Article 8 rules, the authorizing statute is A.R.S. § 17-231(A)(l) and the implementing statutes are A.R.S. §§ 17-23l(B)(2) and 41-1005(A).

2. **Objective of the rule, including the purpose for the existence of the rule.**

   For Rl2-4-801 General Provisions, the objective of this rule is to establish the purposes for wildlife areas, to specify the types of Commission-owned or -managed property that may be designated as a wildlife area, and to notice the public of restrictions that apply to each specific wildlife area. The rule provides protections to Commission-owned and -managed wildlife areas and other properties, while maximizing public access and use of the same properties.

   For Rl2-4-802 Wildlife Area and Other Department Managed Property Restrictions, the objective of this rule is to establish the restrictions and allowable activities applicable to the use of wildlife areas and other Department managed property. The rule provides protections to Commission-owned and -managed wildlife areas and other properties, while maximizing public access and use of the same properties.

For RI 2-4-803 Wildlife Area and Other Department Managed Property Boundary Descriptions, the objective of the rule is to establish the legal boundary descriptions for designated wildlife areas.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

For all of the Article 8 rules, the rules appear to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rules are understandable and applicable. The Department believes this data indicates the rules are effective.

The Department typically amends the Article 8 rules on a biennial basis to implement recommendations resulting from the most recent data/research for specific wildlife areas and boundary descriptions which includes adjusting wildlife boundary descriptions for properties acquired and sold by the Department, increasing consistency between wildlife areas regarding camping, recreational shooting, and travel; and ensuring public safety. Every five years, recommendations are submitted to the Compliance and Strategies Section by Department wildlife managers and biologists after the previous years wildlife, harvest, and habitat data are collected and evaluated. Recommendations are intended to promote and maintain public safety and protect and enhance Arizona's diverse wildlife.

The Department proposes to amend the rules to implement recommendations resulting from data and research gathered over the last five years for specific wildlife areas. These amendments may include allowing fires in designated areas wherever practical or prohibiting fires to protect human life, property, and natural resources in areas where high fuel loads exist or the wildlife area is in a high fire risk area. Allowing firewood cutting or gathering for noncommercial onsite use only wherever practical or prohibiting firewood gathering in areas that do not support appreciable quantities of utilizable wood, with the possible exception of riparian tree species that are of high wildlife value. Allowing overnight public camping for up to 14 days within any 30-day period wherever practical. Allowing motorized big game retrieval wherever hunting for big game is permitted, where big game animals are present in or near the wildlife area, and the surrounding habitat lends itself to off-road motorized big game retrieval or prohibiting big game retrieval in areas where wildlife, wildlife habitat, crop production, or research activities may be harmed by cross country travel. Allowing hunting and fishing wherever practical, when authorized by Commission Order or prohibiting the use of firearms for the purpose of taking wildlife when the wildlife area is not conducive to the use of firearms due to its proximity to populated areas or occupied dwellings.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

For R12-4-801 through R12-4-803, which relate to wildlife areas, the Commission may "[e]stablish game management units or refuges for the preservation and management of wildlife." A.R.S. § 17-231(B)(2). Game management unit boundaries are prescribed under Rl2-4-108, while wildlife area boundaries are prescribed under Rl2-4-803. A "management unit" is defined as "an area established by the Commission for management purposes." only. In contrast, a "wildlife area" designation is used for "preservation and management of wildlife."

For all of the Article 8 rules, the rules appear to be consistent with and are not in conflict with applicable statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and A.A.C. Title 12, Chapter 4."

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

For all of the Article 8 rules, the rules are currently being enforced and the Department is not aware of any problems with the enforcement of the rule.

While the Department has determined the rules are enforceable, the Department proposes to amend Rl2-4-801 and Rl2-4-802, based on comments submitted by regional personnel to reduce confusion and lessen burdens and costs wherever practical, and make other changes supported by data gathered over the last five years.

6. Clarity, conciseness, and understandability of the rule.

For all of the Article 8 rules, the rules are clear, concise, and understandable. While the legal descriptions of the wildlife areas provided under Rl2-4-803 (Wildlife Area and Other Department Managed Property Boundary Descriptions) are often complex, previous Attorney General reviews indicate the wildlife area boundary descriptions are necessary from a legal standpoint as they identify areas in a manner consistent with real property standards and facilitate enforcement of the restrictions established under Rl2-4-802.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

Written Criticism: On November 8 and 11, 2020 the Department received comments from an individual who had concerns about the Department's management of their wildlife areas (WLA) and in particular the Lamar Haines WLA. The comments had to do with the following: allowing camping and fires on WLA's (which would

lead to increased littering, human/wildlife conflicts, deterrent from wildlife using water on the property, and damage to cultural resources) and target shooting (would lead to illegal take of wildlife). In addition, they were interested in additional signage on hunting regulations. They felt that in some cases WLA's should not allow hunting (Cibola WLA) and that it was a public safety risk with an increasing population in Arizona being interested in watchable wildlife. They felt that WLA's should be safe zones for wildlife and that they did not have to be managed consistently with the surrounding lands. With these concerns they wanted to know why WLAs were established, if not to protect wildlife.

Agency Response: Thank you for taking the time to your comment regarding the proposed changes to the Lamar Haines Wildlife Area restrictions. Please consider this letter as a response to your comments submitted to the Department on November 8th and 11th. Although your comments were received after the public comment period (September 28 through October 28th), please know your comments were shared with the team and the Lamar Haines Wildlife Areas property stewards. Your comments have also been placed in the rule record for consideration by future rule review and rulemaking teams. As stated in R12-4-801 (general provisions) wildlife areas are established to provide protective measures for wildlife, habitat, or both; allow for hunting, fishing, and other recreational activities that are determined to be compatible with wildlife habitat conservation and education; allow for special management or research practices; and enhance wildlife and habitat conservation. "Other recreational activities" include camping, backpacking, hiking, general wildlife viewing and photography, etc. R12-4-802 (wildlife area and other department managed property restrictions) establishes the restrictions and limitations on recreational uses of Commission-owned and -managed wildlife areas, with the intent of maximizing public access and use of these properties. The Commission amends wildlife area restrictions to affect recommendations made from data gathered by regional staff and those submitted by local government agencies (includes political subdivisions), local law enforcement, members of the public, etc. The Commission allows target shooting and, when authorized by Commission Order, hunting, wherever practical. The use of firearms for the purpose of target shooting and/or taking wildlife is prohibited when the wildlife area is not conducive to the use of firearms due to its proximity to populated areas or occupied dwellings. It is important to note, grebes are federally protected migratory birds and may not be taken as defined and protected under federal law. We hope the wildlife biologist who discovered the violation reported the incident to the U.S. Fish and Wildlife Migratory Bird Program for further investigation. The proposal to allow dispersed camping on the Lamar Haines Wildlife Area is based on the foundation of increasing public access where possible, increasing consistency between wildlife area rules when applicable, and increasing consistency across multiple jurisdictions whenever possible, such as bringing the wildlife area rules in alignment with the surrounding Coconino National Forest regulations. Please note that dispersed camping for no more than 14 consecutive days in a 30-day period is allowed on the land surrounding the wildlife area (Coconino National Forest). The Department does not believe the proposed change will elevate the risk of human/wildlife conflicts in the wildlife area because Coconino National Forest management has allowed camping on their lands within the San Francisco Peaks for some time and the Department is not aware of any incidents or received any reports of human/wildlife conflicts involving campers in that area. Overnight camping would be managed by signage, such as informational signs at the entrance to the

wildlife area outlining allowed activities and restrictions. In addition, new map signage posted at the entrance to the wildlife area will not depict the locations of cultural significant sites within the property and informational signs will be utilized to mitigate possible camping impacts to the property and its cultural resources (such as signage stating the area is under surveillance; it is against the law to deface cultural sites, etc.). Because camping access may only be gained by foot and vehicular access is controlled through a locked gate, Regional staff does not expect an influx of recreational or semi-permanent campers as a result of the proposed rule change. Additionally, there are no indications that the property is incurring any significant damage as a result of current public access and use. However, the Department is meeting with U.S.F.S staff to discuss this proposal further. The Commission prohibits fires to protect human life, property, and natural resources in areas where high fuel loads exist or the wildlife. R12-4-802 (wildlife area and other department managed property restrictions) currently prohibits campfires on this wildlife area due to the fuel loads, no fires are allowed on the property; and this rulemaking does not propose to change that. Fire restrictions are implemented in alignment with Coconino National Forest designations based on scientific data gathered by the Coconino National Forest. The Department follows a multi-tiered process for setting hunting season structures, hunting season dates, hunt permit allocations, and other controlling elements for regulating hunting of game animals. This is done by using a science-based process designed to ensure sustainable populations of wildlife for future generations to enjoy. Hunt recommendations are proposed three times annually and are made final through Commission Orders. There are times when a hunt structure is modified mid-cycle. Posting signage that is subject to change on a frequent basis is not cost effective and burdensome to the Department. A person need only review the information provided on the Department's website prior to visiting a wildlife area to determine whether a hunt is occurring in a specific area. Information regarding when and where hunts are going on is readily available in the hunting regulations and on the Department's website. This web page provides access to hunt regulations where you can obtain information on hunt seasons and units: https://www.azgfd.com/hunting/regulations/. In addition, to make it simpler, R12-4-802 (wildlife area and other department managed property restrictions) specifies which unit(s) a wildlife area is located in. Simply search for the unit number for the wildlife area that you plan to visit. Please note, small game and nongame hunts may occur in certain areas throughout the entire year. The Commission and Department are entrusted to conserve and protect more than 800 native wildlife species in the state. Wildlife areas provide a benefit to the general public by providing quality space for people to recreate and, when authorized by Commission Order, hunt and fish. These activities and public visitation can draw people into local communities and businesses, resulting in a positive impact to local economies. The rules provide balance to protect and ensure public access to and use of these properties, while also affording protection to wildlife. The Department believes that once the proposed amendments indicated in the report are made, the rules will impose the least burden and costs to persons regulated by the rules.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

There are no previous economic impact statements for the rulemakings associated with the Article 8 rules because the Commission promulgated the rules under an exemption from the Act. The Act does not apply to any "[r]ule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals."

With respect to the Article 8 rules, the rules do not impose any direct or indirect costs on the regulated community, other state agencies, political subdivisions, private business, or the public. The recreational use of wildlife areas by members of the public is a voluntary activity; and the authorized uses and restrictions are intended to promote and maintain public safety and protect and enhance Arizona's diverse wildlife.

The Department believes the rules do not impose any costs to agencies or political subdivisions of this state directly affected by the implementation and enforcement of the rules, and does not impose any additional costs or reduction in revenues to businesses (large or small). The Department believes the rules have no effect on the revenues or payroll expenditures of employers in the state. The rules have resulted in minimal administrative costs to the Department. The Department has determined that the benefits of the rules outweigh any costs.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

The Department completed the course of action indicated in the previous five-year review report as follows: Notice of Final Exempt Rulemaking: 27 A.A.R. 242, February 19, 2021, R21-15.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The Arizona Game and Fish Department tasked a team of employees to review the rules contained within Article 8. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff; and the one comment received from the public over the last five years. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was

consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

Wildlife areas are intended to conserve and protect wildlife and to provide public recreational opportunities to the general public. Wildlife areas are comprised of lands owned or leased by the Commission, federally-owned lands of unique wildlife habitat where cooperative agreements provide wildlife management and research implementation, and any lands with property interest conveyed to the Commission through an approved land use agreement, where said property interest is sufficient for management of the lands consistent with the objectives of the wildlife area. Wildlife areas provide a benefit to the general public by providing quality space for people to recreate and, when authorized by Commission Order, hunt and fish. In addition, these activities and public visitation can draw people into local communities and businesses, positively impacting local economies. The rules provide balance to protect and ensure public access to and use of these properties, while also affording protection to wildlife. The Department believes that once the proposed amendments indicated in the report are made, the rules will impose the least burden and costs to persons regulated by the rules.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule; the rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department anticipates submitting the Notice of Final Exempt Rulemaking for actions proposed in this report to the Secretary of State's office and a copy of the final exempt rules to the Council in compliance with A.R.S. §41-1024(G) by February 2026.

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Article 8	New Article
R12-4-801	New Section
R12-4-802	New Section
R12-4-803	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific);

Authorizing statute: A.R.S. § 17-231(A)(1)(2) and (3) for all rules

Implementing statute: A.R.S. § 17-231(B)(2), (B)(3) and (B)(7)

3. The effective date of the rules:

May 1, 2000

4. A list of all previous notices appearing in the Register addressing the final rule:

Not applicable

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Dona Marie Markley, Rulewriter

Address: Arizona Game and Fish Department DORR
2221 West Greenway Road
Phoenix, AZ 85023-4399

Telephone: (602) 789-3271

Fax: (602) 789-3677

6. An explanation of the rule, including the agency's reasons for initiating the rule:

A.R.S. § 41-1005(A)(1) exempts the Commission from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for wildlife area rules. Based upon this statutory exemption, the Commission has adopted new wildlife area rules to replace Commission Rule R12-4-109, which is repealed effective May 1, 2000. The new wildlife area rules provide protective measures for wildlife and habitat, allow for special management and research practices, and enhance wildlife and habitat conservation. R12-4-801 prescribes criteria for lands that qualify as wildlife areas; R12-4-802 prescribes how public access to wildlife areas may be restricted or closed to entry; and R12-4-803 describes the boundaries of the wildlife areas.

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study and any analysis of the study and other supporting material:

Not applicable

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

Not applicable

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

The rules will result in no new costs to the Department or any other persons. The adoption of exempt wildlife area rules that adequately protect wildlife and habitat will benefit the public and the Department.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

A.R.S. § 41-1005(A)(1) exempts the Commission from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for wildlife area rules. Based upon this statutory exemption, the Commission has adopted new wildlife area rules to replace Commission Rule R12-4-109, which is repealed effective May 1, 2000. The changes from current R12-4-109 and from the new, exempt rules as originally drafted and distributed to the public are as follows:

Changes from R12-4-109:

• The new wildlife area rules are exempt rules: As such, the rulemaking process is not subject to the confines of the Arizona Administrative Procedure Act. This will allow the Commission to amend the rules annually in conjunction with the adoption of Commission Orders.

• R12-4-801. General Provisions: The only change under general provisions is the addition of language in subsection (B)(3) allowing the Department to designate existing forms of property interests as wildlife areas.

• R12-4-802. Wildlife Area Restrictions: This is a new rule that lists land use restrictions for each wildlife area and prescribes how public access to wildlife areas may be restricted or closed to entry. Land use and access restrictions previously included in Commission Order 1 are now identified here instead.

• R12-4-803. Wildlife Area Boundary Descriptions: Eight new wildlife areas (Chevelon Ranches, Colorado River Nature Center, Quigley, Sipe White Mountain, Sunflower Flat, Upper Verde River, Wenima, and White Mountain Grasslands) are added. Two existing wildlife areas that no longer meet the criteria for establishment of a wildlife area (Painted Rock and Santa Rita) are deleted. Existing boundaries for some wildlife areas are amended to reflect changes in ownership status.

Changes from the new, exempt rules as originally drafted:

• R12-4-801. General Provisions: No changes.

• R12-4-802. Wildlife Area Restrictions: White Mountain Grasslands Wildlife Area was added and corresponding restrictions listed. In addition, language among the areas was standardized whenever possible and amended to be consistent with Commission Orders.

• R12-4-803. Wildlife Area Boundary Descriptions: A boundary description for White Mountain Grasslands Wildlife Area was added. At this time, this new area will include Cross L Ranch, which was recently purchased by the Department. In the near future, Ocote Ranch parcel (which the Department is in the process of acquiring) will be added.

11. A summary of the principal comments and the agency response to them:

Notice of the rulemaking, including an explanation of the rules and draft rule language, was given to the public through mailings and distribution at 14 statewide 2000 Hunt Regulations meetings. Public Hearings were also held at Alamo Lake on February 14, 2000; in Showlow, Arizona on February 16, 2000; in Yuma, Arizona on February 16, 2000; and in Springerville, Arizona on February 17, 2000. Written public comments were also accepted through February 22, 2000.

A summary of the principal comments and the agency response to them are as follows:

1. **Comment:** Support for the proposed rules.

Evaluation: The Department agrees that the rules are necessary.

2. **Comment:** Support for the proposed rules, but concern that the rules are not always fairly and reasonably enforced.

Evaluation: The Department agrees that the rules are necessary and that they should be fairly and reasonably enforced at all times.

3. **Comment:** Support for the changes that will allow the Department to designate existing forms of property interests as wildlife areas.

Evaluation: The Department agrees.

4. **Comment:** Support for adding land use restrictions to the rule; but a request that the Department accept pub-

lic comment about the restrictions and list the restrictions on the Department's web site and in its publications.

Evaluation: The Department agrees and will include the land use restrictions in public access information whenever possible.

5. **Comment:** Burro impacts should be addressed in R12-4-801. General Provisions.

Evaluation: The Department does not believe it is necessary to add oversight regarding burros on wildlife areas.

6. **Comment:** Request that closure dates for wildlife areas 17 (Mittry Lake), 19 (Quigley), 22 (Roosevelt Lake), and 3 (Whitewater Draw) be consistent whenever possible.

Evaluation: The Department agrees that whenever possible restrictions should be consistent throughout wildlife areas. However, the Department found that based upon the differences in area elevations and the species of wildlife seeking refuge the differences in closure dates for these areas are necessary.

7. **Comment:** Restrictions or prohibitions on skiing and/or jet skiing should be added to wildlife areas like Mittry Lake.

Evaluation: The Department does not believe that it is necessary to add restrictions regarding skiing or jet skiing to wildlife areas.

8. **Comment:** The 10-day camping rule should be strictly enforced at Mittry Lake.

Evaluation: The Department agrees.

9. **Comment:** Fishing access should be addressed for Quigley Wildlife Area.

Evaluation: The Department believes that fishing access is adequately addressed in the fishing regulations per Commission Order 40 and does not need to be addressed in R12-4-802.

10. **Comment:** Motorized vehicle restrictions should be clarified for Alamo Wildlife Area.

Evaluation: The Department believes that motorized vehicle restrictions are adequately addressed in the Alamo Wildlife Area restriction identifying that such travel is permitted on designated roads, trails, or areas only.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 8. WILDLIFE AREAS

Section
R12-4-801. General Provisions
R12-4-802. Wildlife Area Restrictions
R12-4-803. Wildlife Area Boundary Descriptions

ARTICLE 8. WILDLIFE AREAS

R12-4-801. General Provisions

A. Wildlife areas shall be established to:
1. Provide protective measures for wildlife, habitat, or both; and
2. Allow for special management or research practices; and
3. Enhance wildlife and habitat conservation.

B. Wildlife areas shall be:

1. Lands owned or leased by the Commission and managed by the Department, or
2. Federally-owned lands of unique wildlife habitat where cooperative agreements provide wildlife management and research implementation.
3. Any lands with property interest conveyed to the Commission by any entity, through approved land use agreement, including but not limited to deeds, patents, leases, conservation easements, special use permits, licenses, agreement, management agreement, inter-agency agreements, letter agreements, and right-of-entry, where said property interest is sufficient for management of the lands consistent with the objectives of the wildlife area.

C. Wildlife area designation shall not be given to any private lands, or lands in which private parcels are located, solely for the purpose of protecting private property. Wildlife area designation on private property, or where private property is involved, shall be considered by the Commission only when the Commission and the owners arrive at a mutual agreement that shall not confine or restrict the Department in fulfilling management or research objectives, nor close the area to hunting, trapping, or fishing.

D. Land qualified for wildlife areas shall be:
1. Lands with unique topographic or vegetative characteristics that contribute to wildlife,
2. Lands where certain wildlife species are confined because of habitat demands,
3. Lands that can be physically managed and modified to attract wildlife, or
4. Lands that are identified as critical habitat for certain wildlife species during critical periods of their life cycles.

E. The Department may restrict public access to and public use of wildlife areas and the resources of wildlife areas for up to 90 days when necessary to protect property, ensure public safety, or to ensure maximum benefits to wildlife. Closures or restrictions exceeding 90 days shall require Commission approval.

F. Closures of all or any part of a wildlife area to public entry, and any restriction to public use of a wildlife area, shall be listed in this Article or shall be clearly posted at each entrance to the wildlife area. No person shall conduct an activity restricted by this Article or by such posting.

G. When a wildlife area is posted against travel except on existing roads, no person shall drive a motor-operated vehicle over the countryside except by road.

F. Effective May 1, 2000.

R12-4-802. Wildlife Area Restrictions

A. No person shall violate the following restrictions on Wildlife Areas:
1. Alamo Wildlife Area (located in Units 16A & 44A):
   a. Wood collecting limited to dead and down material, for onsite noncommercial use only.
   b. Overnight public camping in the wildlife area outside of Alamo State Park allowed for no more than 14 days within a 45-day period.
   c. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
   d. Open to hunting in season.
2. Allen Severson Wildlife Area (located in Unit 3B):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Posted portions closed to discharge of all firearms from April 1 to July 31 annually.
   e. Open to hunting in season, except posted portions closed to hunting from April 1 to July 31 annually.
3. Aravaipa Canyon Wildlife Area (located in Units 31 & 32):
   a. Access to Aravaipa Canyon Wilderness Area is by permit only, available through the Safford Office of the Bureau of Land Management.
   b. Closed to discharge of all firearms.
   c. Open to hunting in season with bow and arrow only.
4. Arlington Wildlife Area (located in Unit 39):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
   e. Open to hunting in season.
5. Base and Meridan Wildlife Area (located in Units 39 M & 42M):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
   e. Closed to discharge of rifled firearms.
   f. Open to hunting in season.
6. Becker Lake Wildlife Area (located in Unit 1):

a. No open fires.
b. No overnight public camping.
c. Motorized vehicle travel permitted on designated roads only.
d. Closed to discharge of rifled firearms.
e. Posted portions closed to public entry from December 15 to June 15 annually.
f. Open to hunting in season, except posted portions closed to hunting from December 15 to June 15 annually.

7. Bog Hole Wildlife Area (located in Unit 35B):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
   e. Open to hunting in season.
8. Chevelon Canyon Ranches Wildlife Area (located in Unit 4A):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Motorized vehicle travel permitted on designated roads only, except as permitted by R12-4-110 (G).
   e. Open to hunting in season.
9. Chevelon Creek Wildlife Area (located in Unit 4B):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Motorized vehicle travel permitted on designated roads only, except as permitted by R12-4-110 (G).
   e. Posted portions closed to public entry from October 1 to February 1 annually.
   f. Open to hunting in season, except posted portions closed to hunting from October 1 to February 1 annually.
10. Clarence May & C.H.M. May Memorial Wildlife Area (located in Unit 29):
    a. Closed to discharge of all firearms.
    b. Closed to hunting.
11. Cluff Ranch Wildlife Area (located in Unit 31):
    a. Open fires allowed in designated areas only.
    b. Wood collecting limited to dead and down material, for onsite noncommercial use only.
    c. Overnight public camping allowed in designated areas only, for no more than 5 days within a 14-day period.
    d. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
    e. Posted portions around Department housing closed to discharge of all firearms.
    f. Closed to discharge of centerfire rifled firearms.
    g. Open to hunting in season.
12. Colorado River Nature Center Wildlife Area (located in Unit 15D):
    a. No open fires.
    b. No firewood cutting or gathering.
    c. No overnight public camping.
    d. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
    e. Closed to hunting.
13. House Rock Wildlife Area (located in Unit 12A):
    a. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
    b. Open to hunting in season.
14. Jaques Marsh Wildlife Area (located in Unit 3B):
    a. No open fires.
    b. No firewood cutting or gathering.
    c. No overnight public camping.
    d. Open to hunting in season.
15. Lamar Haines Wildlife Area (located in Unit 7):
    a. No firewood cutting or gathering.
    b. No overnight public camping.
    c. No motorized vehicles.
    d. Open to hunting in season.
16. Luna Lake Wildlife Area (located in Unit 1):
    a. Posted portions closed to public entry from April 1 to July 31 annually.
    b. Open to hunting in season, except closed to hunting from April 1 to July 31 annually.
17. Mittry Lake Wildlife Area (located in Unit 43B):

a. Open fires allowed in designated areas only.
b. Overnight public camping allowed in designated areas only, for no more than 10 days per calendar year.
c. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
d. Posted portions closed to public entry from November 15 to February 15 annually.
e. Open to hunting in season, except posted portions closed to hunting from November 15 to February 15 annually.

18. Powers Butte (Mumme Farm) Wildlife Area (located in Unit 39):
a. No open fires.
b. No firewood cutting or gathering.
c. No overnight public camping.
d. Motorized vehicle travel permitted on posted designated roads, on designated trails, or in designated areas only.
e. Open to hunting only per Commission Order 19 (Dove), except posted portions closed to hunting.

19. Quigley Wildlife Area (located in Unit 41):
a. No open fires.
b. No overnight public camping.
c. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
d. Posted portions closed to public entry from September 1 to March 31 annually.
e. Open to hunting in season, except posted portions closed to hunting from September 1 to March 31 annually.

20. Raymond Ranch Wildlife Area (located in Unit 5B):
a. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
b. Open to hunting in season.

21. Robbins Butte Wildlife Area (located in Unit 39):
a. No open fires.
b. No firewood cutting or gathering.
c. No overnight public camping.
d. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only from 1 hour before sunrise to 1 hour after sunset daily.
e. Parking in designated areas only.
f. Target or claybird shooting permitted in designated areas only.
g. Posted portions around Department housing closed to discharge of all firearms.
h. Closed to discharge of centerfire rifled firearms.
i. Open to hunting in season.

22. Roosevelt Lake Wildlife Area (located in Units 22, 23, & 24B):
a. Posted portions closed to public entry from November 15 to February 15 annually.
b. Open to hunting in season, except posted portions closed to hunting from November 15 to February 15 annually.

23. Sipe White Mountain Wildlife Area (located in Unit 1):
a. No open fires.
b. No firewood cutting or gathering.
c. No overnight public camping.
d. Motorized vehicle travel permitted on designated roads only, except as permitted by R12-4-110 (G).
e. Posted portions around Department housing closed to discharge of all firearms.
f. Open to hunting in season.

24. Springerville Marsh Wildlife Area (located in Unit 2B):
a. No open fires.
b. No firewood cutting or gathering.
c. No overnight public camping.
d. Closed to discharge of all firearms.
e. Closed to hunting.

25. Sunflower Flat Wildlife Area (located in Unit 8):
a. No overnight public camping.
b. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
c. Open to hunting in season.

26. Three Bar Wildlife Area (located in Unit 22):
a. Portions within the fenced enclosure inside the loop formed by Tonto National Forest Road 647 closed to public entry.
b. Open to hunting in season, except portions within the fenced enclosure inside the loop formed by Tonto National Forest Road 647 closed to hunting.

27. Tucson Mountain Wildlife Area (located in Unit 37M):
    a. Closed to discharge of all firearms.
    b. Open to hunting in season with bow and arrow only.
    c. Archery deer and archery javelina hunters must check in with the Arizona Game and Fish Tucson Regional Office prior to going afield.
28. Upper Verde River Wildlife Area (located in Unit 19A):
    a. No firewood cutting or gathering.
    b. Overnight public camping allowed in designated areas only.
    c. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
    d. Open to hunting in season.
29. Wenima Wildlife Area (located in Unit 2B):
    a. No open fires.
    b. No firewood cutting or gathering.
    c. No overnight public camping.
    d. Motorized vehicle travel permitted on designated roads only, except as permitted by R12-4-110 (G).
    e. Posted portions closed to discharge of all firearms.
    f. Open to hunting in season.
30. White Mountain Grasslands Wildlife Area (located in Unit 1):
    a. No open fires.
    b. No overnight public camping
    c. Motorized vehicle travel permitted on designated roads only, except as permitted by R12-4-110 (G).
    d. Posted portions closed to public entry.
    e. Open to hunting in season.
31. Whitewater Draw Wildlife Area (located in Unit 30B):
    a. Open fires allowed in designated areas only.
    b. Overnight public camping allowed in designated areas only, for no more than 3 days within a 7-day period.
    c. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
    d. Closed to discharge of centerfire rifled firearms.
    e. Posted portions closed to public entry from October 15 to March 15 annually.
    f. Open to hunting in season, except posted portions closed to hunting from October 15 through March 15 annually.
32. Willcox Playa Wildlife Area (located in Unit 30A):
    a. Open fires allowed in designated sites only.
    b. No firewood cutting or gathering.
    c. Overnight public camping allowed in designated areas only, for no more than 5 days within a 14-day period.
    d. Motorized vehicle travel permitted on designated roads, on designated trails, or in designated areas only.
    e. Posted portions closed to public entry from October 15 through March 15 annually.
    f. Open to hunting in season, except posted portions closed to hunting from October 15 through March 15 annually.

B. Effective May 1, 2000.

R12-4-803. Wildlife Area Boundary Descriptions

A. Wildlife Areas are described as follows:

1. Alamo Wildlife Area: The Alamo Wildlife Area shall be those areas described as:

T10N, R13W
Section 1, W1/2NW1/4, NW1/4SW1/4;
Section 2 and Section 3;
Section 4, E1/2SW1/4, SE1/4;
Section 9, NE1/4, E1/2NW1/4;
Section 10, N1/2NW1/4, NW1/4NE1/4.

T11N, R11W
Section 7, S1/2SW1/4;
Section 18, N1/2 NW1/4.

T11N, R12W
Section 4, Lots 2, 3 and 4, SW1/4NE1/4, S1/2NW1/4, SW1/4, W1/2SE1/4;
Section 5, Lot 1, SE1/4NE1/4, E1/2SE1/4;
Section 7, S1/2, SE1/4 NE1/4;
Section 8, NE1/4, S1/2NW1/4, S1/2;
Section 9;
Section 10, S1/2NW1/4, S1/2;

Section 11, S1/2S1/2;
Section 12, S1/2S1/2;
Section 13, N1/2, N1/2SW1/4, NW1/4SE1/4;
Section 14, N1/2, E1/2SE1/4;
Section 15, N1/2, SW1/4SW1/4, SW1/4SE1/4;
Section 16, 17, 18 and 19;
Section 20, N1/2, N1/2SW1/4;
Section 21, NW1/4;
Section 29, SW1/4, SW1/4SE1/4;
Section 30;
Section 31, N1/2, N1/2S1/2;
Section 32, NW1/4, N1/2SW1/4.

T11N, R13W
Section 12, SE1/4SW1/4, SW1/4SE1/4, E1/2SE1/4;
Section 13;
Section 14, S1/2NE1/4, SE1/4SW1/4, SE1/4;
Section 22, S1/2SW1/4, SE1/4;
Section 23, E1/2, E1/2NW1/4, SW1/4NW1/4, SW1/4;
Section 24, 25 and 26;
Section 27, E1/2, E1/2W1/2;
Section 34, E1/2, E1/2NW1/4, SW1/4;
Sections 35 and 36.

T12N, R12W
Section 19, E1/2, SE1/4SW1/4;
Section 20, NW1/4NW1/4, SW1/4SW1/4;
Section 28, W1/2SW1/4;
Section 29, W1/2NW1/4, S1/2, SE1/4NW1/4;
Section 30, E1/2, E1/2NW1/4, NE1/4SW1/4;
Section 31, NE1/4NE1/4;
Section 32, N1/2, N1/2SE1/4, SE1/4SE1/4;
Section 33, W1/2E1/2, W1/2.
All in G&SRB&M, Mohave and La Paz Counties, Arizona.

2. Allen Severson Memorial Wildlife Area: The Allen Severson Memorial Wildlife Area shall be that area including Pintail Lake and South Marsh lying within the fenced and posted portions of:

T10N, R22E
Section 32, SE1/4;
Section 33, S1/2SW1/4.

T11N, R22E
Section 4, N1/2NW1/4.

T10N, R22E
Section 4: the posted portion of the NW1/4SW1/4.
All in G&SRB&M, Navajo County, Arizona, consisting of approximately 300 acres.

3. Aravaipa Canyon Wildlife Area: The Aravaipa Canyon Wildlife Area shall be that area within the flood plain of Aravaipa Creek and the first 50 vertical feet above the streambed within the boundaries of the Aravaipa Canyon Wilderness Area administered by the Bureau of Land Management, Graham and Pinal Counties, Arizona.

4. Arlington Wildlife Area: The Arlington Wildlife Area shall be those areas described as:

T1S, R5W
Section 33, E1/2SE1/4.

T2S, R5W
Section 3, W1/2W1/2;
Section 4, E1/2;
Section 9, E1/2, SW1/4;
Section 15, those portions of S1/2N1/2 and NW1/2SW1/4 lying west of the primary through road;
Section 16;
Section 21, E1/2, E1/2SW1/4, SE1/4NW1/4.
All in G&SRB&M, Maricopa County, Arizona.

5. Base and Meridian Wildlife Area: The Base and Meridian Wildlife Area shall be those areas described as:

T1N, R1E
Section 31, Lots 3, 5, 6, and 8, and NE1/4SW1/4.

T1N, R1W
Section 34, N1/2SE1/4;
Section 35, S1/2;
Section 36, S1/2N1/2SE1/4.
All in the G&SRB&M, Maricopa County, Arizona.

6. Becker Lake Wildlife Area: The Becker Lake Wildlife Area shall be that area including Becker Lake lying within the fenced and posted portions of:
T9N, R29E
Section 19, SE1/4SW1/4;
Section 20, SW1/4SW1/4, W1/2NW1/4, and NW1/4SW1/4;
Section 29, E1/2NE1/4;
Section 30, NE1/4SE1/4.
All in the G&SRB&M, Apache County, Arizona, consisting of approximately 325 acres.

7. Bog Hole Wildlife Area: The Bog Hole Wildlife Area lying in Sections 29, 32 and 33, T22S, R17E shall be the fenced and posted area described as follows: Beginning at the southeast corner of Section 32, Township 22 South, Range 17 East, G&SRB&M, Santa Cruz County, Arizona; thence North 21°42'20" West 1394.86 feet to the true point of beginning; thence North 9°15'26" West 1014.82 feet; thence North 14°30'58" West 1088.82 feet; thence North 36°12'57" West 20.93 feet; thence North 50°16'38" West 1341.30 feet; thence North 57°51'08" West 1320.68 feet; thence N39°03'53" East 1044.90 feet; thence North 39°07'43" East 1232.32 feet; thence South 36°38'48" East 1322.93 feet; thence South 43°03'17" East 1312.11 feet; thence South 38°19'38" East 1315.69 feet; thence South 13°11'59" West 2083.31 feet; thence South 69°42'45" West 920.49 feet to the true point of beginning.

8. Chevelon Canyon Ranches Wildlife Area: The Chevelon Canyon Ranches Wildlife Area shall be those areas described as:
Duran Ranch: T12N, R14E
Sections 6 and 7, more particularly bounded and described as follows: Beginning at Corner No. 1, from which the Standard Corner to Section 31 in T13N, R14E and Section 36 T13N, R13E, bears North 11°41' West 21.53 chains distant; thence South 26°5' East 6.80 chains to Corner No. 2; thence South 66° West 12.74 chains to Corner No. 3; thence South 19°16' West 13.72 chains to Corner No. 4; thence South 29°1' West 50.02 chains to Corner No. 5; thence North 64°15' West five chains to Corner No. 6; thence North 28°54' East 67.97 chains to Corner No. 7; thence North 55°36' East 11.02 to Corner No. 1; the place of beginning, all in G&SRB&M, Coconino County, Arizona.
Dye Ranch: T12N, R14E
Sections 9 and 16, more particularly described as follows: Beginning at Corner No. 1 from which the Standard corner to Sections 32 and 33 in T13N, R14E, bears North 2° 24' East 127.19 chains distant; thence South 50°20' East 4.96 chains to corner No. 2; thence South 29°48' West 21.97 chains to Corner No. 3; thence South 14°45' West 21.00 chains to Corner No. 4; thence North 76°23' West 3.49 chains to Corner No. 5; thence North 10°13' West 14.02 chains to Corner No. 6; thence North 19°41' East 8.92 chains to Corner No. 7; thence North 38°2' East 24.79 chains to Corner No. 1, the place of beginning, all in G&SRB&M, Coconino County, Arizona.
Tillman Ranch: T12N, R14E
Sections 9 and 10.
All in G&SRB&M, Coconino County, Arizona.
Vincent Ranch: T12N, R13E
Sections 3 and 4, more particularly described as follows: Begin at corner No. 1, from which the South 1/4 corner to Sec. 33, T13N, R13E, bears North 40°53' West 16.94 chains distance; thence South 53° 08' East 2.98 chains to corner No. 2; thence South 11°26' West 6.19 chains to corner No. 3; thence South 49°43' West 22.41 chains to corner No. 4; thence South 22°45' West 30.03 chains to corner No. 5; thence North 67°35' West 6.00 chains to corner No. 6; thence North 23° East 30.03 chains to corner No. 7; thence North 42°18' East 21.19 chains to corner No. 8; thence North 57°52' East 8.40 chains to corner No. 1, the place of beginning, all in G&SRB&M, Coconino County, Arizona.
Wolf Ranch: T12N, R14E
Sections 18 and 19, more particularly bounded and described as follows: Beginning at Corner No. 1, from which the U.S. Location Monument No. 184 H. E. S. bears South 88°53' East 4.41 chains distant; thence South 34°4' East 11.19 chains to Corner No. 2; thence South 40°31' West 31.7 chains to Corner No. 3; thence South 63°3' West 7.97 chains to Corner No. 4; thence South 23°15' West 10.69 chains to Corner No. 5; thence North 59° West 2.60 chains to Corner No. 6; thence North 18°45' East 10.80 chains to Corner No. 7; thence North 51°26' East 8.95 chains to Corner No. 8; thence North 30°19' East 34.37 chains to Corner No. 1; the place of beginning, all in G&SRB&M, Coconino County, Arizona.

9. Chevelon Creek Wildlife Area: The Chevelon Creek Wildlife Area shall be that area lying in the NE1/4 Section 26, and E1/2 of Section 23, all in T18N, R17E, G&SRB&M, Navajo County, Arizona, consisting of approximately 668 acres.
10. Clarence May & C.M.H. May Memorial Wildlife Area: Clarence May & C.M.H. May Memorial Wildlife Area shall be the SE1/4 of Section 8 and N1/2NE1/4 of Section 17, Township 17 South, Range 31 East, and the W1/2SE1/4, S1/2NW1/4, SW1/4 of Section 9, T17S, R31E, G&SRB&M, Cochise County, Arizona, consisting of approximately 560 acres.
11. Cluff Ranch Wildlife Area: The Cluff Ranch Wildlife Area is that area within the fenced and posted portions of Sections 13, 14, 23, 24, and 26, T7S, R24E, G&SRB&M, Graham County, Arizona; consisting of approximately 788 acres.
12. Colorado River Nature Center Wildlife Area: The Colorado River Nature Center Wildlife Area is Section 10 of T19N, R22W, that is bordered by the Fort Mojave Indian Reservation to the West, the Colorado River to the North, and residential areas of Bullhead City to the South and East, G&SRB&M, Mohave County, Arizona.
13. House Rock Wildlife Area: House Rock Wildlife Area is that area described as: Beginning at the common one-quarter corner of Sections 17 and 20, T36N, R4E; thence east along the south section lines of Sections 17, 16, 15, 14, 13 T36N, R4E, and Section 18, T36N, R5E, to the intersection with the top of the southerly escarpment of Bedrock Canyon; thence meandering southeasterly along the top of said escarpment to the top of the northerly escarpment of Fence Canyon; thence meandering along the top of said north escarpment to its intersection with the top of the southerly escarpment of Fence Canyon; thence meandering northeasterly along the top of said southerly escarpment to its intersection with the top of the escarpment of the Colorado River; thence meandering southerly along top of said Colorado River escarpment to its intersection with Boundary Ridge in Section 29, T34N, R5E; thence meandering westerly along Boundary Ridge to its intersection with the top of the escarpment at the head of Saddle Canyon; thence northerly along the top of the westerly escarpment to its intersection with a line beginning approximately at the intersection of the Cockscomb and the east fork of South Canyon extending southeast to a point approximately midway between Buck Farm Canyon and Saddle Canyon; thence northwest to the bottom of the east fork of South Canyon in the SW1/4SW1/4 of Section 16, T34N, R4E; thence meandering northerly along the west side of the Cockscomb to the bottom of North Canyon in the SE1/4 of Section 12, T35N, R3E; thence meandering northeasterly along the bottom of North Canyon to a point where the slope of the land becomes nearly flat; thence northerly along the westerly edge of House Rock Valley to the point of beginning; all in G&SRB&M, Coconino County, Arizona.
14. Jacques Marsh Wildlife Area: The Jacques Marsh Wildlife Area is that area within the fenced and posted portions of the SE1/4SW1/4, NE/4SW1/4, NE1/4SW1/4SW1/4, NW1/4SW1/4, N1/2NW1/4SE1/4, SW1/4SW1/4NE1/4, S1/2SE1/4NW1/4, SE1/4SE1/4NW1/4, Section 11; and N1/2NE1/4NW1/4 Section 14; T9N, R22E, G&SRB&M, Navajo County, Arizona.
15. Lamar Haines Wildlife Area: The Lamar Haines Wildlife Area is that area described as: T22N, R6E, Section 12 NW1/4, G&SRB&M, Coconino County, Arizona; together with all improvements thereon, and that certain water right on "Hudsonian Spring" as evidenced by certificate of Water Right from the State Water Commissioner of the State of Arizona, dated December 13, 1935 and recorded in Book 5 of Water Rights, pages 374-375, records of Coconino County, Arizona, and being Certificate #624.
16. Luna Lake Wildlife Area: The Luna Lake Wildlife Area shall be the fenced, buoyed, and posted area lying north of U.S. Highway 180 T5N, R31E, Section 17 N1/2, G&SRB&M, Apache County, Arizona.
17. Mittry Lake Wildlife Area: The Mittry Lake Wildlife Area shall be those areas described as:

    T6S, R21W

    Section 31: All of Lots 1, 2, 3, 4, E1/2W1/2, and that portion of E1/2 lying westerly of Gila Gravity Main Canal Right-of-Way.

    T7S, R21W

    Section 5: that portion of SW1/4SW1/4 lying westerly of Gila Gravity Main Canal Right-of-Way;
    Section 6: all of Lots 2, 3, 4, 5, 6, 7 and that portion of Lot 1, S1/2NE1/4, SE1/4 lying westerly of Gila Gravity Main Canal R/W;
    Section 7: all of Lots 1, 2, 3, 4, E1/2W1/2, S1/2E1/2, and that portion of E1/2E1/2 lying westerly of Gila Gravity Main Canal R/W;
    Section 8: that portion of W1/2W1/2 lying westerly of Gila Gravity Main Canal R/W;
    Section 18: all of Lots 1, 2, 3, E1/2NW1/4, and that portion of Lot 4, NE1/4, E1/2 SW1/4, NW1/4SE1/4 lying westerly of Gila Gravity Main Canal R/W.

    T6S, R22W

    Section 36: all of Lots 1, 2.

    T7S, R22W

    Section 1: all of Lot 1;
    Section 12: all of Lots 1, 2, SE1/4SE1/4;

Section 13: all of Lots 1, 2, 3, 4, 5, 6, 7, 8, NE1/4, N1/2SE1/4, and that portion of S1/2SE1/4 lying northerly of Gila Gravity Main Canal R/W, all in G&SRB&M, Yuma County, Arizona.

18. Powers Butte (Mumme Farm) Wildlife Area: The Powers Butte Wildlife Area shall be that area described as:
T1S, R5W
Section 25, N1/2SW1/4, SW1/4SW1/4;
Section 26, S1/2;
Section 27, E1/2SE1/4;
Section 34.
T2S, R5W
Section 3, E1/2W1/2, W1/2SE1/4, NE1/4SE1/4, NE1/4;
Section 10, NW1/4, NW1/4NE1/4;
Section 15, SE1/4SW1/4;
Section 22, E1/2NW1/4, NW1/4NW1/4.
All in G&SRB&M, Maricopa County, Arizona.
19. Quigley Wildlife Area: The Quigley Wildlife Area shall be those areas described as:
T8S, R17W
Section 13, W1/2SE1/4, SW1/4NE1/4, and a portion of land in the West half of Section 13, more particularly described as follows: Beginning at the South Quarter corner, thence South 89º17'09" West along the south line of said Section 13, a distance of 2627.50 feet to the southwest corner of said Section 13; thence North 41º49'46" East, a distance of 3026.74 feet to a point; thence North 0º13'30" West, a distance of 1730.00 feet to a point on the north 1/16th line of said Section 13; thence North 89º17'36" East along said north 1/16th line, a distance of 600.00 feet to the Center of said Section 13; thence South 0º13'30" E. along the north-south Mid-section line, a distance of 3959.99 feet to the point of beginning.
Section 23, SE1/4NE1/4, and a portion of land in the NE1/4NE1/4 of Section 23, more particularly described as follows: Beginning at the Northeast Corner, thence South 0º10'19" East along the east line of said Section 23, a distance of 1326.74 feet to a point on the south line of the NE1/4NE1/4 of said Section 23; thence South 89º29'58" West along said south line, a distance of 1309.64 feet to a point; thence North 44º17'39" East, a distance of 1869.58 feet to the point of beginning.
Section 24, NW1/4, N1/2SW1/4, W1/2NE1/4 all in G&SRB&M, Yuma County, Arizona.
20. Raymond Ranch Wildlife Area: The Raymond Ranch Wildlife Area is that area described as: All of Sections 24, 25, 26, 34, 36, and the portions of Sections 27, 28, and 33 lying east of the following described line: Beginning at the west one-quarter corner of Section 33; thence northeasterly through the one-quarter corner common to Sections 28 and 33, one-quarter corner common to Sections 27 and 28 to the north one-quarter corner of Section 27 all in T19N, R11E. All of Sections 16, 17, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34 all in T19N, R12E, all in G&SRB&M, Coconino County, Arizona.
21. Robbins Butte Wildlife Area: The Robbins Butte Wildlife Area shall be those areas described as:
T1S, R3W
Section 17, S1/2NE1/4, SE1/4, NW1/4SW1/4;
Section 18, Lots 3, 4, and E1/2SW1/4, S1/2NE1/4, W1/2SE1/4, NE1/4SE1/4.
T1S, R4W
Section 13, all EXCEPT that portion of W1/2SW1/4SW1/4 lying west of State Route 85;
Section 14, all EXCEPT the W1/2NW1/4 and that portion of the SW1/4 lying north of the Arlington Canal;
Section 19, S1/2SE1/4;
Section 20, S1/2S1/2, NE1/4SE1/4;
Section 21, S1/2, S1/2NE1/4, SE1/4NW1/4;
Section 22, all EXCEPT for NW1/4NW1/4;
Section 23;
Section 24, that portion of SW1/4, W1/2SW1/4NW1/4 lying west of State Route 85;
Section 25, that portion of the NW1/4NW1/4 lying west of State Route 85;
Section 26, NW1/4, W1/2NE1/4, NE1/4NE1/4;
Section 27, N1/2, SW1/4;
Section 28;
Section 29, N1/2N1/2, SE1/4NE1/4;
Section 30, Lots 1,2, and E1/2NW1/4, NE1/4, SE1/4SE1/4.
All in G&SRB&M, Maricopa County, Arizona.
22. Roosevelt Lake Wildlife Area: The Roosevelt Lake Wildlife Area is that area described as: Beginning at the junction of A-Cross Road and AZ. Hwy. 188; south on AZ. Hwy. 188 to junction of AZ. Hwy. 88; east on AZ. Hwy. 88 to Carson's Landing; northeast across Roosevelt Lake to the south tip of Bass Point; directly north to the Long

Gulch Road; northeast on this road to the A-Cross Road; northwest on the A-Cross Road to the point of beginning; all in G&SRB&M, Gila County, Arizona.

23. Sipe White Mountain Wildlife Area: The Sipe White Mountain Wildlife Area shall be those areas described as:
T7N, R29E
Section 1, SE1/4, SE1/4NE1/4, S1/2NE1/4NE1/4, SE1/4SW1/4NE1/4, NE1/4SE1/4SW1/4, and the SE1/4NE1/4SW1/4.
T7N, R30E
Section 5, W1/2W1/2SE1/4SW1/4, and the SW1/4SW1/4;
Section 6, Lots 1, 2, 3, 7 and 8, SW1/4NW1/4NW1/4, SW1/4NW1/4, S1/2NW1/4NE1/4SE1/4, S1/2NE1/4SE1/4, S1/2NE1/4SE1/4, N1/2SE1/4SE1/4, E1/2SE1/4SE1/4SE1/4, SW1/4SE1/4 and the SE1/4SW1/4;
Section 7, Parcel 10: Lots 1 and 2, E1/2NW1/4, E1/2E1/2NE1/4NE1/4, W1/2SW1/4NE1/4, NW1/4SE1/4, W1/2NE1/4SE1/4, NE1/4SW1/4, E1/2NW1/4SW1/4, and the NW1/4NE1/4;
Section 8, NW1/4NW1/4, and the W1/2W1/2NE1/4NW1/4.
T8N, R30E
Section 31, SE1/4NE1/4, SE1/4, and the SE1/4SW1/4, all in G&SRB&M, Apache County, Arizona.
24. Springerville Marsh Wildlife Area: The Springerville Marsh Wildlife Area shall be those areas described as: S1/2 SE1/4 Section 27 and N1/2 NE1/4 Section 34, T9N, R29E, G&SRB&M, Apache County, Arizona.
25. Sunflower Flat Wildlife Area: The Sunflower Flat Wildlife Area shall be those areas described as:
T20N, R3E
Section 11, NE1/4SE1/4, N1/2NW1/4SE1/4, SE1/4NW1/4SE1/4, NE1/4SE1/4SE1/4, W1/2SE1/4NE1/4, S1/2SE1/4SE1/4NE1/4, E1/2SW1/4NE1/4;
Section 12, NW1/4SW1/4SW1/4, NW1/4NE1/4SW1/4SW1/4, SW1/4NW1/4SW1/4, S1/2NW1/4NW1/4SW1/4, W1/2SE1/4NW1/4SW1/4, SW1/4NE1/4NW1/4 SW1/4 all in the G&SRB&M, Coconino County, Arizona.
26. Three Bar Wildlife Area: The Three Bar Wildlife Area shall be that area lying within the following described boundary: Beginning at Roosevelt Dam, northwesterly on AZ. Hwy. 188 to milepost 252 (Bumble Bee Wash); westerly along the boundary fence for approximately 7-1/2 miles to the boundary of Gila and Maricopa counties; southerly along this boundary through Four Peaks to a fence line south of Buckhorn Mountain; southerly along the barbed wire drift fence at Ash Creek to Apache Lake; northeasterly along Apache Lake to Roosevelt Dam.
27. Tucson Mountain Wildlife Area: The Tucson Mountain Wildlife Area shall be that area lying within the following described boundary: Beginning at the northwest corner of Section 33; T13S, R11E on the Saguaro National Monument boundary; due south approximately 1 mile to the El Paso Natural Gas Pipeline; southeast along this pipeline to Sandario Road; south on Sandario Road approximately 2 miles to the southwest corner of Section 15; T14S, R11E, east along the section line to the El Paso Natural Gas Pipeline; southeast along this pipeline to its junction with State Route 86, also known as the Ajo Highway; easterly along this highway to the Tucson city limits; north along the city limits to Silverbell Road; northwest along this road to Twin Peaks Road; west along this road to Sandario Road; south along this road to the Saguaro National Monument boundary; west and south along the monument boundary to the point of beginning, all in G&SRB&M, Pima County, Arizona.
28. Upper Verde River Wildlife Area: The Upper Verde River Wildlife Area consists of four parcels totaling approximately 796 acres located eight miles north of Chino Valley in Yavapai County, Arizona, along the upper Verde River and lower Granite Creek described as:
    a. Sullivan Lake Parcel: Located immediately downstream of Sullivan Lake, the headwaters of the Verde River: the NE1/4NE1/4 lying east of the California, Arizona, and Santa Fe Railway Company right-of-way in Section 15, T17N, R2W; and also the NW1/4NE1/4 of sec. 15 consisting of approximately 80 acres.
    b. Granite Creek Parcel: Includes one mile of Granite Creek to its confluence with the Verde River: The SE1/4SE1/4 of Section 11; the NW1/4SW1/4 and SW1/4NW1/4 of Section 13; the E1/2NE1/4 of Section 14; all in T17N, R1W consisting of approximately 239 acres.
    c. Campbell Place Parcel: Tracts 40 and 41 in Section 7, T17N, R1W and Section 12, T17N, R2W consisting of approximately 315 acres.
    d. Tract 39 Parcel: The east half of Tract 39 within the Prescott National Forest boundary, SE1/4SW1/4 and SW1/4SE1/4 of Section 5, T18N, R1W; and the W1/2 of Tract 39 outside the Forest boundary, SW1/4SW1/4 of Section 5 and NW1/4NW1/4 of Section 8, T18N, R1W consisting of approximately 163 acres.
29. Wenima Wildlife Area: The Wenima Wildlife Area shall be those areas described as:
T9N, R29E
Section 5, SE1/4 SW1/4, and SW1/4 SE1/4 EXCEPT E1/2 E1/2 SW1/4 SE1/4
Section 8, NE1/4 NW1/4, and NW1/4 NE1/4
Sections 8, 17 and 18, within the following boundary: From the quarter corner of Sections 17 and 18, the true point of beginning; thence North 00°12’56” East 1302.64 feet along the Section line between Sections 17 and 18 to the North 1/16 corner; then North 89°24’24” West 1331.22 feet to the Northeast 1/16 corner of Section

18; thence North 00°18'02" East 1310.57 feet to the East 1/16 corner of Sections 7 and 18; thence South 89°03'51" East 1329.25 feet to the Northeast Section corner of said Section 18; thence North 01°49'10" East 1520.28 feet to a point on the Section line between Sections 7 and 8; thence North 38°21'18" East 370.87 feet to a point; thence North 22°04'51" East 590.96 feet to a point; thence North 57°24'55" East 468.86 feet to a point on the East West mid-section line of said Section 8; thence North 89°38'03" East 525.43 feet along said mid-section line to the center West 1/16 corner; thence South 02°01'25" West 55.04 feet to a point; thence South 87°27'17" East 231.65 feet to a point; thence South 70°21'28" East 81.59 feet to a point; thence North 89°28'36" East 111.27 feet to a point; thence North 37°32'54" East 310.00 feet to a point; thence North 43°58'37" West 550.00 feet to a point; thence North 27°25'53" West 416.98 feet to the North South 1/16 line of said Section 8; thence North 02°01'25" East 380.04 feet along said 1/16 line to the Northwest 1/16 corner of said Section 8; thence North 89°45'28" East 1315.07 feet along the East West mid-sixteenth line to a point; thence South 45°14'41" East 67.69 feet to a point; thence South 49°28'18" East 1099.72 feet to a point; thence South 08°04'43" West 810.00 feet to a point; thence South 58°54'47" West 341.78 feet to a point; thence South 50°14'53" West 680.93 feet to a point in the center of that cul-de-sac at the end of Jeremy's Point Road; thence North 80°02'20" West 724.76 feet to a point, said point lying North 42°15'10" West 220.12 feet from the Northwest corner of Lot 72; thence North 34°19'23" East 80.64 feet to a point; thence North 15°54'25" East 51.54 feet to a point; thence North 29°09'53" East 45.37 feet to a point; thence North 40°09'33" East 69.21 feet to a point; thence North 25°48'58" East 43.28 feet to a point; thence North 13°24'51" East 63.12 feet to a point; thence North 16°03'10" West 30.98 feet to a point; thence North 57°55'25" West 35.50 feet to a point; thence North 80°47'38" West 48.08 feet to a point; thence South 87°28'53" West 82.84 feet to a point; thence South 72°07'06" West 131.85 feet to a point; thence South 43°32'45" West 118.71 feet to a point; thence South 02°37'48" East 59.34 feet to a point; thence South 33°03'29" East 57.28 feet to a point; thence South 28°30'29" East 54.75 feet to a point; thence South 36°39'47" East 105.08 feet to a point; thence South 24°55'07" West 394.78 feet to a point; thence South 61°32'16" West 642.77 feet to the Northwest corner of Lot 23; thence North 04°35'23" West 90.62 feet to a point; thence South 85°24'37" West 26.00 feet to a point; thence North 64°21'36" West 120.76 feet to a point; thence South 61°07'57" West 44.52 feet to a point; thence South 39°55'58" West 80.59 feet to a point; thence South 11°33'07" West 47.21 feet to a point; thence South 19°53'19" East 27.06 feet to a point; thence South 54°26'36" East 62.82 feet to a point; thence South 24°56'25" West 23.92 feet to a point; thence South 48°10'38" West 542.79 feet to a point; thence South 17°13'48" West 427.83 feet to the Northwest corner of Lot 130; thence South 29°10'58" West 104.45 feet to the Southwest corner of Lot 130; thence Southwesterly along a curve having a radius of 931.52 feet, and arc length of 417.52 feet to the Southwest corner of Lot 134; thence South 15°04'25" West 91.10 feet to a point; thence South 04º29'15" West 109.17 feet to a point; thence South 01°41'24" West 60.45 feet to a point, thence South 29°16'05" West 187.12 feet to a point; thence South 14°44'00" West 252.94 feet to a point; thence South 15°42'24" East 290.09 feet to a point; thence South 89°13'25" East 162.59 feet to a point; thence South 37°19'54" East 123.03 feet to the Southeast corner of Lot 169; thence South 20°36'30" East 706.78 feet to the Northwest corner of Lot 189; thence South 04°07'31" West 147.32 feet to a point; thence South 29°11'19" East 445.64 feet to a point; thence South 00°31'40" East 169.24 feet to the East West mid-section line of Section 17 and the Southwest corner of Lot 194; thence South 89°28'20" West 891.84 feet along said East West mid-section line to the true point of beginning. All in G&SRB&M, Apache County, Arizona.

30. White Mountain Grasslands Wildlife Area: The White Mountain Grasslands Wildlife Area shall be those areas described as:

Parcel No. 1: (CL1)

The South half of Section 24; the North half of the Northwest quarter of Section 25; the Northeast quarter and the North half of the Southeast quarter of Section 26; all in Township 9 North, Range 27 East of the Gila and Salt River Base and Meridian, Apache County, Arizona; EXCEPT all coal and other minerals as reserved to the United States in the Patent of said land.

Parcel No. 2: (CL2)

The Southeast quarter and the Southeast quarter of the Southwest quarter of Section 31, Township 9 North, Range 28 East of the Gila and Salt River Base and Meridian, Apache County, Arizona.

Parcel No. 3: (CL3)

The Northwest quarter of the Southwest quarter of Section 28; and the Southwest quarter, the South half of the Southeast quarter and the Northeast quarter of the Southeast quarter of Section 29, Township 9 North, Range 28 East of the Gila and Salt River Base and Meridian, Apache County, Arizona.

Parcel No. 4: (CL4)

The Southwest quarter of the Southwest quarter of Section 5; the Southeast quarter of the Southeast quarter of Section 6; the Northeast quarter of the Northeast quarter of Section 7; the Northwest quarter of the Northwest quarter, the East half of the Southwest quarter of the Northwest quarter, the West half of the Northeast quarter, the Southeast quarter of the Northwest quarter, and that portion of the South half which lies North of Highway

260, EXCEPT the West half of the Southwest quarter of Section 8; All in Township 8 North, Range 28 East of the Gila and Salt River Base and Meridian, Apache County, Arizona.

Parcel No. 1: (O1)

The South half of the North half of Section 10, Township 8 North, Range 28 East, of the Gila and Salt River Base and Meridian, Apache County, Arizona; EXCEPT that Parcel of land lying within the South one-half of the Northeast quarter of Section 10, Township 8 North, Range 28 East, of the Gila and Salt River Base and Meridian, Apache County, Arizona, more particularly described as follows:

From the North 1/16 corner of Sections 10 and 11, monumented with a 5/8 inch rebar with a cap marked LS 13014, said point being the TRUE POINT OF BEGINNING; thence North 89°44'54" West 1874.70 feet along the East-West 1/16 line to a point monumented with a 1/2-inch rebar with a tag marked LS 13014; thence South 02°26'17" West 932.00 feet to a point monumented with a 1/2-inch rebar with a tag marked LS 13014; thence South 89°44'54" East 1873.69 feet to a point monumented with a 1/2-inch rebar with a tag marked LS 13014, said point being on the East line of Section 10; thence North 02°30'00" East 932.00 feet along said Section line to the TRUE POINT OF BEGINNING.

Parcel No.2: (O2)

The North half of the South half of Section 10, Township 8 North, Range 28 East, of the Gila and Salt River Base and Meridian, Apache County, Arizona.

Parcel No.3: (O3)

The Southeast quarter of Section 25, Township 9 North, Range 27 East, of the Gila and Salt River Base and Meridian, Apache County, Arizona; EXCEPT all coal and other minerals as reserved to the United States in the Patent of said land.

Parcel No.4: (O4)

Lots 3 and 4; the East half of the Southwest quarter; the West half of the Southeast quarter; and the Northeast quarter of the Southeast quarter of Section 30, Township 9 North, Range 28 East, of the Gila and Salt River Base and Meridian, Apache County, Arizona; EXCEPT all coal and other minerals as reserved to the United States in the Patent of said land.

Parcel No.5: (O5)

Lots 1, 2 and 3; the South half of the Northeast quarter; the Northwest quarter of the Northeast quarter; the East half of the Northwest quarter; and the Northeast quarter of the Southwest quarter of Section 31, Township 9 North, Range 28 East, of the Gila and Salt River Base and Meridian, Apache County, Arizona; EXCEPT all coal and other minerals as reserved to the United States in the Patent of said land.

Parcel No.6: (O6)

Beginning at the Northwest corner of the Southeast quarter of Section 27, Township 9 North, Range 28 East, of the Gila and Salt River Base and Meridian, Apache County, Arizona; thence East 1320.00 feet; thence South 925.00 feet: thence West 320.00 feet to the center of a stock watering tub; thence North 83° West 1000.00 feet; thence North 740.00 feet to the point of beginning; EXCEPT all gas, oil, metals and mineral rights as reserved to the State of Arizona in the Patent to said land.

31. White Water Draw Wildlife Area: The White Water Draw Wildlife Area shall be those areas described as:

T21S, R26E

Section 19, S1/2 SE1/4
Section 29, W1/2 NE1/4, and E1/2 NE1/4
Section 30, N1/2 NE1/4
Section 32

T22S, R26E

Section 4, Lots 3 and 4

T22S, R26E

Section 5, Lots 1 to 4, EXCEPT an undivided 1/2 interest in all minerals, oil, and/or gas as reserved in Deed recorded in Docket 209, page 117, records of Cochise County, Arizona.

32. Willcox Playa Wildlife Area: The Willcox Playa Wildlife Area shall be that area within the posted Arizona Game and Fish Department fences enclosing the following described area: Beginning at the section corner common to Sections 2, 3, 10 and 11, T15S, R25E, G&SRB&M, Cochise County, Arizona; thence, South O°15'57" West 2645.53 feet to the east 1/4 corner of Section 10; thence South 89°47'15" West 2578.59 feet to the center 1/4 corner of Section 10; thence, North 1°45'24" East 2647.85 feet to the center 1/4 corner of Section 3; thence, North 1°02'42" West 2647.58 feet to the center 1/4 corner of said Section 3; thence North 89°41'37" East to the common 1/4 corner of Section 2 and Section 3; thence, South O°00'03" West 1323.68 feet to the south 1/16 corner of said Sections 2 and 3; thence South 44°46'30" East 1867.80 feet to a point on the common section line of Section 2 and Section 11; thence South 44°41'13" East 1862.94 feet to a point; thence South 44°42'35" East 1863.13 feet to a point; thence North O°13'23" East 1322.06 feet to a point; thence South 89°54'40" East 1276.24 Feet to a point on the west right-of-way fence line of Kansas Settlement Road; thence South O°12'32" West 2643.71 feet along said

fence line to a point; thence North 89°55'43" West 2591.30 feet to a point; thence North O°14'14" East 661.13 feet to a point; thence North 89D°55'27" West 658.20 feet to a point; thence North O°14'39" East 1322.36 feet to a point; thence North 44°41'19" West 931.44 feet to a point; thence North 44°40'31" West 1862.85 feet to the point of beginning. Said wildlife area contains 543.10 acres approximately.

B. Effective May 1, 2000.

ARTICLE 8. WILDLIFE AREAS AND DEPARTMENT PROPERTY

ARTICLE 8. WILDLIFE AREAS AND DEPARTMENT PROPERTY

R12-4-801. General Provisions

A. Wildlife Areas:
1. Wildlife areas shall be established to:
   a. Provide protective measures for wildlife, habitat, or both;
   b. Allow for hunting, fishing, and other recreational activities that are compatible with wildlife habitat conservation and education;
   c. Allow for special management or research practices; and
   d. Enhance wildlife and habitat conservation.
2. Wildlife areas shall be:
   a. Lands owned, leased, or otherwise managed by the Commission;
   b. Federally-owned lands of unique wildlife habitat where cooperative agreements provide wildlife management and research implementation; or
   c. Any lands with property interest conveyed to the Commission by any entity, through an approved land use agreement, including but not limited to deeds, patents, leases, conservation easements, special use permits, licenses, management agreements, inter-agency agreements, letter agreements, and right-of-entry, where the property interest conveyed is sufficient for management of the lands consistent with the objectives of the wildlife area.
3. Land qualified for wildlife areas shall be:
   a. Lands with unique topographic or vegetative characteristics that contribute to wildlife,
   b. Lands where certain wildlife species are confined because of habitat demands,
   c. Lands that can be physically managed and modified to attract wildlife, or
   d. Lands that are identified as critical habitat for certain wildlife species during critical periods of their life cycles.
4. The Department may restrict public access to and public use of wildlife areas and the resources of wildlife areas for up to 90 days when necessary to protect property, ensure public safety, or to ensure maximum benefits to wildlife. Closures or restrictions exceeding 90 days shall require Commission approval.
5. Closures of all or any part of a wildlife area to public entry, and any restriction to public use of a wildlife area, shall be listed in this Article or shall be clearly posted at each entrance to the wildlife area. No person shall conduct an activity restricted by this Article or by such posting.
6. When a wildlife area is posted against travel except on existing roads, no person shall drive a motor-operated vehicle over the countryside except by road.
7. The Department may post signs that place additional restrictions on the use of wildlife areas. Such restrictions may include the timing, type, or duration of certain activities, including the prohibition of access or nature of use.
8. A person shall not access or use any wildlife area or facility in violation of any Department actions authorized under subsection (A)(7) when signs are posted providing notice of the restrictions.

B. Commission-owned real property and -managed lands other than Wildlife Areas:
1. The Department may take action to manage public access and use of any Commission-owned real property or facilities. Such actions may include restrictions on the timing, type, or duration of certain activities, including the prohibition of access or nature of use.
2. A person shall not access or use any Commission-owned real property, facilities, or -managed lands in violation of any Department actions authorized under subsection (B)(1), if signs are posted providing notice of the restrictions.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1731, effective May 1, 2000 (Supp. 00-2). Amended by exempt rulemaking at 17 A.A.R. 800, effective June 20, 2011 (Supp. 11-2). Amended by exempt rulemaking at 18 A.A.R. 1070, effective June 15, 2012 (Supp. 12-2). Amended by exempt rulemaking at 22 A.A.R. 951, effective June 7, 2016 (Supp. 16-2). Amended by final exempt rulemaking at 27 A.A.R. 242, effective April 5, 2021 (Supp. 21-1).

R12-4-802. Wildlife Area and Other Department Managed Property Restrictions

A. No person shall violate the following restrictions on Wildlife Areas:
1. Alamo Wildlife Area (located in Units 16A and 44A):
   a. Posted portions closed to all public entry.

b. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.

2. Allen Severson Wildlife Area (located in Unit 3B):
   a. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
   b. Posted portions closed to discharge of all firearms from April 1 through July 25 annually.
   c. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting from April 1 through July 25 annually.
3. Aravaipa Canyon Wildlife Area (located in Units 31 and 32):
   a. Access through the Aravaipa Canyon Wildlife Area within the Aravaipa Canyon Wilderness Area is by permit only, available through the Safford Office of the Bureau of Land Management.
   b. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of all firearms.
4. Arivaca Lake Wildlife Area (located in Unit 36B):
   a. Open fires allowed in designated areas only.
   b. Wood collecting limited to dead and down material, for onsite noncommercial use only.
   c. Overnight public camping in the wildlife area allowed in designated areas only, for no more than 14 days within a 30-day period.
   d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
   e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
5. Arlington Wildlife Area (located in Unit 39):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). No motorized travel is permitted within agriculture and crop production areas. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
   e. Target or clay bird shooting permitted in designated areas only.
   f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except:
      i. Posted portions around Department housing are closed to the discharge of all firearms; and
      ii. Wildlife area is closed to the discharge of centerfire rifled firearms.
6. Base and Meridian Wildlife Area (located in Units 39, 26M, and 47M):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Motorized vehicle travel is not permitted on the wildlife area, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
   e. No target or clay bird shooting.
   f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of centerfire rifled firearms.
7. Becker Lake Wildlife Area (located in Unit 1):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
   e. The Becker Lake boat launch access road and parking areas along with any other posted portions of the wildlife area will be closed to all public entry from one hour after sunset to one hour before sunrise daily.
   f. Posted portions closed to all public entry.
   g. Posted portions closed to hunting.
   h. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of rifled firearms.

8. Bog Hole Wildlife Area (located in Unit 35B):
   a. Motorized vehicle travel is not permitted on the wildlife area. This subsection does not apply to Department authorized vehicles or law enforcement, fire response or other emergency vehicles.
   b. Open to all hunting in season, by foot access only, as permitted under R12-4-304 and R12-4-318.
9. Chevelon Canyon Ranches Wildlife Area (located in Unit 4A):
   a. Open fires allowed in designated areas only.
   b. Wood collecting limited to dead and down material, for onsite noncommercial use only.
   c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 30-day period.
   d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
   e. No target or clay bird shooting.
   f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
10. Chevelon Creek Wildlife Area (located in Unit 4B):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Motorized vehicle travel permitted on designated roads or areas only. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
   e. Posted portions closed to all public entry.
   f. Additional posted portions closed to all public entry from October 1 through February 1 annually.
   g. No target or clay bird shooting.
   h. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting from October 1 through February 1 annually.
11. Cibola Valley Conservation and Wildlife Area (located in unit 43A):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.
   d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). No motorized travel is permitted within agriculture and crop production areas. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
   e. Posted portions closed to all public entry.
   f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
12. Clarence May and C.H.M. May Memorial Wildlife Area (located in Unit 29): Closed to hunting, except for predator hunts authorized by Commission Order.
13. Cluff Ranch Wildlife Area (located in Unit 31):
   a. Open fires allowed in designated areas only.
   b. Wood collecting limited to dead and down material, for onsite noncommercial use only.
   c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 30-day period.
   d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
   e. Posted portions around Department housing and Pond Three are closed to discharge of all firearms.
   f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of centerfire rifled firearms.
14. Coal Mine Spring Wildlife Area (located in Unit 34A):
   a. Overnight public camping allowed for no more than 14 days within a 30-day period.
   b. Motorized vehicle travel is not permitted on the wildlife area, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response or other emergency vehicles.
   b. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
15. Colorado River Nature Center Wildlife Area (located in Unit 15D):
   a. No open fires.
   b. No firewood cutting or gathering.
   c. No overnight public camping.

d. Motorized vehicle travel permitted on designated roads or areas only. This subsection does not apply to Department authorized vehicles, law enforcement, fire response, or other emergency vehicles.
e. Closed to the discharge of firearms.
f. Closed to hunting.

16. Fool Hollow Lake Wildlife Area (located in Unit 3C):
    a. No open fires.
    b. No firewood cutting or gathering.
    c. No overnight public camping.
    d. Motorized vehicle travel permitted on designated roads, trails, or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    e. The parking area adjacent to Sixteenth Avenue and other posted portions of the wildlife area will be closed to all public entry daily from one hour after sunset to one hour before sunrise, except for anglers possessing a valid fishing license accessing Fool Hollow Lake/Show Low Creek.
    f. Closed to the discharge of firearms.
    g. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of firearms.
17. House Rock Wildlife Area (located in Unit 12A):
    a. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles, law enforcement, fire response, or other emergency vehicles.
    b. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
    c. Members of the public shall remain in an enclosed vehicle at all times when within one-quarter mile of the House Rock bison herd, except when taking bison or accompanied by Department personnel.
18. Jacques Marsh Wildlife Area (located in Unit 3B):
    a. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    b. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of rimfire and centerfire rifled firearms.
19. Lamar Haines Wildlife Area (located in Unit 7):
    a. No open fires.
    b. Wood cutting by permit only and collecting limited to dead and down material, for noncommercial use only. Members of the public shall obtain a wood cutting permit from the Flagstaff Game and Fish Department regional office.
    c. Overnight public camping allowed for no more than 14 days within a 30-day period.
    d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
20. Lower San Pedro River Wildlife Area (located in Units 32 and 37B):
    a. Open fires allowed in designated areas only. The following acts are prohibited:
        i. Building, attending, maintaining, or using a fire without removing all flammable material from around the fire to adequately prevent the fire from spreading from the fire pit.
        ii. Carelessly or negligently throwing or placing any ignited substance or other substance that may cause a fire.
        iii. Building, attending, maintaining, or using a fire in any area that is closed to fires.
        iv. Leaving a fire without completely extinguishing it.
    b. Wood collecting limited to dead and down material, for onsite noncommercial use only.
    c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 30-day period.
    d. Motorized vehicle travel permitted on designated roads, trails, or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    e. Posted portions closed to all public entry.
    f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting.
    g. Parking allowed within 300 feet of designated open roads and in designated areas only.
    h. Discharge of a firearm or pre-charged pneumatic weapon prohibited within 1/4 mile of buildings.

i. A person shall not use a metal detector or similar device except as authorized by the Department. This subsection does not apply to law enforcement officers in the scope of their official duties, or to persons duly licensed, permitted, or otherwise authorized to investigate historical or cultural artifacts by a government agency with regulatory authority over cultural or historic artifacts.

21. Luna Lake Wildlife Area (located in Unit 1):
    a. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    b. Posted portions closed to all public entry from February 15 through July 31 annually.
    c. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except when closed to hunting from April 1 through July 31 annually.
22. Manhattan Claims Wildlife Area (located in Unit 29):
    a. Wood collecting limited to dead and down material, for onsite noncommercial use only.
    b. Overnight public camping allowed for no more than 14 days within a 30-day period.
    c. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
23. Mittry Lake Wildlife Area (located in Unit 43B):
    a. Open fires allowed in designated areas only.
    b. Wood collecting limited to dead and down material, for onsite noncommercial use only.
    c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 30-day period.
    d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    e. Posted portions closed to all public entry.
    f. Mittry Lake is a "No Ski" waterway as defined under R12-4-501.
    g. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
24. Planet Ranch Conservation and Wildlife Area (located in Units 16A and 44A):
    a. No open fires.
    b. No firewood cutting or gathering.
    c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 30-day period.
    d. Motorized vehicle travel permitted on designated roads, trails, or areas only, except for big game retrieval as permitted under R12-4-110(H), outside the posted Lower Colorado River Multi-Species Conservation Program habitat area. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    e. Posted portions closed to public entry.
    f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting.
25. Powers Butte (Mumme Farm) Wildlife Area (located in Unit 39):
    a. No open fires.
    b. No firewood cutting or gathering.
    c. No overnight public camping.
    d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). No motorized travel is permitted within agriculture and crop production areas. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    e. If conducted during an event approved under R12-4-125, target or clay bird shooting is permitted in designated areas only.
    f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except:
        i. Posted portions around Department housing are closed to the discharge of all firearms; and
        ii. Wildlife area is closed to the discharge of centerfire rifled firearms.
26. Quigley-Achee Wildlife Area (located in Unit 41):
    a. No open fires.
    b. No overnight public camping.
    c. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). No motorized travel is permitted within agriculture and crop production areas. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency

vehicles.
d. Posted portions closed to all public entry.
e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting.

27. Raymond Wildlife Area (located in Unit 5B):
a. Open fires allowed in designated areas only.
b. Overnight public camping permitted in designated sites only, for no more than 14 days within a 30-day period.
c. Motorized vehicle travel permitted on designated roads, trails, or areas only, except for big game retrieval as permitted under R12-4-110(H). All-terrain and utility type vehicles are prohibited. For the purpose of this subsection, all-terrain and utility type vehicle means a motor vehicle having three or more wheels fitted with large tires and is designed chiefly for recreational use over roadless, rugged terrain. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
d. Posted portions closed to all public entry from May 1 through July 29 annually.
e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting periodically during hunting seasons.
f. Members of the public shall remain in an enclosed vehicle at all times when within one-quarter mile of the Raymond bison herd, except when taking bison or accompanied by Department personnel.

28. Robbins Butte Wildlife Area (located in Unit 39):
a. No open fires.
b. No firewood cutting or gathering.
c. No overnight public camping.
d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
e. Parking in designated areas only.
f. If conducted during an event approved under R12-4-125, target or clay bird shooting is permitted in designated areas only.
g. Open to all hunting in season as permitted under R12-4-304 and R12-4-318 except the wildlife area is closed to the discharge of centerfire rifled firearms.

29. Roosevelt Lake Wildlife Area (located in Units 22, 23, and 24B):
a. Posted portions closed to all public entry from November 15 through February 15 annually.
b. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). No motorized travel is permitted within agriculture and crop production areas. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
c. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting from November 15 through February 15 annually.

30. Santa Rita Wildlife Area (located in Unit 34A): Open to all hunting in season as permitted under R12-4-304 and R12-4-318.

31. Sipe White Mountain Wildlife Area (located in Unit 1):
a. Open fires allowed in designated areas only.
b. No firewood cutting or gathering.
c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 30-day period.
d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions around Department housing is closed to the discharge of all firearms.

32. Springerville Marsh Wildlife Area (located in Unit 2B):
a. No open fires.
b. No firewood cutting or gathering.
c. No overnight public camping.
d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
e. Closed to the discharge of all firearms.

f. Open to all hunting as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of all firearms.

33. Sunflower Flat Wildlife Area (located in Unit 8):
    a. Overnight public camping allowed for no more than 14 days within a 30-day period.
    b. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    c. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
34. Three Bar Wildlife Area (located in Unit 22):
    a. Motorized vehicle travel:
        i. Is permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H).
        ii. Is prohibited within the Three Bar Wildlife and Habitat Study Area.
        iii. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    b. Open to all hunting in season, as permitted under R12-4-304 and R12-4-318.
35. Tucson Mountain Wildlife Area (located in Unit 38M):
    a. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except:
        i. Portions posted closed to hunting,
        ii. Portions closed to hunting as identified on the online check-in system wildlife area map, and
        iii. Firearms and pre-charged pneumatic weapons are prohibited for the take of wildlife.
    b. Archery hunters must check-in online with the Arizona Game and Fish Department prior to going afield.
36. Upper Verde River Wildlife Area (located in Unit 8 and 19A):
    a. No open fires.
    b. No firewood cutting or gathering.
    c. No overnight public camping allowed.
    d. Motorized vehicle travel is not permitted, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire department, or other emergency vehicles.
    e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
37. Wenima Wildlife Area (located in Unit 2B):
    a. No open fires.
    b. No firewood cutting or gathering.
    c. No overnight public camping.
    d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    e. No target or clay bird shooting.
    f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
38. White Mountain Grasslands Wildlife Area (located in Unit 1):
    a. No open fires.
    b. No firewood cutting or gathering.
    c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 30-day period.
    d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    e. Posted portions closed to all public entry.
    f. If conducted during an event approved under R12-4-125, target or clay bird shooting is permitted in designated areas only.
    g. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
39. Whitewater Draw Wildlife Area (located in Unit 30B):
    a. No open fires except as authorized by the Department.
    b. Overnight public camping allowed in designated areas only, for no more than 14 days within a 30-day period.
    c. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    d. Posted portions closed to all public entry from October 15 through March 15 annually.

e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except:
   i. The wildlife area is closed to the discharge of centerfire rifled firearms, and
   ii. Posted portions closed to hunting from October 15 through March 15 annually.

40. Willcox Playa Wildlife Area (located in Unit 30A):
   a. Open fires allowed in designated areas only.
   b. Wood collecting limited to dead and down material, for onsite noncommercial use only.
   c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 30-day period.
   d. Motorized vehicle travel permitted on designated roads or areas only, except for big game retrieval as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
   e. Posted portions closed to all public entry from October 15 through March 15 annually.
   f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting from October 15 through March 15 annually.

B. Notwithstanding Commission Order 40, public access and use of the Hirsch Conservation Education Area and Biscuit Tank is limited to activities conducted and offered by the Department and in accordance with the Department's special management objectives for the property, which include, but are not limited to, flexible harvest, season, and methods that:
1. Allow for a variety of fishing techniques, fish harvest, fish consumption, and catch and release educational experiences;
2. Maintain a healthy, productive, and balanced fish community; and
3. Provide public education activities and training courses that are compatible with the management of aquatic wildlife.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1731, effective May 1, 2000 (Supp. 00-2). Amended by exempt rulemaking at 8 A.A.R. 2107, effective May 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 9 A.A.R. 3141, effective August 23, 2003 (Supp. 03-2). Amended by exempt rulemaking at 10 A.A.R. 1976, effective May 14, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 1927, effective May 20, 2005 (Supp. 05-2). Amended by exempt rulemaking at 12 A.A.R. 1698, effective May 19, 2006 (Supp. 06-2). Amended by exempt rulemaking at 13 A.A.R. 1741, effective May 18, 2007 (Supp. 07-2). Amended by exempt rulemaking at 14 A.A.R. 1841, effective April 22, 2008 (Supp. 08-2). Amended by exempt rulemaking at 16 A.A.R. 397, effective March 5, 2010 (Supp. 10-1). Amended by exempt rulemaking at 17 A.A.R. 800, effective June 20, 2011 (Supp. 11-2). Amended by exempt rulemaking at 18 A.A.R. 1070, effective June 15, 2012 (Supp. 12-2). Amended by exempt rulemaking at 19 A.A.R. 931, effective June 17, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 841, effective June 17, 2014 (Supp. 14-1). Amended by exempt rulemaking at 22 A.A.R. 951, effective June 7, 2016 (Supp. 16-2). Amended by exempt rulemaking at 22 A.A.R. 2209, effective October 4, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 27 A.A.R. 242, effective April 5, 2021 (Supp. 21-1).

R12-4-803. Wildlife Area and Other Department Managed Property Boundary Descriptions

A. For the purposes of this Section:
"B.C." means brass cap.
"B.C.F." means brass cap flush.
"G&SRB&M" means Gila and Salt River Base and Meridian.
"M&B" means metes and bounds.
"R" means Range line.
"T" means Township line.

B. Wildlife Areas are described as follows:
1. Alamo Wildlife Area: The Alamo Wildlife Area shall be those areas described as follows:
T10N, R13W; Section 3 N1/2, SW1/4, SE1/4 Mohave County only; Section 4, E1/2SW1/4, SE1/4; Section 9, NE1/4, E1/2NW1/4; Section 10, NW1/4NW1/4, NE1/4NW1/4 within designated Wilderness Area. T11N, R11W; Section 7, S1/2SW1/4; Section 18, N1/2 NW1/4; T11N, R12W; Section 4, Lots 2, 3 and 4, SW1/4NE1/4, S1/2NW1/4, SW1/4, W1/2SE1/4; Section 5, Lot 1, SE1/4NE1/4, E1/2SE1/4; Section 7, S1/2, SE1/4 NE1/4; Section 8, NE1/4, S1/2NW1/4, S1/2; Section 9; Section 10, S1/2NW1/4, S1/2; Section 11, S1/2S1/2; Section 12, S1/2S1/2; Section 13, N1/2, N1/2SW1/4, NW1/4SE1/4; Section 14, N1/2, E1/2SE1/4; Section 15, N1/2, SW1/4SW1/4, SW1/4SE1/4; Section 16, 17, 18 and 19; Section 20, N1/2, N1/2SW1/4; Section 21, NW1/4; Section 29, SW1/4, SW1/4SE1/4; Section 30; Section 31, N1/2, N1/2S1/2; Section 32, NW1/4, N1/2SW1/4; T11N, R13W; Section 12, SE1/4SW1/4, SW1/4SE1/4, E1/2SE1/4; Section 13; Section 14, S1/2NE1/4, SE1/4SW1/4, SE1/4; Section 22, S1/2SW1/4, SE1/4; Section 23, E1/2, E1/2NW1/4, SW1/4NW1/4, SW1/4; Section 24, 25 and 26; Section 27, E1/2, E1/2W1/2; Section 34, E1/2, E1/2NW1/4, SW1/4; Section 35 W1/2, W1/2NE1/4; T12N, R12W; Section 19, E1/2, SE1/4SW1/4; Section 20, NW1/4NW1/4, SW1/4SW1/4; Section 28, W1/2SW1/4; Section 29, W1/2NW1/4, S1/2, SE1/4NW1/4; Section 30,

E1/2, E1/2NW1/4, NE1/4SW1/4; Section 31, NE1/4NE1/4; Section 32, N1/2, N1/2SE1/4, SE1/4SE1/4; Section 33, W1/2E1/2, W1/2; all in G&SRB&M, Mohave and La Paz Counties, Arizona.

2. Allen Severson Memorial Wildlife Area: The Allen Severson Memorial Wildlife Area shall be that area including Pintail Lake and South Marsh lying within the fenced and posted portions of:
T11N, R22E; Section 32, SE1/4; Section 33, S1/2SW1/4; T10N, R22E; Section 4, N1/2NW1/4; T10N, R22E; Section 4: the posted portion of the NW1/4SW1/4; all in G&SRB&M, Navajo County, Arizona, consisting of approximately 300 acres.
3. Aravaipa Canyon Wildlife Area: The Aravaipa Canyon Wildlife Area shall be that area within the flood plain of Aravaipa Creek and the first 50 vertical feet above the streambed within the boundaries of the Aravaipa Canyon Wilderness Area administered by the Bureau of Land Management (BLM), Graham and Pinal Counties, Arizona.
4. Arivaca Lake Wildlife Area: The Arivaca Lake Wildlife Area shall be those areas described as:
A parcel or land located in Sections 6, 7 and 8 all of which being situated in T22S, R11E of the G&SRB&M, Pima County, Arizona described as follows: Commencing at the N1/4 corner of said Section 7 run thence S 43°42'30" E (assumed bearing) a distance of 742.14 feet to point 1, the point of Beginning: thence N 81°26'32" E a distance of 705.76 feet to point 2; thence N 09°54'25" E a distance of 305.96 feet to point 3; thence N 21°43'49" E a distance of 872.20 feet to point 4; thence S 84°14'14" E a distance of 471.36 feet to point 5; thence N 28°12'16" E a distance of 357.98 feet to point 6: thence N 85°30'7" E a distance of 110.05 feet to point 7; thence S 02°03'27" W a distance of 417.50 feet to point 8; thence N 88°20'00" E a distance of 141.99 feet to point 9; thence S 27°29'57" W a distance of 341.84 feet to point 10; thence N 60°20'59" W a distance of 297.87 feet to point 11; thence S 38°10'38" W a distance of 363.79 feet to point 12; thence S 03°36'24" E a distance of 222.07 feet to Point 13; thence S 59°52'05" E a distance of 133.71 feet to point 14 from which the northeast corner of said Section 7 bears N 76°07'51" E a distance of 689.94 feet, said northeast corner also being the common Section corner of Sections 5, 6, 7 and 8 of said Township and Range; thence S 59°18'56" W a distance of 225.86 feet to point 15; thence S 14°38'09" W a distance of 184.94 feet to point 16; thence N 73°08'58" E a distance of 282.60 feet to point 17; thence S 33°21'50" W a distance of 275.24 feet to point 18; thence S 16°37'03" E a distance of 294.45 feet to point 19; thence S 60°13'45" E a distance of 187.22 feet to point 20; thence N 09°21'57" E a distance of 502.65 feet to point 21; thence S 57°19'17" E a distance of 175.82 feet to point 22; thence S 06°20'39" W a distance of 405.88 feet to point 23: thence S 73°13'57" E a distance of 307.36 feet to point 24; thence N 72°27'59" E a distance of 108.77 feet to point 25; thence N 13°07'02" E a distance of 316.07 foot to point 26; thence N 15°41'38" E a distance of 292.54 feet to point 27; thence S 16°25'12" E a distance of 338.44 feet to point 28; thence N 60°53'52" E a distance of 349.03 feet to point 29; thence N 68°30'49" E a distance of 286.09 feet to point 30; thence S 09°14'22" W a distance of 396.67 feet to point 31; thence S 42°27'47" W a distance of 265.50 feet to point 32; thence N 86°09'01" W a distance of 253.50 feet to point 33; thence S 34°29'33" W a distance of 500.53 feet to point 34; thence S 59°56'05" W a distance of 120.42 feet to point 35; thence N 71°17'44" W a distance of 228.54 feet to point 36; thence S 69°42'17" W a distance of 120.88 feet to point 37; thence S 12°12'05" E a distance of 146.20 feet to point 38; thence S 83°22'20" E a distance of 339.63 feet to point 39; thence N 34°26'45" E a distance of 345.01 feet to point 40; thence N 88°14'41" E a distance of 272.60 feet to point 41; thence S 54°11'52" E a distance of 246.09 feet to point 42; thence S 76°42'33" W a distance of 304.58 feet to point 43; thence S 25°02'30" W a distance of 515.24 feet to point 44; thence N 54°58'47" W a distance of 330.22 feet to point 45; thence S 59°01'38" W a distance of 443.06 feet to point 46; thence S 28° 40' 19" E a distance of 381.98 feet to point 47; thence S 42°18'41" E a distance of 436.71 feet to point 48 from which the E1/4 corner of said Section 7 and common to the W1/4 corner of said Section 8 bears N 04°23'16" E a distance of 126.73 feet; thence N 87°40'07" E a distance of 385.96 feet to point 49; thence S 46°57'39" E a distance of 243.05 feet to point 50; thence S 13°06'06" W a distance of 183.34 feet to point 51; thence N 55°28'27" W a distance of 228.94 feet to point 52; thence S 55°08'41" W a distance of 330.40 feet to point 53; thence S 48°10'36" E a distance of 218.70 feet to point 54; thence S 06°38'09" E a distance of 140.86 feet to point 55; thence S 28° 04'14" E a distance of 892.21 feet to point 56; thence S 12°20'35" W a distance of 181.98 feet to point 58; thence S 63°52'33" E a distance of 230.70 feet to point 59; thence S 72°30'09" E a distance of 335.12 feet to point 60; thence S 41°39'07" W a distance of 498.00 feet to point 61; thence N 86°49'30" W a distance of 330.81 feet to point 62; thence N 34°09'15" W a distance of 1380.92 foot to point 63; thence S 86°14'38" W a distance of 310.49 feet to point 64; thence N 04°22'03" W a distance of 206.30 feet to point 65; thence N 70°41'46" E a distance of 226.45 feet to point 66; thence N 10°01'58" E a distance of 468.22 feet to point 67; thence N 67°59'02" W a distance of 220.56 feet to point 68; thence N 36°50'14" W a distance of 360.36 feet to point 69; thence N 04°31'00" E a distance of 187.56 feet to point 69A; thence N 53°13'11" W a distance of 85.56 feet to point 69B; thence S 31°01'48" W a distance of 322.05 feet to point 70; thence S 16°55'20" W a distance of 1033.42 feet to point 71; thence S 32°45'38" E a distance of 209.12 feet to point 72; thence S 64°28'24" W a distance of 319.54 feet to point 73; thence S 24°35'49" W a distance of 264.49 feet to point 74; thence S 42°38'39" W a distance of 428.36 feet to point 75; thence N 88°49'40" W a distance of 549.92 feet to point 76 from which the S1/4 corner of said Section 7 bears S 28°36'15" W a distance of 730.77 feet; thence N 27°38'55" W a distance of 456.55 feet to point 76A; thence N 21°18'02" E a distance of 2170.03 feet to point

78; thence N 00°01'17" E a distance of 958.28 feet to point 79; thence S 89°36'36" W a distance of 624.49 feet to point 80; thence N 00°05'06" E a distance of 553.06 feet to point 81 from which the N1/4 corner of said Section 7 bears N 14°02'18" W a distance of 734.38 feet; thence N 62°15'48" E a distance of 378.12 feet to the point of beginning; consisting of approximately 195.04 acres.

5. Arlington Wildlife Area: The Arlington Wildlife Area shall be those areas described as follows:
T1S, R5W, Section 33, E1/2SE1/4; T2S, R5W, Section 3, W1/2W1/2, Section 4, E1/2, and Parcel 401-58-001A as described by the Maricopa County Assessor's Office; a parcel of land lying within Section 4, T2S, R5W, more particularly described as follows: commencing at the southwest corner of said Section 4, 2-inch aluminum cap (A.C.) in pothole stamped "RLS 36562", from which the northwest corner of said Section, a 1 1/2-inch B.C. stamped "T1S R5W S32 S33 S5 S4 1968", bears N 00°09'36" E (basis of bearing) a distance of 4130.10 feet, said southwest corner being the point of beginning; thence along the west line of said Section, N 00°09'36" E a distance of 16.65 feet; thence leaving said west line, S 89°48'28" E a distance of 986.79 feet; thence N 00°47'35" E a distance of 2002.16 feet; thence N 01°07'35" E a distance of 2102.65 feet to the north line of said Section; thence along said north line S 89°18'45" E a distance of 1603.61 feet to the N1/4 corner of said Section, a 1/2-inch metal rod; thence leaving said north line, along the north-south midsection line of said Section, S 00°08'44" E a distance of 4608.75 feet to the S1/4 corner of said Section, a 3-inch B.C.F. stamped "T2S R5W 1/4S4 S9 RLS 46118 2008"; thence leaving said north-south midsection line, along the south line of said Section, N 79°10'54" W a distance of 2719.41 feet to the point of beginning. Subject to existing rights-of-way and easements. This parcel description is based on the Record of Survey for Alma Richardson Property, recorded in Book 996, page 25, Maricopa County Records and other client provided information. This parcel description is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of April, 2008 and October, 2009 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey; all in G&SRB&M, Maricopa County, Arizona. Section 9; NW1/4 and SW1/4; Section 3; LOT 4 SW1/4NW1/4, W1/2SW1/4 NE1/4SE1/4; Section 3; M&B in LOT 1 SE1/4NE1/4E1/2SE1/4; Section 9; M&B in NE1/4NE1/4; Section 10; SW1/4NW1/4; Section 15; those portions of S1/2W1/4 and N1/2SW1/4 lying west of the primary through road; Section 16; W1/2 M&B in E1/2E1/2 W1/2E1/2; Section 21; NE1/4NW1/4 and Parcel 401-61-008D as described by the Maricopa County Assessor's Office, more particularly described as follows: commencing at the BLM B.C. marking the northeast corner of said Section 21, from which the BLM B.C. marking the northwest corner of said Section 21 bears N 82°26'05" W a distance of 5423.64 feet; thence N 82°26'05" W along the north line of Section 21 a distance of 2711.82 feet to the NW1/4 corner of said Section 21; thence S 00°33'45" W along the north-southerly midsection line of said Section 21 a distance of 33.25 feet to the True Point of Beginning; thence continuing S 00° 33'45" W along said north-south midsection line a distance of 958.00 feet to a point on a line which is parallel with and 983.85 feet southerly, as measured at right angles from the north line of said Section 21; thence N 82°26'05" W along said parallel line a distance of 925.54 feet; thence N 26°12'18" W a distance of 153.32 feet; thence N 13°26'18" W a distance of 303.93 feet; thence N 34°15'49" W a distance of 189.27 feet; thence N 21°32'45" W a distance of 215.60 feet; thence N 89°25'47" W a distance of 95.37 feet to a point on the west line of the NE1/4N1/4 of said Section 21; thence N 00°34'13" E, along said west line a distance of 223.54 feet to a point on a line which is parallel with and 33.00 feet southerly, as measured at right angles from the north line of said Section 21; thence S 82°26'05" E along said parallel line, a distance of 1355.91 feet to the True Point of Beginning; all in G&SRB&M, Maricopa County, Arizona.

6. Base and Meridian Wildlife Area: The Base and Meridian Wildlife Area shall be those areas described as follows:
T1N, R1E, Section 31; Maricopa County APN 101-44-023, also known as Lots 3, 5, 6, 7, 8 and NE1/4SW1/4, and Maricopa County APN 101-44-003J, also known as the S1/2S1/2SW1/4NW1/4 except the west 55 feet thereof; and 101-44-003K, also known as the S1/2S1/2SW1/4NW1/4 except the west 887.26 feet thereof; and Maricopa County APN 104-44-002S, also known as that portion of the N1/2SE1/4, described as follows: commencing at the aluminum cap set at the E1/4 corner of said Section 31, from which the 3" iron pipe set at the southeast corner of said Section 31, S 00°20'56" W a distance of 2768.49 feet; thence S 00°20'56" W along the east line of said SE1/4 of Section 31 a distance of 1384.25 feet to the southeast corner of said N1/2SE1/4; thence S 89"25'13" W along the south line of said N1/2SE1/4 a distance of 2644.35 feet to the southwest corner of said N1/2SE1/4 and the point of beginning; thence N 00°03'37" W along the west line of said SE1/4 a distance of 746.86 feet to the south line of the north 607.00 feet of said N1/2SE1/4; thence N 88°46'12" E along said south line of the north 607.00 feet of the N1/2SE1/4 a distance of 656.09 feet; thence S 00°03'37" E parallel with said west line of the SE1/4 a distance of 754.31 feet to said south line of the N1/2SE1/4; Thence S 89"25' 13" W along said south line of the N1/2SE1/4 a distance of 655.98 feet to the point of beginning. T1N, R1W, Section 34, N1/2SE1/4; Section 35, S1/2; Section 36. The Maricopa County APN 500-69-099; the W1/2SE1/4NE1/4. APN 500-69-099, 500-69-100, also known as that portion of the SE1/4SE1/4NE1/4. 500-69-010C, also known as that portion of the W1/2SE1/4NE1/4, except any portion of said W1/2SE1/4NE1/4 of Section 36 lying within the following described four parcels: Exception 1: commencing at the northeast corner of said

W1/2SE1/4NE1/4 of Section 36; thence along the east line thereof S 00°10' E a distance of 846.16 feet to the point of beginning; thence continuing S 00°18' E a distance of 141.17 feet; thence S 87°51'15" W a distance of 570.53 feet; thence S 00°29' E a distance of 310.00 feet to the south line of said W1/2SE1/4NE1/4 of Section 36; thence N 89°29' W along the west line of said W1/2SE1/4NE1/4 of Section 36 a distance of 425.93 feet; said point bears S 00°29' E a distance of 895.93 feet from the northwest corner of said W1/2SE1/4NE1/4 of Section 36; thence N 85°54C33" E a distance of 647.01 feet to the point of beginning. Exception 2: commencing at the northeast corner of said W1/2SE1/4NE1/4 of Section 36; thence along the east line thereof S 00°18' E a distance of 846.16 feet to the point of beginning; said point being on the northerly line of the Flood Control District of Maricopa County parcel as shown in Document 84-26119, Maricopa County Records; thence S 85°54'33" W a distance of 647.01 feet to the west line of said W1/2SE1/4NE1/4 of Section 36; thence N 00°29' W along said west line a distance of 30 feet; thence N 84°23'15" E a distance of 228.19 feet; thence N 87°17'06" E a distance of 418.85 feet to the east line of the W1/2SE1/4NE1/4 of Section 36; thence S 00°18' E along said east line a distance of 26.00 feet to the point of beginning. Exception 3: the South 37.6 feet of said W1/2SE1/4NE1/4 of Section 36. Except all oil, gas and other hydrocarbon substances, helium or other substance of gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description and except all materials which may be essential to the production of fissionable material as reserved in Arizona Revised Statutes. Exception 4: that part of the W1/2SE1/4NE1/4 of Section 36, T1N, R1W lying north of the following described line: commencing at the northeast corner of said W1/2SE1/4NE1/4 of Section 36; thence along the east line thereof S 00°18'00" E a distance of 820.16 feet, to the point of beginning; said point being on the northerly line of the Flood District of Maricopa County parcel as shown in Document 85-357813, Maricopa County Records; thence S 87°17'06" W a distance of 418.85 feet; thence S 84°23'15" W a distance of 228.19 feet to the west line of said W1/2SE1/4NE1/4 of Section 36 and the point of terminus. The above described parcel contains 162,550 sq. ft. or 3.7316 acres 500-69-001L and 500-69-001M, also known as the N1/2SE1/4, except the south 892.62 feet thereof. 500-69-001N, 500-69-001P, 500-69-001Q, 500-69-001R, 500-69-001T, 500-69-001X, 500-69-001Y, also known as that portion of the south 892.62 feet of the N1/2SE1/4. The SE1/4SE1/4NE1/4 of Section 36, T1N, R1W, except the south 37.6 feet of said SE1/4SE1/4NE1/4, and except the east 55 feet of said SE1/4SE1/4NE1/4, and except that part of said SE1/4SE1/4NE1/4 lying north of the most southerly line of the parcel described in Record 84-026119, Maricopa County Records, said southerly line being described as follows: beginning at the NE1/4S1/2NE1/4SE1/4NE1/4 of said Section 36; thence S 00°07' E along the east line of Section 36, a distance of 50.70 feet; thence S 89°53' W a distance of 55.00 feet to a point on the west line of the east 55.00 feet of said Section 36; thence S 00°07' E along said line, a distance of 510.00 feet; thence S 81°4'43" W a distance of 597.37 feet to a terminus point on the west line of said SE1/4SE1/4NE1/4 of Section 36, and except that part of said SE1/4SE1/4NE1/4 described as follows: commencing at the E1/4 corner of said Section 36; thence N 89°37'23" W along the south line of said SE1/4SE1/4NE1/4 of Section 36, a distance of 241.25 feet; thence N 18°53'04" E a distance of 39.65 feet to the point of beginning; thence continuing N 18°53'04" E a distance of 408.90 feet; thence S 81°04'43" W a distance of 222.55 feet; thence S 18°53'04" W a distance of 370.98 feet; thence S 89°37'23" E a distance of 207.58 feet to the point of beginning. That portion of land lying within the SE1/4SE1/4NE1/4 of Section 36, T1N, R1W, and the S1/2SW1/4NW1/4 of Section 31, T1N, R1E, as described in Document Number 99-1109246. Except the west 22 feet of the property described in Recorder Number 97-0425420, also known as APN 101-44-003G; and except the west 22 feet of the property described in Recorder Number 97-566498, also known as APN 101-44-013; all in G&SRB&M, Maricopa County, Arizona.

7. Becker Lake Wildlife Area: The Becker Lake Wildlife Area shall be that area including Becker Lake lying within the fenced and posted portions of:
T9N, R29E, Section 19, SE1/4SE1/4 also known as APN. 105-07-001; Section 20, SW1/4SW1/4; beginning at a point 1012 feet north of the southwest corner of the SE1/4SW1/4 of Section 20, T9N, R29E; thence north 1285 feet; thence east a distance of 462 feet; thence south a distance of 2122 feet, more or less to the center of U.S. Highway 60; thence in a northwesterly direction along the center of U.S. Highway 60 a distance of 944 feet, more or less; thence west a distance of 30 feet, more or less to the point of beginning, also known as APN 105-08-002); Section 29, W1/2NW1/4, NW1/4SW1/4, also known as APN 105-15-003; beginning at the S1/4 corner of said Section 29, said point being the True Point of Beginning; thence N 00°43'20" E along the western boundary of the SE1/4 of said Section 29, a distance of 1329.15 feet to the center-south 1/16 corner of said Section 29; thence S 89°53'01" W along the southern boundary of the NE1/4SW1/4 of said Section 29, a distance of 99.69 feet; thence N 00°43'20" E a distance of 417.54 feet; thence S 89°31'37" E a distance of 99.69 feet; thence N 00°43'20" E along the western boundary of the SE1/4 of said Section 29 a distance of 374.40 feet; thence N 88°49'48" E a distance of 474.94 feet; thence N 27°35' 15" E a distance of 99.21 feet; thence N 04°13'26" W a distance of 160.59 feet; thence N 37°38'44" E a distance of 12.27 feet; thence S 26°22'25" E a distance of 371.13 feet; thence N 31°21'35" E a distance of 58.00 feet; thence S 26°22'27" E a distance of 1203.23 feet; thence S 63°58'58" W a distance of 200.00 feet; thence S 36°24'36" E a distance of 375.11 feet; thence S 00°24'06" W a distance of 490.79 feet; thence S 01°22'24" E a distance of 110.21 feet; thence S 22°27'23" E a distance of 44.27 feet; thence N 89°48'03" W a distance of 1331.98 feet to the True Point of Beginning, also known as APN

105-15-014E; beginning at the corner of Sections 28, 29, 32 and 33, T9N, R29E of G&SRB&M, Apache County, Arizona; thence N 54°21'09" W a distance of 1623.90 feet; thence N 26°00'59" W a distance of 100.00 feet; thence N 26°22'14" W a distance of 1203.23 feet to the True Point of Beginning; thence N 26°22'27" W a distance of 351.19 feet; thence S 55°14'10" W a distance of 38.42 feet; thence S 37°38'44" W a distance of 12.38 feet; thence S 26°22'14" E a distance of 371.13 feet; thence N 31°21'35" E a distance of 58.00 feet to the True Point of Beginning, also known as APN 105-15-014C. S1/2SW1/4, except the following described parcel: commencing at a 2-inch aluminum cap monument stamped LS 8906 located at the Section corner common to Sections 29, 30, 31 and 32 of said Township and Range; thence bear S 89°46'16" E along the Section line common to Sections 29 and 32, a distance of 1038.05 feet to the True Point of Beginning; thence N 35°17'33" E along the northwest boundary of the Springerville Municipal Airport a distance of 328.32 feet; thence S 39°31'26" E a distance of 349.55 feet to a point on the Section line common to Sections 29 and 32; thence N 89°46'44" W a distance of 131.96 feet to the W1/16 corner of Sections 29 and 32; thence N 89°46'16" W a distance of 280.18 feet to the True Point of Beginning. Section 30, NE1/4SE1/4, E1/2NE1/4 also known as APN 105-16-001; W1/2NE1/4, W1/2NE1/4 also known as APN 105-16-002; Section 32, beginning at the N1/4 corner of said Section 32, said point being the True Point of Beginning; thence S 89°48'03" E along the north line of said Section 32 a distance of 1331.98 feet; thence S 21°49'15" E a distance of 198.07 feet; thence S 20°56'35" W a distance of 191.75 feet; thence S 19°53'23" W a distance of 24.65 feet; thence S 39°17'55" W a distance of 86.61 feet; thence S 01°41'36" E a distance of 13.60 feet; thence S 50°13'33" W a distance of 1.29 feet; thence S 02°24'23" E a distance of 906.39 feet; thence S 00°44'11" W a distance of 466.82 feet; thence S 35°26'56" W a distance of 218.51 feet; thence S 89°57'05" W a distance of 1141.87 feet; thence N 07°57'52" E a distance of 328.83 feet; thence N 77°39'30" W a distance of 68.79 feet; thence N 00°30'56" W a distance of 334.16 feet to a 1/16th section corner; thence N 00°30'56" W a distance of 1349.10 feet to the True Point of Beginning. Except therefrom any portion lying in the S1/2SW1/4NE1/4 of said Section 32 also known as APN 105-18-008A; all that portion of the NE1/4NW1/4 of Section 32, T9N, R29E of G&SRB&M, Apache County, Arizona, lying east of the Becker Lake Roadway; except for the following described parcel: from the NW1/16 corner of said Section 32; thence S 89°45'28" E along the 1/16 line a distance of 736.55 feet to the True Point of Beginning, said point being in the west rights-of-way limits of Becker Lake Rd.; thence N 06°09'00" W along the west line of said right-of-way a distance of 266.70 feet to a 1/2-inch rebar with a tag marked LS 13014; thence N 06°21'43" W a distance of 263.42 feet to a 1/2-inch rebar with a tag marked LS 13014; thence N 06°21'43" W a distance of 198.60 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence N 78°43'10" E a distance of 158.40 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 47°05'42" E a distance of 65.65 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 29°24'20" E a distance of 202.48 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 48°03'17" W a distance of 146.19 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence South 19°36'10" W a distance of 115.75 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence South 00°38'05" East a distance of 74.66 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 14°52' 53" E a distance of 125.09 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 15°08'20" E a distance of 136.60 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 89°58'07" W a distance of 144.13 feet to the True Point of Beginning, also known as APN 105-18-012G.

8. Bog Hole Wildlife Area: The Bog Hole Wildlife Area lying in Sections 29, 32 and 33, T22S, R17E shall be the fenced and posted area described as follows: beginning at the southeast corner of Section 32, T22S, R17E, G&SRB&M, Santa Cruz County, Arizona; thence N 21°42'20" W a distance of 1394.86 feet to the True Point of Beginning; thence N 9°15'26" W a distance of 1014.82 feet; thence N 14°30'58" W a distance of 1088.82 feet; thence N 36°12'57" W a distance of 20.93 feet; thence N 50°16'38" W a distance of 1341.30 feet; thence N 57°51'08" W a distance of 1320.68 feet; thence N 39°03'53" E a distance of 1044.90 feet; thence N 39°07'43" E a distance of 1232.32 feet; thence S 36°38'48" E a distance of 1322.93 feet; thence S 43°03'17" E a distance of 1312.11 feet; thence S 38°19'38" E a distance of 1315.69 feet; thence S 13°11'59" W a distance of 2083.31 feet; thence S 69°42'45" W a distance of 920.49 feet to the True Point of Beginning.
9. Chevelon Canyon Ranches Wildlife Area: The Chevelon Canyon Ranches Wildlife Area shall be those areas described as follows:
   Duran Ranch: T12N, R14E; Sections 6 and 7, more particularly bounded and described as follows: beginning at Corner 1, from which the Standard Corner to Section 31 in T13N, R14E and Section 36 T13N, R13E, bears N 11°41' W 21.53 chains distant; thence S 26°5' E 6.80 chains to Corner 2; thence S 66° W 12.74 chains to Corner 3; thence S 19°16' W 13.72 chains to Corner 4; thence S 29°1' W 50.02 chains to Corner 5; thence N 64°15' W five chains to Corner 6; thence N 28°54' E 67.97 chains to Corner 7; thence N 55°36' E 11.02 to Corner 1; the place of beginning,; all in G&SRB&M, Coconino County, Arizona. Dye Ranch: T12N, R14E Sections 9 and 16, more particularly described as follows: beginning at Corner 1 from which the Standard corner to Sections 32 and 33 in T13N, R14E, bears N 2° 24' E 127.19 chains distant; thence S 50°20' E 4.96 chains to corner 2; thence S 29°48' W 21.97 chains to Corner 3; thence S 14°45' W 21.00 chains to Corner 4; thence N 76°23' W 3.49 chains to Corner 5; thence N 10°13' W 14.02 chains to

Corner 6; thence N 19°41' E 8.92 chains to Corner 7; thence N 38°2' E 24.79 chains to Corner 1, the place of beginning; all in G&SRB&M, Coconino County, Arizona. Tillman Ranch: T12N, R14E land included in H.E. Survey 200 embracing a portion of approximately Sections 9 and 10 in T12N, R14E of G&SRB&M; all in G&SRB&M, Coconino County, Arizona. Vincent Ranch: T12N, R13E; Sections 3 and 4, more particularly described as follows: beginning at Corner 1, from which the south corner to Section 33, T13N, R13E, bears N 40°53' W 16.94 chains distance; thence S 53° 08' E 2.98 chains to Corner 2; thence S 11°26' W 6.19 chains to Corner 3; thence S 49°43' W 22.41 chains to Corner 4; thence S 22°45' W 30.03 chains to Corner 5; thence N 67°35' W 6.00 chains to Corner 6; thence N 23° E 30.03 chains to Corner 7; thence N 42°18' E 21.19 chains to Corner 8; thence N 57°52' E 8.40 chains to Corner 1, the place of beginning; all in G&SRB&M, Coconino County, Arizona. Wolf Ranch: T12N, R14E, Sections 18 and 19, more particularly bounded and described as follows: beginning at Corner 1, from which the U.S. Location Monument 184 H. E. S. bears S 88°53' E 4.41 chains distant; thence S 34°4' E 11.19 chains to Corner 2; thence S 40°31' W 31.7 chains to Corner 3; thence S 63°3' W 7.97 chains to Corner 4; thence S 23°15' W 10.69 chains to Corner 5; thence N 59° W 2.60 chains to Corner 6; thence N 18°45' E 10.80 chains to Corner 7; thence N 51°26' E 8.95 chains to Corner 8; thence N 30°19' E 34.37 chains to Corner 1; the place of beginning; all in G&SRB&M, Coconino County, Arizona.

10. Chevelon Creek Wildlife Area: The Chevelon Creek Wildlife Area shall be those areas described as follows:
Parcel 1: The S1/2S1/2NW1/4SW1/4 of Section 23, T18N, R17E of G&SRB&M; Parcel 2: Lots 1, 2, 3 and 4 of Section 26, T18N, R17E of G&SRB&M; Parcel 1: That portion of the NE1/4 of Section 26 lying northerly of Chevelon Creek Estates East Side 1 Amended, according to the plat of record in Book 5 of Plats, page 35, records of Navajo County, Arizona, all in T18N, R17E of G&SRB&M, Navajo County, Arizona. Parcel 2: That part of Tract A, Chevelon Creek Estates East Side 1 Amended, according to the plat of record in Book 5 of Plats, page 35, records of Navajo County, Arizona lying northerly of the following described line: beginning at the southwest corner of Lot 3 of said subdivision; thence southwesterly in a straight line to the southwest corner of Lot 6 of said subdivision.
11. Cibola Valley Conservation and Wildlife Area: The Cibola Valley Conservation and Wildlife Area shall be those areas described as follows:
Parcel 1: this parcel is located in the NW1/4 of Section 36, T1N, R24W of G&SRB&M, La Paz County, Arizona, lying east of the right of way line of the "Cibola Channelization Project of the United States Bureau of Reclamation Colorado River Front Work and Levee System," as indicated on Bureau of Reclamation Drawing 423-300-438, dated March 31, 1964, and more particularly described as follows: beginning at the northeast corner of the NW1/4 of said Section 36; thence south and along the east line of the NW1/4 of said Section 36, a distance of 2646.00 feet to a point being the southeast corner of the NW1/4 of said Section 36; thence westerly and along the south line of the NW1/4 a distance of 1711.87 feet to a point of intersection with the east line of the aforementioned right of way; thence northerly and along said east line of the aforementioned right of way, a distance of 2657.20 feet along a curve concave easterly, having a radius of 9260.00 feet to a point of intersection with the north line of the NW1/4 of said Section 36; thence easterly and along the north line of the NW1/4 of said Section 36, a distance of 1919.74 feet to the point of beginning. Parcel 2: this parcel is located in the U.S. Government Survey of Lot 1 and the E1/2SW1/4 of Section 36, T1N, R24W of G&SRB&M, La Paz County, Arizona, lying east of the right of way line of the "Cibola Channelization Project of the United States Bureau of Reclamation Colorado River Front Work and Levee System," as indicated on Bureau of Reclamation Drawing 423-300-438, dated March 31, 1964, and more particularly described as follows: beginning at the S1/4 corner of said Section 36; thence westerly and along the south line of said Section 36, a distance of 610.44 feet to a point of intersection with the east line of the aforementioned right of way; thence northerly along said east line of the of the aforementioned right of way and along a curve concave southwesterly, having a radius of 17350.00 feet, a distance of 125.12 feet; thence continuing along said right of way line and along a reverse curve having a radius of 9260.00 feet, a distance of 2697.10 feet to a point of intersection with the east-west midsection line of said Section 36; thence easterly along said east-west midsection line, a distance of 1711.87 feet to a point being the center of said Section 36; thence south and along the north-south midsection line, a distance of 2640.00 feet to the point of beginning. Parcel 3: this parcel is located in the E1/2NE1/4 of Section 36, T1N, R24W of G&SRB&M, La Paz County, Arizona. Parcel 4: this parcel is located in the E1/2NW1/4SW1/4 of Section 21, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the south right of way line of U.S.A. Levee; except therefrom that portion lying within Cibola Sportsman's Park, according to the plat thereof recorded in Book 4 of Plats, Page 58, records of Yuma (now La Paz) County, Arizona; and further excepting the N1/2E1/2NW1/4SW1/4. Parcel 5: this parcel is located in the S1/2SW1/4 of Section 21, T1N, R23W of G&SRB&M, La Paz County, Arizona. Except the west 33.00 feet thereof; and further excepting that portion more particularly described as follows: the N1/2NW1/4SW1/4SW1/4 of said Section, excepting the north 33.00 feet and the east 33.00 feet thereof. Parcel 6: this parcel is located in the SW1/4SE1/4 of Section 21, T1N, R23W of G&SRB&M, La Paz County, Arizona. Parcel 7: this parcel is located in Sections 24 and 25, T1N, R24W of G&SRB&M, La Paz County, Arizona, lying south of the Colorado River and east of Meander line per BLM Plat 2647C. Parcel 8: this parcel is located in the W1/2 of Section 19, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the Colorado River. Except that portion in condemnation suit Civil 5188PHX filed in District

Court of Arizona entitled USA -vs- 527.93 acres of land; and excepting therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water. Parcel 9: this parcel is located in the N1/2NE1/4SE1/4; and the W1/2SW1/4NE1/4SE1/4; and that portion of the SE1/4NE1/4 of Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the south right of way line of the U.S.B.R. Levee; except the east 33.00 feet thereof; and further excepting that portion more particularly described as follows: commencing at the northeast corner of the SE1/4 of said Section 20; thence S 0º24'00" E along the east line, a distance of 380.27 feet; thence S 89º36'00" W a distance of 50.00 feet to the True Point of Beginning; thence continuing S 89º36'00" W a distance of 193.00 feet; thence N 0º24'00" W a distance of 261.25 feet; thence S 70º11'00" E a distance of 205.67 feet to the west line of the east 50.00 feet of said SE1/4 of Section 20; thence S 0º24'00" E a distance of 190.18 feet to the True Point of Beginning; excepting therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water. Parcel 10: this parcel is located in the S1/2SE1/4 Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona; except the east 33.00 feet thereof. Parcel 11: This parcel is located in the SW1/4NE1/4; and the NW1/4SE1/4 of Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the Colorado River and west of the Meander line per BLM Plat 2546B; except any portion thereof lying within U.S.A. Lots 5 and 6 of said Section 20, as set forth on BLM Plat 2546B; and excepting therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water. Parcel 12: this parcel is located in the SE1/4NE1/4SE1/4; and the E1/2SW1/4NE1/4SE1/4 of Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona. Parcel 13: this parcel is located in the E1/2 of Section 19, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the Colorado River; except the W1/2W1/2SE1/4SW1/4SE1/4; except the E1/2E1/2SW1/4SW1/4SE1/4; except the SW1/4SW1/4NE1/4; except the W1/2SE1/4SW1/4NE1/4; and excepting therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water. Parcel 14: this parcel is located in the SW1/4SW1/4NE1/4; and the W1/2SE1/4SW1/4NE1/4 of Section 19, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the Colorado River and protection levees and front work, excepting therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water. Parcel 15: this parcel is located in the W1/2 of Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona; except the west 133.00 feet thereof; except any portion lying within the U.S. Levee or Channel right of way or any portion claimed by the U.S. for Levee purposes or related works; and except the SE1/4SE1/4SW1/4 of said Section 20. Parcel 16: this parcel is located in the SE1/4SE1/4SW1/4 of Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona.

12. Clarence May and C.M.H. May Memorial Wildlife Area: The Clarence May and C.M.H. May Memorial Wildlife Area shall be the SE1/4 of Section 8 and N1/2NE1/4 of Section 17, T17S, R31E, and the W1/2SE1/4, S1/2NW1/4, and SW1/4 of Section 9, T17S, R31E, G&SRB&M, Cochise County, Arizona, consisting of approximately 560 acres.
13. Cluff Ranch Wildlife Area: The Cluff Ranch Wildlife Area is that area within the fenced and posted portions of Sections 13, 14, 23, 24, and 26, T7S, R24E, G&SRB&M, Graham County, Arizona; consisting of approximately 788 acres.
14. Coal Mine Spring Wildlife Area: The Coal Mine Spring Wildlife Area shall be those areas described as:
    Phase I: That portion of the N1/2 of the Baca Location No. 3, also known as the Baca Float No. 3 in Santa Cruz County, Arizona according to the survey by Philip Contzen under Contract No. 133, dated June 17, 1905 and now filed and approved in the Office of the Commissioner of the General Land Office, Washington, D. C., described as follows: Beginning at the southeast corner of Lot 128, as shown on the record of survey of Salero Ranch Unit 7, recorded in Book 2 of Records of Survey, page 455, records of Santa Cruz County, Arizona. Thence the following 13 courses and distances upon the boundary line of said Salero Ranch Unit 7; N 29°42'21" E a distance of 2605.96 feet; S 58°19'30" E a distance of 1154.77 feet; thence N 19°14'52" E a distance of 1039.92 feet; thence N 56°11'38" E a distance of 1160.51 feet; thence N 26°24'15" W a distance of 1201.99 feet; thence N 12°43'46" W a distance of 1774.13 feet; thence N 60°37'49" W a distance of 1403.00 feet; thence S 87°25'09" W a distance of 2733.59 feet; thence S 69°40'43" W a distance of 1437.62 feet; thence S 90°00'00" W a distance of 640.89 feet; thence N 5°17'55" E a distance of 1274.34 feet; thence N 11°18'44" E a distance of 2193.00 feet; thence N 2°31'52" W a distance of 1109.93 feet to the northeast corner of Lot 110 of said Salero Ranch Unit 7, on the southerly boundary line of Salero Ranch Unit 4, as shown on the record of survey recorded in Book 2 of Records of Survey, page 454, records of Santa Cruz County, Arizona; thence S 77°20'10" E a distance of 1403.77 feet upon said southerly boundary line; thence N 85°19'15" E a distance of 415.73 feet upon said southerly boundary line; thence N 83°19'40" E a distance of 1332.97 feet upon said southerly boundary line; thence S 53°17'58" E a distance of 2353.56 feet; thence S 79°45'10" E a distance of 2127.16 feet; thence N 78°08'19" E a distance of 1754.99 feet; thence S 76°40'30" E a distance of 645.76

feet; thence N 8°06'04" E a distance of 2439.25 feet; thence N 83°38'56" E a distance of 2626.58 feet; thence S 4°32'48" E a distance of 1300.66 feet; thence S 22°28'06" E a distance of 1289.33 feet; thence S 41°28'30" E a distance of 693.93 feet; thence N 64°37'22" E a distance of 1137.61 feet; thence S 22°10'49" E a distance of 2355.11 feet; thence S 27°36'21" W a distance of 931.18 feet; thence S 42°06'28" E a distance of 800.14 feet; thence S 23°50'04" W a distance of 5166.49 feet; thence S 0°00'00" W a distance of 853.11 feet to the easterly projection of the south line of said Salero Ranch Unit 7; thence S 90°00'00" W 6 a distance of 239.35 feet upon said easterly projection; thence S 0°00'00" E a distance of 376.92 feet to a 1/2-inch rebar at the northeast corner of the abandonment and reversion to acreage plat, recorded in Book 4 of Maps and Plats at page 35, records of Santa Cruz County, Arizona, also being the northeast corner of the Sonoita Creek State Natural Area, recorded in Book 2 of Records of Survey at page 68, records of Santa Cruz County, Arizona; thence N 89°36'12" W a distance of 4547.83 feet upon the north line of said abandonment and reversion to acreage plat and said Sonoita Creek Natural State Area; thence N 29°42'21" E a distance of 397.69 feet to the point of beginning.

Phase II: Portions of the N1/2 of the Baca Location No. 3, also known as the Baca Float Location No. 3 in Santa Cruz County, Arizona, according to the survey by Philip Contzen under Contract No. 133, dated June 17, 1905 and now filed and approved in the Office of the Commissioner of the General Land Office, Washington, D. C., described as follows:

Parcel 1: Beginning at “PT 17", as shown in the record of survey Coal Mine Canyon, recorded in Book 2 of Records of Survey, page 651, records of Santa Cruz County, Arizona, also being the southwest corner of Lot 102 of Salero Ranch Unit 4, as shown on the record of survey recorded in Book 2 of Records of Survey, page 454, records of Santa Cruz County, Arizona; thence N 58°47'17" E a distance of 1817.43 feet upon the boundary line of said Salero Ranch Unit 4; thence N 34°12'25" E a distance of 2213.94 feet upon said boundary line; thence N 62°07'32" E a distance of 792.65 feet upon said boundary line; thence departing said boundary line, N 80°16'25" E a distance of 2588.25 feet; thence S 66°29'16" E a distance of 913.97 feet; thence S 48°56'10" E a distance of 3171.87 feet to “PT 23” of said record of survey of Coal Mine Canyon; thence the following 6 courses upon said boundary line of said record of survey; thence S 83°38'56" W a distance of 2626.58 feet; thence S 8°06'04" W a distance of 2439.25 feet; thence N 76°40'30" W a distance of 645.76 feet; thence S 78°08'19" W a distance of 1754.99 feet; thence N 79°45'10" W a distance of 2127.16 feet; thence N 53°17'58" W a distance of 2353.56 feet to the point of beginning. Containing approximately 634.858 acres.

Parcel 2: Beginning at “PT 23”, as shown in the record of survey Coal Mine Canyon; thence S 42°44'49" E a distance of 6724.97 feet; thence S 23°50'04" W a distance of 4984.18 feet; thence S 58°24'44" W a distance of 1555.88 feet to the easterly boundary line of said record of survey; thence N 23°50'04" E a distance of 4583.50 feet upon said easterly line to “PT 30”; thence following 7 courses upon the boundary line of said record of survey; thence N 42°06'28" W a distance of 800.14 feet; thence N H 27°36'21" E a distance of 931.18 feet; thence N 22°10'49" W a distance of 2355.11 feet; thence S 64°37'22" W a distance of 1137.61 feet; thence N 41°28'30" W a distance of 693.93 feet; thence N 22°28'06" W a distance of 1289.33 feet; thence N 4°32'48" W a distance of 1300.66 feet to the point of beginning. Containing approximately 238.928 acres, with both parcels containing approximately 873.8 acres.

Phase III: A portion of the N1/2 of the Baca Location No. 3, also known as the Baca Float Location No. 3 in Santa Cruz County, Arizona, according to the survey by Philip Contzen under Contract No. 133, dated June 17, 1905 and now filed and approved in the Office of the Commissioner of the General Land Office, Washington, D. C., described as follows:

Parcel l: Beginning at “PT 32”, as shown in the record of survey Coal Mine Canyon, recorded in Book 2 of Records of Survey, page 651, records of Santa Cruz County, Arizona, thence N 00°00'0" E a distance of 853.11 feet upon the east line of said Coal Mine Canyon; thence N 23°50'04" E a distance of 582.99 feet upon said east line; thence departing said east line, N 58°24'44" E a distance of 1555.88 feet; thence N H 23°50'04" E a distance of 4984.07 feet; thence N 42°44'46" W a distance of 6725.01 feet to “PT 23” of said record of survey; thence N 48°56'1 0" W a distance of 248.35 feet to the most southerly corner of Lot 167 of Salero Ranch Amended Unit 5, a record of survey recorded in Book 2 of Surveys at page 890, records of Santa Cruz County, Arizona; thence N 64°11'14" E a distance of 1596.01 feet upon the southerly line of said lot 167; thence departing said southerly line, N 05°09'36" E a distance of 1369.85 feet: thence N 53°17'18" E a distance of 65.27 feet; thence N 35°52'16" E a distance of 125.74 feet; thence N 74°11'01" E a distance of 169.04 feet; thence N 55°03'38" E a distance of 178.31 feet; thence N 85°27'03" E a distance of 214.56 feet; thence N 69°11'45" E a distance of 152.18 feet; thence N 38°28'18" E a distance of 21.66 feet; thence N 85°02'24" E a distance of 41.31 feet; thence N 38°28'18" E a distance of 586.88 feet; thence N 50°53'07" E a distance of 190.20 feet; thence S 18°53'17" E a distance of 63.40 feet; thence S 08°07'48" E a distance of 102.38 feet to a tangent curve concave northeasterly; thence southeasterly upon said arc of said curve to the left, having a radius of 380.00 feet and a central angle of 77°14'41", for an arc distance of 512.31 feet to a tangent line; thence S 85°22'29" E a distance of 279.02 feet; thence S 70°54'30" E a distance of 129.90 feet; thence N 83°37'47" E a distance of 142.49 feet; thence S 62°23'38" E a distance of 198.13 feet; thence S 36°56'10" E a distance of 113.72 feet; thence S 58°09'14" E a distance

of 170.59 feet; thence N 87°32'08" E a distance of 64.89 feet T to a tangent curve concave southerly; thence easterly upon the arc of said curve to the right, having a radius of 700.00 feet and a central angle of 23°48'20", for an arc distance of 290.84 feet to a compound curve concave southwesterly; thence southeasterly upon the arc of said curve to the right, having a radius of 100.00 feet and a central angle of 55°43'08", for an arc distance of 97.25 feet to a reverse curve concave northerly; thence easterly upon said arc of said curve to the left, having a radius of I 00.00 feet and a central angle of 176°30'32", for an arc distance of 308.07 feet to a non-tangent line; thence N 80°33'04" E a distance of 772.85 feet; thence S 00°31 '59" W a distance of 1378.17 feet; thence S 57°01'50" E a distance of 565.37 feet; thence S 11 °27'08" E a distance of 1517.29 feet; thence S 61°34'44" W a distance of 493.92 feet to the south line of Lot 162 of said Salero Ranch Amended Unit 5; thence continue S 61°34'44" W a distance of 125.58 feet; thence S 90°00'00" W a distance of 333.31 feet; thence S 00°00'00" W a distance of 807.64 feet; thence S 48°51'24" W a distance of 807.64 feet; thence S 12°09'23" E a distance of 879.27 feet; thence S 04°52'34" W a distance of 1219.26 feet; thence S 08°58'33" E a distance of 630.90 feet; thence S 02°41'39" W a distance of 683.84 feet; thence S 38°57'06" W a distance of 883.05 feet; thence S 00°36'34" W a distance of 695.56 feet; thence S 33°38'55" W a distance of 695.56 feet; thence S 39°38'10" E a distance of 521.88 feet; thence S 00°28'11" E a distance of 521.88 feet; thence S 89°31'49" W a distance of 980.46 feet; thence S 20°25'57" W a distance of 836.32 feet; thence S 36°28'11" E a distance of 2307.36 feet; thence S 00°00'00" W a distance of 611.63 feet to the south line of the N1/2 of said Baca Float No. 3; thence N 89°52'37" W a distance of 3334.98 feet upon said south line; thence N 00°00'00" W a distance of 200.46 feet to the point of beginning.

Phase IV: Portions of APN: l12-43-002B. A portion of the N1/2 of the Baca Location No. 3, also known as the Baca Float Location No. 3 in Santa Cruz County, Arizona, according to the survey by Philip Contzen under Contract No. 133, dated June 17, 1905 and now filed and approved in the Office of the Commissioner of the General Land Office, Washington, D. C., described as follows:

Parcel A: Beginning at the southwest corner of lot 161 of Salero Ranch 2nd Amended Unit 5 recorded as document No. 2008-01905, said records of the Santa Cruz County Recorder, said corner also being labeled as “PT 57” on the record of survey for trust for public land Phase II, recorded as document No. 2008-04365, said records of the Santa Cruz County Recorder; thence S 04°52'34"W a distance of 1219.26 feet upon the east line of Parcel 1, as shown on said survey for trust for public land Phase II, to the corner labeled “PT 56” on said record of survey; thence S 08°58'33" E a distance of 630.90 feet upon said east line to the corner labeled “PT 55”; thence S 02°41 '39" W a distance of 683.84 feet upon said east line to the corner labeled “PT 54”; thence S 38°57'06" W a distance of 450.07 feet upon said east line; thence departing said east line, N 72°31'14" E a distance of 380.13 feet; thence N 42°04'28" E a distance of 168.63 feet; thence N 06°07'23" E a distance of 458.79 feet; thence N 09°13'50" W a distance of 428.46 feet; thence N 16°07'21" W a distance of 689.05 feet; thence N 10°00'14" E a distance of 341.00 feet; thence N 00°15'23" W a distance of 754.93 feet to the point of beginning.

Parcel B: Commencing at said above noted corner labeled “PT 54” on said east line as shown on said record of survey of the trust for public land Phase III, thence S 38°57'06" W a distance of 883.05 feet upon said east line to the corner labeled “PT 53”, the point of beginning; thence S 00°36'34" W a distance of 695.56 feet upon said east line to the corner labeled “PT 52”; thence N 30°38'23" E a distance of 217.38 feet; thence N 03°24'47" W a distance of 299.47 feet; thence N 22° 12'34" W a distance of 226.35 feet to the point of beginning.

15. Colorado River Nature Center Wildlife Area: The Colorado River Nature Center Wildlife Area is Section 10 of T19N, R22W, bordered by the Fort Mojave Indian Reservation to the west, the Colorado River to the north, and residential areas of Bullhead City to the south and east, G&SRB&M, Mohave County, Arizona.
16. Fool Hollow Lake Wildlife Area: The Fool Hollow Lake Wildlife Area shall be that area lying in those portions of the S1/2 of Section 7 and of the N1/2N1/2 of Section 18, T10N, R22E, G&SRB&M, described as follows: beginning at a point on the west line of the said Section 7, a distance of 990 feet south of the W1/4 corner thereof; thence S 86°12' E a distance of 2533.9 feet; thence S 41°02' E a distance of 634.7 feet; thence east a distance of 800 feet; thence south a distance of 837.5 feet, more or less to the south line of the said Section 7; thence S 89°53' W along the south line of Section 7 a distance of 660 feet; thence S 0°07' E a distance of 164.3 feet; thence N 89°32' W a distance of 804.2 feet; thence N 20°46' W a distance of 670 feet; thence S 88°12' W a distance of 400 feet; thence N 68°04' W a distance of 692 feet; thence S 2°50' W a distance of 581 feet; thence N 89°32' W a distance of 400 feet; thence N 12°40' W a distance of 370.1 feet, more or less, the north line of the SW1/4SW1/4SW1/4 of said Section 7; thence west a distance of 483.2 feet, more or less, along said line to the west line of Section 7; thence north to the point of beginning.
17. House Rock Wildlife Area: The House Rock Wildlife Area is that area described as follows: beginning at the common 1/4 corner of Sections 17 and 20, T36N, R4E; thence east along the south Section lines of Sections 17, 16, 15, 14, 13 T36N, R4E, and Section 18, T36N, R5E, to the intersection with the top of the southerly escarpment of Bedrock Canyon; thence southeasterly along the top of said escarpment to the top of the northerly escarpment of Fence Canyon; thence along the top of said north escarpment to its intersection with the top of the southerly escarpment of Fence

Canyon; thence northeasterly along the top of said southerly escarpment to its intersection with the top of the escarpment of the Colorado River; thence southerly along top of said Colorado River escarpment to its intersection with Boundary Ridge in Section 29, T34N, R5E; thence westerly along Boundary Ridge to its intersection with the top of the escarpment at the head of Saddle Canyon; thence northerly along the top of the westerly escarpment to its intersection with a line beginning approximately at the intersection of the Cockscomb and the east fork of South Canyon extending southeast to a point approximately midway between Buck Farm Canyon and Saddle Canyon; thence northwest to the bottom of the east fork of South Canyon in the SW1/4SW1/4 of Section 16, T34N, R4E; thence northerly along the west side of the Cockscomb to the bottom of North Canyon in the SE1/4 of Section 12, T35N, R3E; thence northeasterly along the bottom of North Canyon to a point where the slope of the land becomes nearly flat; thence northerly along the westerly edge of House Rock Valley to the point of beginning; all in G&SRB&M, Coconino County, Arizona.

18 Jacques Marsh Wildlife Area: The Jacques Marsh Wildlife Area is that area within the fenced and posted portions of the SE1/4, SW1/4SW1/4NE1/4, SE1/4NW1/4, SW1/4NW1/4, Section 11; and NE1/4NW1/4, NW1/4NE1/4, NE1/4NE1/4, Section 14; T9N, R22E, G&SRB&M, Navajo County, Arizona.

19. Lamar Haines Wildlife Area: The Lamar Haines Wildlife Area is that area described as: T22N, R6E, Section 12 NW1/4, G&SRB&M, Coconino County, Arizona.

20. Lower San Pedro River Wildlife Area: The Lower San Pedro River Wildlife Area shall be those areas described as follows:

For the Triangle Bar Ranch Property: Parcel 1: that portion of the SE1/4 of Section 22, T7S, R16E, G&SRB&M, Pinal County, Arizona, more particularly described as follows: beginning at the southeast corner of Section 22, to a point being a 2.5" Aluminum Cap stamped PLS 35235; thence N 00°38'57" W along the east line of the SE1/4 of Section 22 a distance of 2626.86 feet to a point being the E1/4 corner of Section 22 a 2.5" Aluminum Cap stamped PLS 35235; thence S 89°00'32" W along the north line of the SE1/4 of Section 22 a distance of 1060.80 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 12°30'55" E a distance of 673.56 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 36°31'44" E a distance of 491.55 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 89°00'32" W a distance of 689 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 00°31'09" W a distance of 400.00 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 89°00'32" W a distance of 1320.00 feet to a point on the west line of the SE1/4 of Section 22 to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 00°31'09" E a distance of 1454.09 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 88°51'39" E a distance of 1387.86 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 53°14'11" E a distance of 322.56 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 01°05'49" W a distance of 321.71 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 88°51'39" E along said South line of Section 22 a distance of 1011.31 feet to the point of beginning; containing 110.65 acres, more or less. Parcel 2: that portion of Sections 23 T7S, R16E of G&SRB&M, Pinal County, Arizona, more particularly described as follows: beginning at the point on the south line of Section 23, which point is 720 feet east of the southwest corner of Section 23, said point being a 1/2" Iron Pin tagged PLS 35235; thence N 23°45'32" W a distance of 1833.68 feet (N 22°28'00" W a distance of 1834 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235 on the west line of Section 23; thence S 00°38'57" E a distance of 1691.03 feet (south, record) to the southwest corner of Section 23 to a point being a 2.5" Aluminum Cap stamped PLS 35235; thence along the south line of Section 23 N 89°02'45" E a distance of 720.00 feet (east, a distance of 720.00 feet, recorded) to the point of beginning; containing 13.98 acres, more or less. Parcel 3: lots 2 and 3, and the NE1/4NW1/4, SE1/4NW1/4, and NE1/4SW1/4 of Sections 18 T7S, R16E of G&SRB&M, Pinal County, Arizona, more particularly described as follows: commencing at the northwest corner of Section 18, said point being a GLO B.C. stamped Sec 18 CC; thence S 89°47'17" E along the north line of Section 18, a distance of 1271.33 feet to a point being a 1/2" Iron Pin tagged PLS 35235, and being the point of beginning, said point is the northwest corner of the NE1/4NW1/4; thence S 89°47'17" E a distance of 1320.00 feet to a point being the N1/4 corner of Section 18, to a point being a found stone marked 1/4; thence S 01°35'23" E a distance of 4020.67 feet to a point being a found 1/2" Iron Pin with added tag of PLS 35235 to a point being the southeast corner or the NE1/4SW1/4 of Section 18; thence N 89°37'16" W a distance of 2610.28 feet to a point on the west line of Section 18 to a point being a 1/2" Iron Pin tagged PLS 35235, to a point being the southwest corner of Lot 3; thence N 01°17 '05" W along the west line of Section 18, a distance of 1360.825 feet to a point being the W1/4 corner of Section 18, to a point being a found stone marked 1/4; thence N 01°20'34" W along the west line of Section 18 a distance of 1325.845 feet to a point being a 1/2" Iron Pin tagged PLS 35235, to a point being the northwest corner of Lot 2; thence S 89°32'47" E a distance of 1279.09 feet to a point being a found 1/2" Iron Pin with added tag of PLS 35235 approximately 0.8 feet down from natural grade, to a point being the northeast corner of Lot 2; thence N 01°40'11" W along the west line of the NE1/4NW1/4 of Section 18, a distance of 1331.47 feet to a point on the north line of Section 18 and the point of beginning; containing 200.78 acres, more or less. Parcel 4: lots 3, 4, 5, 6, and 7 of Section 9, T7S, R16E, of

G&SRB&M, Pinal County, Arizona more particularly described as follows: beginning at the S1/4 corner of said Section 9, to a point being a 1.5" Open Iron Pipe with added tag PLS 35235; thence N 00°00'03" E along the north-south midsection line a distance of 2641.16 feet (N 00°38'48" E a distance of 2641.20 feet, record) to the center section of Section 9 to a point being a 1/2" Iron Pin tagged PLS 35235; thence continuing N 00°00'03" E along the north-south midsection line, a distance of 1349.83 feet (N 00°38'48" E a distance of 1349.83 feet, record) to the northeast corner of Lot 5 to a point being a found 1/2" Iron Pin with added tag PLS 35235; thence S 89°09'38" W along the north line of Lot 5 a distance of 1346.80 feet (S 89°44'19" W a distance of 1347.21 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, and the northwest corner of Lot 5 and the southeast corner of Lot 3; thence N 00°58'35" E along the east line of Lot 3 a distance of 1357.74 feet (N 00°37'27" E a distance of 1357.74 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235 and the northeast corner of Lot 3; thence N 89°24'33" W along the north line of Lot 3 a distance of 1323.90 feet (N 89°56'37" W a distance of 1323.945 feet, record) to the northwest corner of Section 9 to a point being a found Drill Steel with added tag PLS 35235; thence S 01°56'29" W along the west line of Section 9 a distance of 712.90 feet to a point on the west boundary line of Old Camp Grant and to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 23°03'26" E along said west boundary line of Old Camp Grant, a distance of 5011.05 feet to a point on the south line of Section 9 to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 89°13'21" E along the south line of Section 9 a distance of 709.50 feet (N 89°51'39" E a distance of 709.50 feet, record) to the point of beginning; containing 181.71 acres, more or less. Together with those parts of Sections 15 and 22, T7S, R16E, of G&SRB&M, Pinal County, Arizona, more particularly described as follows: beginning at a point being a 1/2" Iron Pin tagged PLS 35235, N 89°00'32" E along the south line of the NE1/4 of Section 22, a distance of 2251.00 feet (east a distance of 2251 feet, record) of the center section corner of Section 22; thence N 47°16'51" W a distance of 1275.05 feet (N 46°47'00" W a distance of 1275.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 79°57'00" W a distance of 1344.00 feet (N 7°27'00" W a distance of 1344.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 65°05'02" W a distance of 399.00 feet (N 59°46'00" W a distance of 399.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 17°49'24" W a distance of 1382.47 feet (N 17°34'00" W a distance of 1385.00 feet, record) to a point on the Section line between Sections 15 and 22 to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 21°43'45" W a distance of 1408.97 feet (N 20°49'00" W a distance of 1412.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235 and the Center corner of the SW1/4 of Section 15; thence S 01°06'32" W along the west line of the SE1/4SW1/4 of Section 15, a distance of 1317.07 feet (south, record) to a point on the south line of Section 15 and the southwest corner of the SE1/4SW1/4 of Section 15 to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 00°27'15" E along the west line of the E1/2NW1/4 of Section 22, a distance of 2637.50 feet (south, record) to a point on the south line of the NW1/4 of Section 22 and the southwest corner of the E1/2NW1/4 of Section 22 to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 89°00'56" E along said south line of the NW1/4 of Section 22 a distance of 1320.895 feet (east, record) to the center section corner of Section 22 to a point being a found 2.5" Aluminum Cap stamped C1/4 PLS 35235; thence N 89°00'32" E along the south line of the NE1/4 of Section 22 a distance of 2251.00 feet (east, record) to the point of beginning; containing 110.28 acres, more or less. Parcel 5: those parts of Sections 26 and 35 T7S, R16E of G&SRB&M, Pinal County, Arizona, more particularly described as follows: beginning at a point N 89°31'56" E a distance of 571.74 feet (record 572 a distance of feet east) of the center section of Section 35 said point being a 1/2" Iron Pin tagged PE 9626; thence N 16°07'19" W a distance of 1369.92 feet (N 15°44'00" W a distance of 1371 feet, record) to a point being a Power Pole tagged PLS 35235; thence N 46°55'33" W a distance of 279.77 feet (N 45°00'00" W a distance of 283.00 feet, record) to the center of a 6" hollow iron fence post filled with concrete approximately 6 feet tall, tagged PLS 35235; thence N 79°45'23" W a distance of 500.00 feet (N 80°00'00" W a distance of 500.00 feet, record) to the center of a 6" hollow iron fence post filled with concrete approximately 6 feet tall, tagged PLS 35235; thence N 21°10'05" W a distance of 1104.18 feet (N 20°38 '00" W a distance of 1104.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, said point being a distance of 3.55 feet south of the north line of Section 35; thence N 07°46'25" E a distance of 1334.00 feet (N 08°08'00" E a distance of 1334.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 89°37'04" W a distance of 630.00 feet to a point being a found 1/2" Iron Pin with added tag PLS 35235; thence N 01°11'34" W a distance of 1314.34 feet (north a distance of 1320.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, said point being on the north line of the SW1/4; thence along the north line of the SW1/4 N 89°18'34" E a distance of 282.00 feet (east a distance of 282.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, said point being S 89°18'34" W a distance of 992.74 from the center section corner of Section 26; thence N 13°48'15" W a distance of 1351.04 feet (N 13°40'00" W a distance of 1358.00 feet, record) to a point on the north line of the SE1/4NW1/4 of Section 26 to a point being a 1/2" Iron Pin tagged PLS 35235, said point being N 89°10'39" E a distance of 26.52 feet from the northwest corner of the SE1/4NW1/4 of Section 26; thence N 26°31'53" W a distance of 1458.00 feet (N 23°43'00" W a distance of 1442.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, that is on the north line of Section 26 said point being N 89°02'45" E along the north line of Section 26, a distance of 720.00 feet from the northwest corner of Section 26; thence N

23°45'32" W a distance of 1833.68 feet (N 22°28'00" W a distance of 1834.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, said point being on the west line of Section 23; thence S 00°38'57" E along the west line of Section 23, a distance of 1690.37 feet (south, record) to the southwest corner of Section 23 and northwest corner of Section 26 to a point being a 2.5" Aluminum Cap stamped PLS 35235; thence continuing S 01°16'16" E along the west line of Section 26 a distance of 2625.56 feet (south a distance of 2640.00 feet, record) to the W1/4 corner of Section 26 to a point being a 2.5" Aluminum Cap stamped PLS 35235; thence S 01°16'16" E along the west line of Section 26, a distance of 2625.56 feet (south a distance of 2640.00 feet, record) to the southwest corner of Section 26 and northwest corner of Section 35 to a point being a 2.25" Capped Iron Pipe stamped with added tag PLS 35235; thence S 00°45'30" E along the west line of Section 35, a distance of 1317.94 feet (south a distance of 1320.00 feet, record) to a point being a 2.5" Capped Iron Pipe stamped with added tag PLS 35235, said point being the southwest corner of the N1/2NW1/4 of Section 35; thence N 89°41'45" E along the south line of the N1/2NW1/4 of Section 35, a distance of 2630.87 feet (east a distance of 2644.00 feet, record) to a point being an Oblong Iron Pin with added tag PLS 35235 said point being the southeast corner of the N1/2NW1/4 of Section 35; thence S 01°11'23" E a distance of 1319.08 (south a distance of 1320.00 feet, record) to a point being an Oblong Iron Pin, with added tag PLS 35235, said point being the center section corner of Section 35; thence N 89°31'56" E along the south line of the NE1/4 of Section 35 a distance of 571.74 feet (east a distance of 572.00 feet, record) to the point of beginning; excepting therefrom any portion of said lands lying and within Section 23, T7S, R16E, G&SRB&M; CONTAINING containing 249.46 acres, more or less. Parcel 6: that portion of Section 1, T8S, R16E of G&SRB&M, Pinal County, Arizona, more particularly described as follows: beginning at a point N 88°25'39" E a distance of 507.07 feet (east a distance of 510 feet record) of the southwest corner of the SE1/4SW1/4 of Section 1 said point being a 1/2" Iron Pin tagged RLS 10046; thence N 18°38'44" E a distance of 1399.18 feet (record N 19°41' E a distance of 1402 feet) to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 03°51'10" W a distance of 1314.74 feet (record N 02°44' W a distance of 1321 feet) to a point being a 1/2" Iron Pin tagged RLS 10046; thence S 88°45'59" W a distance of 918.71 feet (record west, a distance of 919 feet) to a point being a 1/2" Iron Pin tagged RLS 10046; thence N 01°02'04" W a distance of 977.00 feet (record north a distance of 977 feet) to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 72°26'42" W a distance of 1384.43 feet (record N 71°22' W a distance of 1393 feet) to a point on the west line of Section 1 to a point being a 1/2" Iron Pin PLS 35235; thence S 01°07'43" E along the west line of Section 1, a distance of 1422.00 feet (record south a distance of 1412 feet) to the W1/4 corner of Section 1, said point being a 2.5" Aluminum Cap stamped PLS 35235; thence continuing S 01°07'43" E along the west line of Section 1, a distance of 1320.00 feet (record south a distance of 1320 feet) to the southwest corner of the NW1/4SW1/4 of Section 1 to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 88°37'29" E a distance of 1311.56 feet (record east to the southwest corner of the NE1/4SW1/4) to the southwest corner of the NE1/4SW1/4 of Section 1 to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 01°05'24" E a distance of 1316.31 feet (record, south a distance of 1320 feet) to the southwest corner of the SE1/4SW1/4 of Section 1 to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 88°25'39" E a distance of 507.07 feet (record, east a distance of 510 feet) to the point of beginning; containing 126.84 acres, more or less. For the ASARCO Property: Parcel 1: Section 15: the W1/2SE1/4 and E1/2SW1/4 of Section 15, T7S, R16E of G&SRB&M, Pinal county, Arizona; except that portion of land situated in Government Lot 9 lying west of the center line of the San Pedro River, said portion being APN 300-35-002. Section 22: That portion of the NE1/4NW1/4 and the NE1/4 of Section 22 T7S, R16E of G&SRB&M, Pinal County, Arizona, lying east of the San Pedro River. Section 23: that portion of the SW1/4 of Section 23, T7S, R16E of G&SRB&M, Pinal County, Arizona, lying east of the San Pedro River. Section 26: that portion of the N1/2NW1/4 of Section 26, T7S, R16E of G&SRB&M, Pinal County, Arizona, lying east of the San Pedro River. Parcel 2: Section 15: Government Lots 1, 2, 3, 4, 5, 6, and 7 of Section 15, T7S, R16E of G&SRB&M, Pinal County, Arizona. Parcel 3: Section 4: Government Lots 5, 8, 9, 11, 12, and 13 of Section 4 except that portion of land situated in Government Lot 13 lying east of State Highway 77 right-of-way, said portion of land being APN 300-31-005B. Section 5: Government Lots 2, 3, 4 and 5, except that portion of land situated in Government Lot 2, more particularly described as follows: beginning at the northeast corner of said Lot 2; thence along the east boundary of said Lot 2 due south 599.94 feet; thence leaving said east boundary due west 283.27 feet to the County Rd. right-of-way (El Camino Rd.); thence along said County Rd. right-of-way N 04°18'56" E a distance of 95.16 feet; thence continuing along said County Rd. right-of-way N 16°30'21" E a distance of 384.05 feet; thence continuing along said County Rd. right-of-way N 14°33'05" E a distance of 141.35 feet to the north boundary of said County Rd. right-of-way due east a distance of 131.48 feet along the north boundary of Government Lot 1 to the point of beginning.

21. Luna Lake Wildlife Area: The Luna Lake Wildlife Area shall be the fenced, buoyed, and posted area lying north of U.S. Highway 180 T5N, R31E, Section 17 N1/2, G&SRB&M, Apache County, Arizona.
22. Manhattan Claims Wildlife Area: Manhattan Claims Wildlife Area: The Manhattan Claims Wildlife Area shall be those areas described as the following mines or mining claims, situated in the California Mining District, in Cochise County, State of Arizona, to-wit: being Sections 3, 4, 5, 9, 10, in T17S., R30E., G&SRB&M, being known as the

"Manhattan Group," Cochise County, State of Arizona. Erion Cap: Fraction: Monarch: and Mogul Patented Mines, the United States patent to which is of record in the Recorder's Office in Book 23 of Deeds of Mines, at page 396; Copper trust' Smith No. 1' Iron Cap; wedge; Smith No. 2; Rodea; Standard Extension; Smith No. 4; Smith No. 3; JHU; Cottonwood; Tucson; Prince; Hidden Treasure; Joe Wheeler fraction; Bride of the West; Mackey; Sun Beam; Queen; Last Turn; Winner; and Winner Fraction; patented mines, in the U.S. Patent to which is of record in the Recorder's Office in Book 23 Deeds of Mines, at page 368. Badger; Badger Fraction; patented mines, the U.S. Patent to which is of record in said Recorder's Office, in Book 23 Deeds of Mines, at page 388; Standard patented mine, the U.S. Patent to which is of record in said Recorder's Office in Book 23 Deeds of Mines at page 393; The following patented mining claims situated in said California Mining District, patent records of which are set out with name of claim as follows: Bull Dog, Docket No. 27, at page No. 558; Copper King, Docket No. 27, at page No. 555; Copper Bluff, Docket No. 27, at page No. 552; Copper Top, Docket No. 27, at page No. 558; Copper Glance, Docket No. 27, at page No. 558; and AETNA, Docket No. 27, at page No. 558.

23. Mittry Lake Wildlife Area: The Mittry Lake Wildlife Area shall be those areas described as follows:
T6S, R21W, Section 31: All of Lots 1, 2, 3, 4, E1/2W1/2, and that portion of E1/2 lying westerly of Gila Gravity Main Canal Right-of-Way; T7S, R21W; Section 5: that portion of SW1/4SW1/4 lying westerly of Gila Gravity Main Canal Right-of-Way; Section 6: all of Lots 2, 3, 4, 5, 6, 7 and that portion of Lot 1, S1/2NE1/4, SE1/4 lying westerly of Gila Gravity Main Canal R/W; Section 7: all of Lots 1, 2, 3, 4, E1/2W1/2, W1/2E1/2, and that portion of E1/2E1/2 lying westerly of Gila Gravity Main Canal R/W; Section 8: that portion of W1/2W1/2 lying westerly of Gila Gravity Main Canal R/W; Section 18: all of Lots 1, 2, 3, 4, E1/2NW1/4, and that portion of NE1/4, E1/2SW1/4, NW1/4SE1/4 lying westerly of Gila Gravity Main Canal R/W; T6S, R22W; Section 36: all of Lot 1. T7S, R22W; Section 1: all of Lot 1; Section 12: all of Lots 1, 2, SE1/4SE1/4; Section 13: all of Lots 1, 2, 3, 4, 5, 6, 7, 8, NE1/4, N1/2SE1/4, and that portion of S1/2SE1/4 lying northerly of Gila Gravity Main Canal R/W; all in G&SRB&M, Yuma County, Arizona.
24. Planet Ranch Conservation and Wildlife Area: The Planet Ranch Wildlife Area shall be those areas described as follows: Mohave County (Parcels 1 through 5) Parcel No. 1: the S1/2S1/2 of Section 28, T11N, R16W of the G&SRB&M, Mohave County, Arizona; except 1/16 of all oil, gases, and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizer of every name and description and except all materials which may be essential to production of fissionable material as reserved in Arizona Revised Statutes. Parcel No. 2: all of sections 32 and 34 T11N, R16W of the G&SRB&M, lying in Mohave County, Arizona; except 1/16 of all oil, gases, and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizer of every name and description and except all materials which may be essential to production of fissionable material as reserved in Arizona Revised Statutes. Parcel No. 3: the S1/2S1/2 of Section 27, T11N, R16W of the G&SRB&M, Mohave County, Arizona; except oil, gas, coal, and minerals as reserved in deed recorded in Book 64 of Deeds, Page 599, records of Mohave County, Arizona. Parcel No. 4: all of Section 33 and 35, T11N, R16W of the G&SRB&M, lying in Mohave County, Arizona; except oil, gas, coal, and minerals as reserved in deed recorded in Book 64 of Deeds, Page 599, records of Mohave County, Arizona. Parcel No. 5: the S1/2S1/2N1/2 and the S1/2 of Section 36, T11N, R16W of the G&SRB&M, lying in Mohave County, Arizona; except 1/16 of all oil, gases, and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizer of every name and description and except all materials which may be essential to production of fissionable material as reserved in Arizona Revised Statutes. La Paz County (Parcels 6 through 9) Parcel No. 6: that portion of the S1/2 of Lot 2, all of Lots 3, and 4, the S1/2SE1/4NW1/4 and the S1/2S1/2NE1/4 of Section 31, T11N, R16W of the G&SRB&M, lying in La Paz County, Arizona; except all oil, gas, coal, and minerals as set forth in instrument recorded in Book 57, of Dockets, Page 310. Parcel No. 7: all of Section 32, T11N, R16W of the G&SRB&M, lying in La Paz County, Arizona; except any part of Section 32 lying within the Copper Hill Mining Claim as shown on the Plat of Mineral Survey Number 2675; except that portion of the SW1/4 of Section 32, T11N, R16W of the G&SRB&M, lying in La Paz County, Arizona, described as follows: commencing at the S1/4 corner of Section 32; thence west along the south line of Section 32, a distance of 1270.58 feet to the point of beginning; thence north 634.31 feet; thence S 76º41'15" W a distance of 94.09 feet to the southeasterly line of the Planet Ranch Road; thence along said line S 28º55'W a distance of 101.23 feet; thence southwesterly 250.25 feet through an angle of 54º22', along a tangent curve concave to the northwest, having a radius of 263.73 feet to a point of tangency, from which a radial line bears N 07º05' W; thence along said line S 82º55' W a distance of 96.52 feet; thence westerly 184.42 feet through an angle of 17º40'14" along a tangent curve concave to the north, having a radius of 597.96 feet to a point of tangency from which a radial line bears N 10º35'14" E; thence N 79º24'46" W a distance of 260.38 feet; thence leaving the southwesterly line of said Planet Ranch Road, south a distance of 429.61 feet to the south line of said Section 32; thence south along said south line east a distance of 874.42 feet more or less back to the point of beginning; and except that portion of the SW1/4 of Section 32, T11N, R16W of the G&SRB&M, La Paz County, Arizona, described as follows: beginning at the S1/4 corner of Section 32; thence west along the south line of Section 32, a distance of 1270.58 feet; thence north a distance of 634.31 feet; thence S 76º41'15" W a distance of 214.08 feet; thence N 13º18'45" W a distance of 25 feet; thence N 76º41'15" E a distance of 220 feet; thence east a distance of 1270.58 feet;

thence south a distance of 660 feet back to the point of beginning. Parcel No. 8: those portions of Sections 33, 34, and 35, T11N, R16W of the G&SRB&M, lying in La Paz County, Arizona; except an undivided 1/16 of all oil, gases, and other hydrocarbon substances, coal or stone, metals, minerals, fossils and fertilizer of every name and description, together with all uranium, thorium, or any other material which is or may be determined by the laws of the production of fissionable materials, whether or not of commercial value, as reserved by the State of Arizona in Section 37-231, Arizona Revised Statutes, and in patent of record (Section 34); also except all oil, gas, coal, and minerals as set forth in instrument recorded in Book 57 of Dockets, Page 310 (Section 33 and 35). Parcel No. 9: the S1/2S1/2N1/2 and the S1/2 of Section 36, T11N, R16W of the G&SRB&M, lying in La Paz County, Arizona; except an undivided 1/16 of all oil, gases, and other hydrocarbon substances, coal or stone, metals, minerals, fossils and fertilizer of every name and description, together with all uranium, thorium, or any other material which is or may be determined by the laws of the production of fissionable materials, whether or not of commercial value, as reserved by the State of Arizona in Section 37-231, Arizona Revised Statutes, and in patent of record.

25. Powers Butte (Mumme Farm) Wildlife Area: The Powers Butte Wildlife Area shall be that area described as follows: T1S, R5W, Section 25, N1/2SW1/4, SW1/4SW1/4; Section 26, S1/2; Section 27, E1/2SE1/4; Section 34. T2S, R5W Section 3, E1/2W1/2, W1/2SE1/4, NE1/4SE1/4, NE1/4; Section 10, NW1/4, NW1/4NE1/4; Section 15, SE1/4SW1/4; Section 22, E1/2NW1/4, NW1/4NW1/4; all in G&SRB&M, Maricopa County, Arizona.
26. Quigley-Achee Wildlife Area: The Quigley-Achee Wildlife Area shall be those areas described as follows:
T8S, R17W; Section 13, W1/2SE1/4, SW1/4NE1/4, and a portion of land in the W1/2 of Section 13, more particularly described as follows: beginning at the S1/4 corner; thence S 89º17'09" W along the south line of said Section 13 a distance of 2627.50 feet to the southwest corner of said Section 13; thence N 41º49'46" E a distance of 3026.74 feet; thence N 0º13'30" W a distance of 1730.00 feet to a point on the north 1/16th line of said Section 13; thence N 89º17'36" E along said north 1/16th line a distance of 600.00 feet to the center of said Section 13; thence S 0º13'30" E. along the north-south midsection line a distance of 3959.99 feet to the point of beginning. Section 23, SE1/4NE1/4, and a portion of land in the NE1/4NE1/4 of Section 23, more particularly described as follows: beginning at the northeast corner; thence S 0º10'19" E along the east line of said Section 23, a distance of 1326.74 feet to a point on the south line of the NE1/4NE1/4 of said Section 23; thence S 89º29'58" W along said south line, a distance of 1309.64 feet; thence N 44º17'39" E a distance of 1869.58 feet to the point of beginning. Section 24, NW1/4, N1/2SW1/4, W1/2NE1/4, N1/2SE1/4NE1/4; all in G&SRB&M, Yuma County, Arizona.
27. Raymond Wildlife Area: The Raymond Wildlife Area is that area described as follows: All of Sections 24, 25, 26, 34, 35, 36, and the portions of Sections 27, 28, and 33 lying east of the following described line: beginning at the W1/4 corner of Section 33; thence northeasterly through the 1/4 corner common to Sections 28 and 33, 1/4 corner common to Sections 27 and 28 to the N1/4 corner of Section 27 all in T19N, R11E. All of Sections 15, 16, 17, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34 all in T19N, R12E,; all in G&SRB&M, Coconino County, Arizona.
28. Robbins Butte Wildlife Area: The Robbins Butte Wildlife Area shall be those areas described as follows:
T1S, R3W, Section 17, S1/2NE1/4, SE1/4, NW1/4SW1/4; Section 18, Lots 3, 4, and E1/2SW1/4, S1/2NE1/4, W1/2SE1/4, NE1/4SE1/4. T1S, R4W, Section 13, all except that portion of W1/2SW1/4SW1/4 lying west of State Route 85; Section 14, all except the W1/2NW1/4 and that portion of the SW1/4 lying north of the Arlington Canal; Section 19, S1/2SE1/4; Section 20, S1/2S1/2, NE1/4SE1/4; Section 21, S1/2, S1/2NE1/4, SE1/4NW1/4; Section 22, all except for NW1/4NW1/4; Section 23; Section 24, that portion of SW1/4, W1/2SW1/4NW1/4 lying west of State Route 85; Section 25, that portion of the NW1/4NW1/4 lying west of State Route 85; Section 26, NW1/4, W1/2NE1/4, NE1/4NE1/4; Section 27, N1/2, SW1/4; Section 28; Section 29, N1/2N1/2, SE1/4NE1/4; Section 30, Lots 5, 6, 7, 8, NE1/4, SE1/4SE1/4; all in G&SRB&M, Maricopa County, Arizona.
29. Roosevelt Lake Wildlife Area: The Roosevelt Lake Wildlife Area is that area described as follows: beginning at the junction of A-Cross Rd. and Arizona Highway 188; south on Arizona Highway 188 to the main entrance of Roosevelt Lake Marina; northeast on this road towards the main marina launch; northeast across Roosevelt Lake to the south tip of Bass Point; northerly to Long Gulch Rd.; northeast on this road to the A-Cross Rd.; northwest on the A-Cross Rd. to the point of beginning; all in G&SRB&M, Gila County, Arizona.
30. Santa Rita Wildlife Area: The Santa Rita Experimental Range is that area described as follows: Concurrent with the Santa Rita Experimental Range boundary and includes the posted portion of the following sections: Sections 33 through 36, T17S, R14E, Section 25, Section 35 and Section 36, T18S, R13E, Sections 1 through 4, Sections 9 through 16, and Sections 21 through 36, T18S, R14E, Sections 3 through 9, Sections 16 through 21, Sections 26 through 34, T18S, R15E, Sections 1 through 6, Sections 9 through 16, Section 23, T19S, R14E, Sections 3 through 10, Sections 16 through 18, T19S, R15E; all in G&SRB&M, Pima County, Arizona, and all being coincidental with the Santa Rita Experimental Range Area.
31. Sipe White Mountain Wildlife Area: The Sipe White Mountain Wildlife Area shall be those areas described as follows: T7N, R29E, Section 1, SE1/4, SE1/4NE1/4, S1/2NE1/4NE1/4, SE1/4SW1/4NE1/4, NE1/4SE1/4SW1/4, and the SE1/4NE1/4SW1/4. T7N, R30E, Section 5, W1/2W1/2SE1/4SW1/4, and the SW1/4SW1/4; Section 6, Lots 1, 2, 3, 7,

and 8, SW1/4NW1/4NW1/4, S1/2NW1/4NE1/4SE1/4, N1/2SE1/4SE1/4, E1/2SE1/4SE1/4SE1/4, SW1/4SE1/4 and the SE1/4SW1/4; Section 7, Parcel 10: Lots 1 and 2, E1/2NW1/4, E1/2E1/2NE1/4NE1/4, W1/2SW1/4NE1/4, NW1/4SE1/4, W1/2NE1/4SE1/4, NE1/4SW1/4, E1/2NW1/4SW1/4, and the NW1/4NE1/4; Section 8, NW1/4NW1/4, and the W1/2W1/2NE1/4NW1/4. T8N, R30E; Section 31, SE1/4NE1/4, SE1/4, and the SE1/4SW1/4; all in G&SRB&M, Apache County, Arizona.

32. Springerville Marsh Wildlife Area: The Springerville Marsh Wildlife Area shall be those areas described as follows: S1/2 SE1/4 Section 27 and N1/2 NE1/4 Section 34, T9N, R29E, G&SRB&M, Apache County, Arizona.
33. Sunflower Flat Wildlife Area: The Sunflower Flat Wildlife Area shall be those areas described as follows:
T20N, R3E; Section 11, NE1/4SE1/4, N1/2NW1/4SE1/4, SE1/4NW1/4SE1/4, NE1/4SE1/4SE1/4, W1/2SE1/4NE1/4, S1/2SE1/4SE1/4NE1/4, E1/2SW1/4NE1/4; Section 12, NW1/4SW1/4SW1/4, NW1/4NE1/4SW1/4SW1/4, SW1/4NW1/4SW1/4, S1/2NW1/4NW1/4SW1/4, W1/2SE1/4NW1/4SW1/4, SW1/4NE1/4NW1/4 SW1/4; all in the G&SRB&M, Coconino County, Arizona.
34. Three Bar Wildlife Area: The Three Bar Wildlife Area shall be that area described as follows: beginning at Roosevelt Dam, northwesterly on 188 to milepost 252 (Bumble Bee Wash); westerly along the boundary fence for approximately 7 1/2 miles to the boundary of Gila and Maricopa counties; southerly along this boundary through Four Peaks to a fence line south of Buckhorn Mountain; southerly along the barbed wire drift fence at Ash Creek to Apache Lake; northeasterly along Apache Lake to Roosevelt Dam.
35. Tucson Mountain Wildlife Area: The Tucson Mountain Wildlife Area shall be that area described as follows: beginning at the northwest corner of Section 33; T13S, R11E on the Saguaro National Park boundary; due south approximately one mile to the El Paso Natural Gas Pipeline; southeast along this pipeline to Sandario Rd.; south on Sandario Rd. approximately two miles to the southwest corner of Section 15; T14S, R11E, east along the section line to the El Paso Natural Gas Pipeline; southeast along this pipeline to its junction with State Route 86, also known as the Ajo Highway; easterly along this highway to the Tucson city limits; north along the city limits to Silverbell Rd.; northwest along this road to Twin Peaks Rd.; west along this road to Sandario Rd.; south along this road to the Saguaro National Park boundary; west and south along the park boundary to the point of beginning, all in G&SRB&M, Pima County, Arizona.
36. Upper Verde River Wildlife Area: The Upper Verde River Wildlife Area consists of eight parcels totaling 1102.54 acres located eight miles north of Chino Valley in Yavapai County, Arizona, along the upper Verde River and lower Granite Creek described as follows:
Sullivan Lake: located immediately downstream of Sullivan Lake, the headwaters of the Verde River: the NE1/4NE1/4 lying east of the California, Arizona, and Santa Fe Railway Company right-of-way in Section 15, T17N, R2W; and also the NW1/4NE1/4 of Section 15 consisting of approximately 80 acres. Granite Creek Parcel: includes one mile of Granite Creek to its confluence with the Verde River: The SE1/4SE1/4 of Section 11; the NW1/4SW1/4 and SW1/4NW1/4 of Section 13; the E1/2NE1/4 of Section 14; all in T17N, R1W consisting of approximately 239 acres. E1/2SW1/4SW1/4, SE1/4SW1/4, NE1/4SW1/4 and NW1/4SE1/4 of Section 12, NW1/4NW1/4 of Section 13, T17N, R2W consisting of approximately 182.26 acres. Campbell Place Parcel: NE1/4NW1/4, NW1/4NE1/4, NE1/4NE1/4, SE1/4NW1/4, SW1/4NE1/4, SE1/4NE1/4, NE1/4SW1/4, NW1/4SE1/4, NE1/4SE1/4, NW1/4SW1/4, NE1/4SW1/4, and NW1/4SE1/4 in Section 7, T17N, R1W and SE1/4SE1/4 Section 12, T17N, R2W consisting of 315 acres. Tract 39 Parcel: the E1/2 of Tract 39 within the Prescott National Forest boundary, SE1/2SW1/4 and SW1/4SE1/4 of Section 5, T18N, R1W; and the W1/2 of Tract 39 outside the Forest boundary, SW1/4SW1/4, and SW1/4SW1/4 of Section 5 and NW1/4NW1/4 of Section 8, T18N, R1W consisting of approximately 163 acres. Wells Parcels: Parcel 1 and Parcel 2: all that portion of Government Lots 9 and 10, Section 7, along with Lot 3 and the SW1/4NW1/4, Section 8, located in T17N, R1W, of G&SRB&M, Yavapai County, Arizona, also known as APN 306-39-004L and 306-39-004M. Parcel 3 and Parcel 4: all that portion of the NE1/4SW1/4, NW1/4SE1/4, SW1/4SW1/4, and E1/2SW1/4SW1/4 of Section 12 and the NW1/4NW1/4 of Section 13, T17N, R2W, of G&SRB&M, Yavapai County, Arizona.
37. Wenima Wildlife Area: The Wenima Wildlife Area shall be those areas described as follows:
T9N, R29E; Section 5, SE1/4 SW1/4, and SW1/4 SE1/4 except E1/2 E1/2 SW1/4 SE1/4, Section 8, NE1/4 NW1/4, and NW1/4 NE1/4; Sections 8, 17 and 18, within the following boundary: From the 1/4 corner of Sections 17 and 18, the True Point of Beginning; thence N 00°12'56" E a distance of 1302.64 feet along the Section line between Sections 17 and 18 to the N1/16 corner; thence N 89°24'24" W a distance of 1331.22 feet to the NE1/16 corner of Section 18; thence N 00°18'02" E a distance of 1310.57 feet to the E1/16 corner of Sections 7 and 18; thence S 89°03'51" E a distance of 1329.25 feet to the northeast Section corner of said Section 18; thence N 01°49'10" E a distance of 1520.28 feet to a point on the Section line between Sections 7 and 8; thence N 38°21'18" E a distance of 370.87 feet; thence N 22°04'51" E a distance of 590.96 feet; thence N 57°24'55" E a distance of 468.86 feet to a point on the east-west midsection line of said Section 8; thence N 89°38'03" E a distance of 525.43 feet along said midsection line to the center W1/16 corner; thence S 02°01'25" W a distance of 55.04 feet; thence S 87°27'17" E a distance of 231.65 feet; thence S 70°21'28" E a distance of 81.59 feet; thence N 89°28'36" E a distance of 111.27 feet; thence N 37°32'54" E

a distance of 310.00 feet; thence N 43°58'37" W a distance of 550.00 feet; thence N 27°25'53" W a distance of 416.98 feet to the NS1/16 line of said Section 8; thence N 02°01'25" E a distance of 380.04 feet along said 1/16 line to the NW1/16 corner of said Section 8; thence N 89°45'28" E a distance of 1315.07 feet along the east-west middle 1/16 line; thence S 45°14'41" E a distance of 67.69 feet; thence S 49°28'18" E a distance of 1099.72 feet; thence S 08°04'43" W a distance of 810.00 feet; thence S 58°54'47" W a distance of 341.78 feet; thence 50°14'53" W a distance of 680.93 feet to a point in the center of that cul-de-sac at the end of Jeremy's Point Rd.; thence N 80°02'20" W a distance of 724.76 feet, said point lying N 42°15'10" W a distance of 220.12 feet from the northwest corner of Lot 72; thence N 34°19'23" E a distance of 80.64 feet; thence N 15°54'25" E a distance of 51.54 feet; thence N 29°09'53" E a distance of 45.37 feet; thence N 40°09'33" E a distance of 69.21 feet; thence N 25°48'58" E a distance of 43.28 feet; thence N 13°24'51" E a distance of 63.12 feet; thence N 16°03'10" W a distance of 30.98 feet; thence N 57°55'25" W a distance of 35.50 feet; thence N 80°47'38" W a distance of 48.08 feet; thence S 87°28'53" W a distance of 82.84 feet; thence S 72°07'06" W a distance of 131.85 feet; thence S 43°32'45" W a distance of 118.71 feet; thence S 02°37'48" E a distance of 59.34 feet; thence S 23°03'29" E a distance of 57.28 feet; thence S 28°30'39" E a distance of 54.75 feet; thence S 36°39'47" E a distance of 105.08 feet; thence S 24°55'07" W a distance of 394.78 feet; thence S 61°32'16" W a distance of 642.77 feet to the northwest corner of Lot 23; thence N 04°35'23" W a distance of 90.62 feet; thence S 85°24'37" W a distance of 26.00 feet; thence N 64°21'36" W a distance of 120.76 feet; thence S 61°07'57" W a distance of 44.52 feet; thence S 39°55'58" W a distance of 80.59 feet; thence S 11°33'07" W a distance of 47.21 feet; thence S 19°53'19" E a distance of 27.06 feet; thence S 54°26'36" E a distance of 62.82 feet; thence S 24°56'25" W a distance of 23.92 feet; thence S 48°10'38" W a distance of 542.79 feet; thence S 17°13'48" W a distance of 427.83 feet to the northwest corner of Lot 130; thence S 29°10'58" W a distance of 104.45 feet to the southwest corner of Lot 130; thence southwesterly along a curve having a radius of 931.52 feet, and arc length of 417.52 feet to the southwest corner of Lot 134; thence S 15°04'25" W a distance of 91.10 feet; thence S 04º29'15" W a distance of 109.17 feet; thence S 01°41'24" W a distance of 60.45 feet; thence S 29°16'05" W a distance of 187.12 feet; thence S 14°44'00" W a distance of 252.94 feet; thence S 15°42'24" E a distance of 290.09 feet; thence S 89°13'25" E a distance of 162.59 feet; thence S 37°19'54" E a distance of 123.03 feet to the southeast corner of Lot 169; thence S 20°36'30" E a distance of 706.78 feet to the northwest corner of Lot 189; thence S 04°07'31" W a distance of 147.32 feet; thence S 29°11'19" E a distance of 445.64 feet; thence S 00°31'40" E a distance of 169.24 feet to the east-west midsection line of Section 17 and the southwest corner of Lot 194; thence S 89°28'20" W a distance of 891.84 feet along said east-west midsection line to the True Point of Beginning; all in G&SRB&M, Apache County, Arizona.

38. White Mountain Grasslands Wildlife Area: The White Mountain Grasslands Wildlife Area shall be those areas described as follows:

Parcel 1 (CL1): the S1/2 of Section 24; the N1/2NW1/4 of Section 25; the NE1/4 and N1/2SE1/4 of Section 26; all in T9N, R27E of G&SRB&M, Apache County, Arizona; except all coal and other minerals as reserved to the U.S. in the Patent of said land. Parcel 2 (CL2): the SE1/4 and the SE1/4SW1/4 of Section 31, T9N, R28E of G&SRB&M, Apache County, Arizona. Parcel 3 (CL3): the NW1/4SW1/4 of Section 28; and the SW1/4S1/2SE1/4 and NE1/4SE1/4 of T9N, R28E of G&SRB&M, Apache County, Arizona. Parcel 4 (CL4): the SW1/4SW1/4 of Section 5; the SE1/4SE1/4 of Section 6; the NE1/4NE1/4 of Section 7; the NW1/4NW1/4, E1/2SW1/4NW1/4, W1/2NE1/4, SE1/4NW1/4, and that portion of the S1/2 which lies North of Highway 260, except the W1/2SW1/4 of Section 8; all in T8N, R28E of G&SRB&M, Apache County, Arizona. Parcel 1 (O1): the S1/2N1/2 of Section 10, T8N, R28E, of G&SRB&M, Apache County, Arizona; except that Parcel of land lying within the S1/2NE1/4 of Section 10, T8N, R28E, of G&SRB&M, Apache County, Arizona, more particularly described as follows: From the N1/16 corner of Sections 10 and 11, monumented with a 5/8-inch rebar with a cap marked LS 13014, said point being the True Point of Beginning; thence N 89°44'54" W a distance of 1874.70 feet along the east-west 1/16 line to a point monumented with a 1/2-inch rebar with a tag marked LS 13014; thence S 02°26'17" W a distance of 932.00 feet to a point monumented with a 1/2-inch rebar with a tag marked LS 13014; thence S 89°44'54" E a distance of 1873.69 feet to a point monumented with a 1/2-inch rebar with a tag marked LS 13014, said point being on the east line of Section 10; thence N 02°30'00" E a distance of 932.00 feet along said Section line to the True Point of Beginning. Parcel 2 (O2): the N1/2S1/2 of Section 10, T8N, R28E, of G&SRB&M, Apache County, Arizona. Except for that portion lying South of State Highway 260. Parcel 3 (O3): the SE1/4 of Section 25, T9N, R27E, of G&SRB&M, Apache County, Arizona. Parcel 4 (O4): lots 3 and 4; the E1/2SW1/4; W1/2SE1/4; and NE1/4SE1/4 of Section 30, T9N, R28E, of G&SRB&M, Apache County, Arizona. Parcel 5 (O5): lots 1, 2 and 3; the S1/2NE1/4; NW1/4NE1/4; E1/2NW1/4; and NE1/4SW1/4 of Section 31, T9N, R28E, of G&SRB&M, Apache County, Arizona. Parcel 6 (O6): beginning at the northwest corner of the SE1/4 of Section 27, T9N, R28E, of G&SRB&M, Apache County, Arizona; thence east a distance of 1320.00 feet; thence south a distance of 925.00 feet: thence west a distance of 320.00 feet to the center of a stock watering tub; thence N 83° W a distance of 1000.00 feet; thence north a distance of 740.00 feet to the point of beginning. State Land Special Use Permit: SE1/4SW1/4 of Section 5; E1/2NE1/4 of Section 08; NE1/4NW1/4 of Section 8; M&B in N1/2NW1/4 north of Hwy 260 of Section 17, all in T8N, R28E of the G&SRB&M, Apache County, Arizona. S1/2NW1/4 and

SW1/4 of Section 26; all of Section 36, all in T9N, R27E of the G&SRB&M, Apache County, Arizona. SE1/4 lying easterly of Carnero Creek in Section 18; Lots 3 and 4, E1/2SW1/4, SE1/4, NE1/4, and SE1/4NW1/4, lying southeasterly of Carnero Creek in Section 19; NW1/4SE1/4 of Section 29, Lots 1 and 2 and NE1/4 and E1/2NW1/4 and SE1/4SE1/4 of Section 30; and Lot 4, and the NE1/4NE1/4 of Section 31; all in T9N, R28E of the G&SRB&M, Apache County, Arizona. State Grazing Lease: Legal Description of the White Mountain Grassland State Land Grazing Lease. Lots 1 thru 4, and S1/2N1/2, SW1/4, N1/2N1/2SE1/4, S SW1/4NW1/4SE1/4, and W1/2SW1/4SE1/4 of Section 3; Lots 1 thru 4, and the S1/2N1/2 and S1/2 of Section 4; SE1/4SW1/4 of Section 5; E1/2NE1/4, NE1/4NW1/4 of Section 8; SE1/4NE1/4 and N1/2N1/2 of Section 9; S1/2NE1/4NE1/4, SE1/4NW1/4NE1/4, W1/2NW1/4NE1/4, N1/2NW1/4, all in Section 10; NE1/4NW1/4 lying north of the centerline of State Highway 260, in Section 17, T8N, R28E of the G&SRB&M, Apache County; NE1/4, S1/2NW1/4, and the SW1/4 of Section 25, and all of Section 36; in T9N, R27E of the G&SRB&M, Apache County; a portion of the SE1/4 of Section 18 lying southeasterly of Carnero Creek, Lots 3 and 4, E1/2SW1/4, SE1/4, NE1/4, and SE1/4NW1/4 lying southeast of Carnero Creek in Section 19; all of Section 20 and Section 21; SW1/4NE1/4, S1/2NW1/4, and M&B in N1/2SW1/4, of Section 27; N1/2E1/2SW1/4, SW1/4SW1/4 and SE1/4 of Section 28; Lots 1 and 2, and NE1/4, E1/2NW1/4, and SE1/4SE1/4 of Section 30; Lot 4 and NE1/4NE1/4 of Section 31; all of Section 32 and Section 33, in T9N, R28E, in the G&SRB&M, Apache County. SE1/4NE1/4SE1/4 of Section 31; T09N, R28E, G&SRB&M, Apache County, Arizona.

39. Whitewater Draw Wildlife Area: The Whitewater Draw Wildlife Area shall be those areas described as follows: T21S, R26E; Section 19, S1/2 SE1/4; Section 29, W1/2 NE1/4, and E1/2 NE1/4; Section 30, N1/2 NE1/4; Section 32; T22S, R26E; Section 4, Lots 3 and 4; T22S, R26E; Section 5, Lots 1 to 4, except an undivided 1/2 interest in all minerals, oil, and/or gas as reserved in Deed recorded in Docket 209, page 117, records of Cochise County, Arizona.
40. Willcox Playa Wildlife Area: The Willcox Playa Wildlife Area shall be that area within the posted Arizona Game and Fish Department fences enclosing the following described area: beginning at the Section corner common to Sections 2, 3, 10 and 11, T15S, R25E, G&SRB&M, Cochise County, Arizona; thence S 0°15'57" W a distance of 2645.53 feet to the east 1/4 corner of Section 10; thence S 89°47'15" W a distance of 2578.59 feet to the center 1/4 corner of Section 10; thence N 1°45'24" E a distance of 2647.85 feet to the center 1/4 corner of Section 3; thence N 1°02'42" W a distance of 2647.58 feet to the center 1/4 corner of said Section 3; thence N 89°41'37" E to the common 1/4 corner of Section 2 and Section 3; thence S 0°00'03" W a distance of 1323.68 feet to the south 1/16 corner of said Sections 2 and 3; thence S 44°46'30" E a distance of 1867.80 feet to a point on the common Section line of Section 2 and Section 11; thence S 44°41'13" E a distance of 1862.94 feet; thence S 44°42'35" E a distance of 1863.13 feet; thence N 0°13'23" E a distance of 1322.06 feet; thence S 89°54'40" E a distance of 1276.24 feet to a point on the west right-of-way fence line of Kansas Settlement Rd.; thence S 0°12'32" W a distance of 2643.71 feet along said fence line; thence N 89°55'43" W a distance of 2591.30 feet; thence N 0°14'14" E a distance of 661.13 feet; thence N 89°55'27" W a distance of 658.20 feet; thence N 0°14'39" E a distance of 1322.36 feet; thence N 44°41'19" W a distance of 931.44 feet; thence N 44°40'31" W a distance of 1862.85 feet to the point of beginning. Said wildlife area contains 543.10 acres approximately.

C. Department Controlled Properties are described as follows: Hirsch Conservation Education Area and Biscuit Tank: The Hirsch Conservation Education Area and Biscuit Tank shall be that area lying in Section 3 T5N R2E, beginning at the north-east corner of Section 3,T5N, R2E, G&SRB&M, Maricopa County, Arizona; thence S 35°33'23.43" W a distance of 2938.12 feet; to the point of true beginning; thence S 81°31'35.45" W a distance of 147.25 feet; thence S 45°46'21.90" W a distance of 552.25 feet; thence S 21°28'21.59" W a distance of 56.77 feet; thence S 16°19'49.19" E a distance of 384.44 feet; thence S 5°27'54.02" W a distance of 73.43 feet; thence S 89°50'44.45" E a distance of 431.99 feet; thence N 4°53'57.68" W a distance of 81.99 feet; thence N 46°49'53.27" W a distance of 47.22 feet; thence N 43°3'3.68" E a distance of 83.74 feet; thence S 47°30'40.79" E a distance of 47.71 feet; thence N 76°2'59.67" E a distance of 105.91 feet; thence N 15°45'0.24" W a distance of 95.87 feet; thence N 68°48'27.79" E a distance of 69.79 feet; thence N 8°31'53.39" W a distance of 69.79 feet; thence N 30°5'32.34" E a distance of 39.8 feet; thence N 46°17'32.32" E a distance of 63.77 feet; thence N 22°17'26.17" W a distance of 517.05 feet to the point of true beginning.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1731, effective May 1, 2000 (Supp. 00-2). Amended by exempt rulemaking at 9 A.A.R. 3141, effective August 23, 2003 (Supp. 03-2). Amended by exempt rulemaking at 11 A.A.R. 1927, effective May 20, 2005 (Supp. 05-2). Amended by exempt rulemaking at 16 A.A.R. 397, effective March 5, 2010 (Supp. 10-1). Amended by exempt rulemaking at 17 A.A.R. 800, effective June 20, 2011 (Supp. 11-2). Amended by exempt rulemaking at 18 A.A.R. 1070, effective June 15, 2012 (Supp. 12-2). Amended by exempt rulemaking at 19 A.A.R. 931, effective June 17, 2013 (Supp 13-2). Amended by exempt rulemaking at 20 A.A.R. 841, effective June 17, 2014 (Supp 14-1). Amended by exempt rulemaking at 22 A.A.R. 951, effective June 7, 2016 (Supp. 16-2). Amended by exempt rulemaking at 22 A.A.R. 2209, effective October 4, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 27 A.A.R. 242, effective April 5, 2021 (Supp. 21-1).

R12-4-804. Renumbered

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 1424, effective June 14, 2003 (Supp. 03-2). Amended by exempt rulemaking at 17 A.A.R. 800, effective June 20, 2011 (Supp. 11-2). Section R12-4-804 renumbered to R12-4-125, by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.

2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.

3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.

4. Be responsible for the enforcement of laws for the protection of wildlife.

5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.

6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.

7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.

8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.

9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.

2. Establish game management units or refuges for the preservation and management of wildlife.

3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.

4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.

5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.

6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.

7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.

8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.

10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.

11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.

12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.

13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.

14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used

for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-241. Acquisition and disposition of lands and waters; retention of rights; disposition of proceeds

A. The commission, in the name of the state, with the approval of the governor may:

1. Acquire by purchase, lease, exchange, gift or condemnation lands for use as fish hatcheries, game farms, firing ranges, reservoir sites or rights of way to fishing waters.

2. Acquire by purchase, lease, exchange or gift lands or waters for use as fish hatcheries, game farms, shooting areas, firing ranges or other purposes necessary to carry out the provisions of this title.

3. Acquire by condemnation waters for use as fish hatcheries. The acquisition of land acquired by condemnation shall be limited to a maximum of one hundred sixty acres unless first approved by the legislature.

B. The commission may, with approval of the governor and state land commissioner, lease, sublease, exchange, or sell, in the name of the state, any land acquired by gift, purchase, lease, exchange, or other method.

C. Notwithstanding any other provision of law, the sale or transfer of any lands under the provisions of this section shall be subject to a reservation to the state of all mineral rights and may be subject to the right of entry thereon by the public for hunting and fishing purposes.

D. Money derived from a sale or lease shall be deposited in the game and fish fund.

17-452. Restrictions on motor vehicle use; recommendations; agreements; rules

A. When the commission determines that the operation of motor vehicles within a certain area, except private land, is or may be damaging to wildlife reproduction, wildlife management or wildlife habitat of such area, the commission, with the concurrence of the land management agency involved and after a public hearing, may order such area closed to motor vehicles for not more than five years from the date of such closure, provided that all roads in such area shall remain open unless specifically closed.

B. The commission may also recommend that particular areas of land be set aside or made available for the use of recreational vehicles.

C. The commission may enter into agreements with landowners and agencies controlling areas that the commission has made recommendations on pursuant to subsection B. Any such agreement shall stipulate the restrictions, prohibitions and permitted uses of motor vehicles in such area and the duties of the commission and such landowner or agency relating to the enforcement of the terms of such agreement.

D. The commission shall adopt rules pursuant to title 41, chapter 6 to carry out the provisions of this section.

17-453. Notices of restrictions; posting; publication

A. For all areas specified under agreements pursuant to section 17-452, the commission shall cause notices of the restrictions, prohibitions or permitted uses of such area to be posted, prior to the effective date of such restrictions, prohibitions or permitted uses, on the main traveled roads and highways entering such area and such locations that the commission deems appropriate.

B. In addition to the posted notices required by subsection A of this section, the commission shall cause a notice of such restrictions, prohibitions or permitted uses, together with a description of the area, to be published three times in a newspaper of general circulation in the state prior to the effective date of such restrictions, prohibitions or permitted uses.

17-454. Prohibition against vehicle travel

No person shall drive a motor operated vehicle cross-country on public or private lands where such cross-country driving is prohibited by rule or regulation or, in the case of private lands, by proper posting.

17-455. Exceptions

A. The restrictions, prohibitions or permitted uses established pursuant to section 17-452 shall not apply to:

1. Public employees acting in the scope of their employment.

2. Valid licensees and permittees of state agencies and land management agencies. Holders of such licenses and permits shall be limited to the specific purposes and areas of travel for which such licenses or permits were issued or granted.

3. Necessary travel within or across restricted or prohibited land by employees and agents of public utilities, subject to Arizona corporation commission (or any successor agency) or federal power commission regulation, of suppliers of water or power acting as agents of the federal government, and employees or agents of mining companies exercising rights pursuant to any state or federal mining law or regulation. Other persons who are regularly engaged in prospecting or mineral exploration shall upon application be issued vehicular access permits by the director.

4. A licensed hunter who enters an area solely to pick up a big game animal which he has legally killed.

B. Emergency situations, such as fire or other disasters, or when otherwise necessary to protect life or property shall not require a permit.

C. Parking and camping shall be allowed along open roads in closed areas, except that no vehicle shall be parked or operated at a distance greater than three hundred feet from such roads.

41-1005. Exemptions

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.

2. Order or rule of the Arizona game and fish commission that does the following:

(a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.

(b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.

(c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.

(d) Limits the number or use of licenses or permits that are issued to nonresidents pursuant to section 17-332.

3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.

4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.

5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.

6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.

7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.

8. Form whose contents or substantive requirements are prescribed by rule or statute and instructions for the execution or use of the form.

9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.

10. Fees prescribed by section 6-125.

11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.

12. Fees established under section 3-1086.

13. Fees established under sections 41-4010 and 41-4042.

14. Rule or other matter relating to agency contracts.

15. Fees established under section 32-2067 or 32-2132.

16. Rules made pursuant to section 5-111, subsection A.

17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.

18. Fees or charges established under section 41-511.05.

19. Emergency medical services protocols except as provided in section 36-2205, subsection B.

20. Fee schedules established pursuant to section 36-3409.

21. Procedures of the state transportation board as prescribed in section 28-7048.

22. Rules made by the state department of corrections.

23. Fees prescribed pursuant to section 32-1527.

24. Rules made by the department of economic security pursuant to section 46-805.

25. Schedule of fees prescribed by section 23-908.

26. Procedure that is established pursuant to title 23, chapter 6, article 6.

27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.

28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.

29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.

30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.

31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.

32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.

33. Rules made by the Arizona department of agriculture to adopt, implement and administer the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252) as provided by title 3, chapter 3, article 4.1.

34. Calculations that are performed by the department of economic security and that are associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.

35. Rules made by the Arizona department of agriculture to implement and administer the livestock operator fire and flood assistance grant program established by section 3-109.03.

B. Notwithstanding subsection A, paragraph 21 of this section, if the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.

C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:

1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.

2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.

3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.

D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.

E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.

F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.

G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

E-6.

DEPARTMENT OF REVENUE
Title 15, Chapter 12 Articles 1-3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

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

FROM: Council Staff

DATE: May 20, 2025

SUBJECT: **DEPARTMENT OF REVENUE**
Title 15, Chapter 12 Articles 1-3

Summary

This Five-Year Review Report (5YRR) from the Arizona Department Revenue ("Department") covers twenty-four (24) rules in Title 15, Chapter 12, Articles 1-3 relating to the Property Tax Oversight Commission. Article 1 covers general provisions, Article 2 covers property tax levy limits, and Article 3 covers hearing and appeal procedures. The purposes of the Property Tax Oversight Commission is to: (1) further the public confidence in property tax limitations; (2) provide a uniform methodology for determining those limitations; and (3) provide a continuing review of practices for ensuring a fair and equitable administration of the property tax laws.

The Department has not completed the proposed course of action from their previous three reports approved by the Council in July 2010, July 2015 and February 2020, respectively.

In the 2010 report, the Department proposed to amend 14 rules but this was not completed because the Department did not qualify for an exemption to the executive order concerning the Rulemaking Moratorium. In the 2015 report, the Department proposed to amend 14 rules but did not provide a timeline because of active litigation. In the 2020 report, the Department indicated that they did not complete this proposed course of action from the 2015

report because the Department was named as a defendant to a lawsuit on June 8, 2015. In the 2020 report, the Department indicated this lawsuit was resolved and the Department intended on completing a rulemaking by September 1, 2020.

In this 5YRR now before the Council, the Department has indicated that the course of action from the 2020 report was not completed as a result of litigation started in June 2024. The Department stated that they do not want to make any substantive changes to the rules prior to final adjudication in that matter, which concerns the calculation of levy limits.

Proposed Action

The Department indicates that they still intend on amending the 14 rules identified in the previous reports. The amendments are necessary to incorporate 2009 statutory changes and to update the rules to conform to modern rulewriting standards. Given the on-going litigation, the Department has not proposed any timeline for when they intend on completing a rulemaking.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Property Tax Oversight Commission was created by Laws 1987, Ch, 204. The Department indicates that the original economic impact statement estimated that the Department of Revenue, Property Tax Oversight Commission, the Attorney General's Office and political subdivisions would all experience cost savings due to the standardization of the Property Tax Oversight Commission's practices and procedures. The Department believes that the economic impacts projected in the original adoptions of the rules and in the subsequent amendments in 1997, 2000, and 2006 are generally accurate. However, the Department believes that one aspect that may generate costs that outweigh benefits is in the engagement of the Commission members and staff as well as a political subdivision, special taxing district or fire district that disputes the Commission's findings in a rehearing process that is unnecessary prior to the petitioner's appeal of the matter to tax court.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department states that after analysis, the probable benefits of the rules outweigh the probable costs and the rules impose the least burden and costs to persons regulated by them, including paperwork and other costs necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are mostly clear, concise, and understandable but that the following 7 rules need to be amended to conform with modern rulewriting standards, such as improving terminology and removing passive voice.

- R15-12-201
- R15-12-301
- R15-12-302
- R15-12-303
- R15-12-304
- R15-12-306
- R15-12-312

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are generally consistent with other rules and statutes, with the exception of the following. The following rules are not compliant with the statutes that govern the Property Tax Oversight Commission because of laws 2009, Ch 118 which included fire districts.

- R15-12-106
- R15-12-201
- R15-12-203
- R15-12-204
- R15-12-205
- R15-12-301
- R15-12-302
- R15-12-303
- R15-12-305
- R15-12-306
- R15-12-308
- R15-12-311
- R15-12-312

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives with the exception of R15-12-312. The Department indicates that the current rehearing process could result in repetitive or unnecessary actions prior to the ability to take the matter to tax court.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are enforced as written outside of those listed that are not compliant with statute, in which the statutes would govern.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department indicates there are no corresponding federal laws.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department has indicated that the rules do not require a permit or a license.

11. Conclusion

This Five-Year Review Report (5YRR) from the Arizona Department Revenue ("Department") covers twenty-four (24) rules in Title 15, Chapter 12, Articles 1-3 relating to the Property Tax Oversight Commission. The Department has not completed their previous courses of action from the Department's last three 5YRR as a result of litigation. The Department is proposing to amend 14 rules but have not identified a timeframe for when they expect to complete the rulemaking, as a result of litigation filed in 2024.

The Department has not provided a course of action with a date and year in accordance with R1-6-301. Council staff recommends the Council ask the Department to clarify when the Department intends to complete a rulemaking.

DEPARTMENT OF REVENUE

5 YEAR REVIEW REPORT

A.A.C. Title 15 Revenue

Chapter 12 Department of Revenue

Property Tax Oversight Commission

Articles 1, 2, and 3

December 31, 2024

1. Authorization of the rule by existing statutes

All of the rules are generally authorized by A.R.S. § 42-1005, which provides that the Director ("Director") of the Department of Revenue ("Department") may make administrative rules as he deems necessary and proper to effectively administer the Department and enforce Arizona Revised Statutes ("A.R.S.") Title 42 and Title 43. Additionally, A.R.S § 42-17002(A) establishes the Property Tax Oversight Commission ("Commission") to: (1) further the public confidence in property tax limitations; (2) provide a uniform methodology for determining those limitations; and (3) provide a continuing review of practices for ensuring a fair and equitable administration of the property tax laws. A.R.S. § 42-17002(B) states that the Director or the Director's designee is to serve as chairman of the Commission and A.R.S. § 42-17002(D) states that the Department shall provide secretarial and staff support services to the Commission. The Commission is required "to make rules of practice setting forth the nature and requirements of "those hearing procedures. A.R.S. §41-1003.

Specific Authorization for the Rules:

1. A.R.S. §§ 42-17001 through 42-17003 are the specific statutes upon which the following rules are based:

   R15-12-101. Definitions

   R15-12-102. Principal Office of the Property Tax Oversight Commission

   R15-12-103. Quorum

   R15-12-104. Hearings

R15-12-104. Voting

R15-12-106. Decisions

R15-12.107. Copying and Recording Costs

2. A.R.S. §§ 42-17003 and 42-17051 are the specific statutes upon which the following rules are based:

R15-12-201. Primary Property Tax Calculations

R15-12-202. Involuntary Tort Judgments

3. A.R.S. §§ 42-17003 and 42-17054 are the specific statutes upon which the following rules are based:

R15-12-203. Primary Property Tax Calculations

R15-12-204. Involuntary Tort Judgments

R15-12-205. Actual Levies

4. A.R.S. §§ 42-17002 and 42-17004 are specific statutes upon which the following rules are based:

R15-12-301. Notice of Violation

R15-12-302. Petition

R15-12-303. Grounds for Petition

R15-12-304. Manner of Filing

R15-12-305. Supplementing the Petition

R15-12-306. Withdrawal of Petition

R15-12-307. Rescheduling of Hearing

R15-12-308. Evidence

R15-12-309 Subpoena

R15-12-310. Post Hearing Memoranda

R15-12-311. Prehearing Issue Resolution

R15-12.312. Rehearing

2. <u>The objective of each rule</u>:

Rule	Objective
R15-12-101	*Definitions:* The objective of this rule is to define words and phrases used throughout the chapter.
R15-12-102	*Principal Office of the Property Tax Oversight Commission:* The objective of this rule is to provide the location of the principal office of the Property Tax Oversight Commission and where inquiries, correspondence, and filings are to be sent and the meeting and hearing are to be held.
R15-12-103	*Quorum*: The objective of this rule is to require a quorum of the Commission to make orders and decisions and conduct official business.
R15-12-104	*Hearings:* The objective of this rule is to provide that a quorum of the Commission shall directly conduct all hearings before the Commission regarding contested cases. Under A.R.S. §41-1092.02(F), a commission that directly conducts an administrative hearing is not required to use the services of the Office of Administrative Hearings.
R15-12-105	*Voting*: The objective of this rule is to provide when Commission members may vote and allows dissenting members to state the reason for their dissent.
R15-12-106	*Decisions*: The objective of this rule is to explain when Commission decisions are rendered and to whom these decisions must be sent.

R15-12-107	*Copying and Recording Costs*: The objective of this rule is to provide who will bear the costs of copying and the costs of employing a court reporter.
R15-12-201	*Primary Property Tax Calculations*: The objective of this rule is to expound on the proper calculations for determining the maximum allowable primary property tax levy limit and the allowable primary property tax rate.
R15-12-202	*Involuntary Tort Judgments*: The objective of this rule is to provide when the Commission shall recognize an involuntary tort judgment paid by a political subdivision and what the political subdivision may do with the involuntary tort judgment.
R15-12-203	*Levy Limit Worksheets*: The objective of this rule is to provide when and to whom the counties should submit a copy of the final levy limit worksheets. The rule also provides that the County Assessor must certify the copies as true and correct.
R15-12-204	*Political Subdivision Agreement*: The objective of this rule is to provide the procedure and deadlines for a political subdivision to disagree with the county's levy limit worksheet calculations. The rule also provides that the Commission may allow additional time to present objections to specific items if good cause is shown or on motion by the Commission.
R15-12-205	*Actual Levies*: The objective of this rule is to require the chief county fiscal officers in each county to certify and submit to the Commission the actual amount of primary property tax levied by each political subdivision in their counties within a certain time frame.
R15-12-301	*Notice of Violation*: The objective of this rule is to provide what kind of information must be contained on a notice of violation issued by the Commission
R15-12-302	*Petition*: The objective of this rule is to provide that all objections to the notice of violation must be made by way of a written petition to the Commission. The rule further explains the

	proper form of the petition and what information it must contain.
R15-12-303	*Grounds for Petition*: The objective of this rule is to require that objections to notices of violations be limited to factual findings and conclusions of law reached by the Commission
R15-12-304	*Manner of Filing*: The objective of this rule is to provide the manner for filing the petition. The rule specifies the number of copies of the petition that must be filed, that the Commission shall record the petition and supporting memorandum, and that no fee shall be charged for filing.
R15-12-305	*Supplementing the Petition*: The objective of this rule is to provide that the Commission may allow additional time, not to exceed 15 days, to supplement the petition
R15-12-306	*Withdrawal of Petition*: The object of this rule is to provide the procedure for withdrawal of a petition and the result of such a withdrawal.
R15-12-307	*Rescheduling of Hearing*: The objective of this rule is to allow the Commission to postpone or recess a hearing upon a showing of good cause. The Commission must then state the date, time, and place for the hearing to continue.
R15-12-308	*Evidence*: The objective of this rule is to describe the kinds of evidence that may be presented at a hearing before the Commission. The rule also provides guidance for admitting evidence and hearing oral evidence.
R15-12-309	*Subpoena*: The objective of this rule is to allow the Commission to issue subpoenas upon request of a party or its own initiative.
R15-12-310	*Post-Hearing Memoranda*: The objective of this rule is to provide information concerning the submission of post-hearing memoranda.
R15-12-311	*Prehearing Issue Resolution*: The objective of this rule is to explain the treatment of any agreement or resolution of issues prior to hearing between

	the Commission and a political subdivision.
R15-12-312	*Rehearing*: The objective of this rule is to provide a rehearing process and the circumstances under which a rehearing may be granted. The rules also provide the proper time frame for the Commission to grant or order a rehearing.

3. <u>Are the rules effective in achieving their objectives</u>? Yes _<u>X</u>_ No ____

Rule	Explanation
R15-12-312	*Rehearing*: The Department believes the rehearing process and the circumstances under which a rehearing is necessary may create scenarios in which both the Commission and petitioner are engaged in repetitive or unnecessary actions before the petitioner is able to appeal the matter to the tax court.

4. <u>Are the rules consistent with other rules and statutes</u>? Yes ___ No _<u>X</u>_

The following rules identified below are not consistent with other rules and statutes as written.

Rule	Explanation
R15-12-106	*Decisions*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-201	*Primary Property Tax Calculations*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-203	*Levy Limit Worksheets*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include

	fire districts.
R15-12-204	*Political Subdivision Agreement*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-205	*Actual Levies*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-301	*Notice of Violation*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-302	*Petition*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-303	*Grounds for Petition*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-305	*Supplementing the Petition*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-306	*Withdrawal of Petition*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-308	*Evidence*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include

	fire districts.
R15-12-311	*Prehearing Issue Resolution*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.
R15-12-312	*Rehearing*: The Department proposes to amend this rule to comply with the Secretary of State's guidelines and to reflect statutory changes made by Laws 2009, Ch. 118 to include fire districts.

5. <u>Are the rules enforced as written</u>? Yes _X_ No ___

6. <u>Are the rules clear, concise, and understandable</u>? Yes ___ No _X_

Rule	Explanation
R15-12-201	*Primary Property Tax Calculations*: This rule contains language that does not conform to existing rulewriting standards.
R15-12-301	*Notice of Violation*: This rule contains language that does not conform to existing rulewriting standards.
R15-12-302	*Petition*: This rule contains language that does not conform to existing rulewriting standards.
R15-12-303	*Grounds for Petition*: This rule contains language that does not conform to existing rulewriting standards.
R15-12-304	*Manner of Filing*: This rule contains language that does not conform to existing rulewriting standards.
R15-12-306	*Withdrawal of Petition*: This rule contains language that does not conform to existing rulewriting standards.
R15-12-312	*Rehearing*: This rule contains language that does not conform to existing rulewriting standards.

7. <u>Has the agency received written criticisms of the rules within the last five years</u>? Yes___ No __<u>X</u>_

8. <u>Economic, small business, and consumer impact comparison</u>:

All of the rules in this chapter with the exception of R15-12-104 were adopted in one package in 1990. R15-12-104 was added in 1997 to replace the old R15-12-104 that was repealed. In addition, ten of the rules in this chapter were amended in 1997. Two more rules were amended in 2000. And, finally, two rules were amended in 2006.

The Property Tax Oversight Commission was created by Laws 1987, Ch. 204. Prior to the original adoption of these rules in 1990, the Property Tax Oversight Commission did not have any rules. Therefore, the original economic impact statement estimated that the Department of Revenue, Property Tax Oversight Commission, the Attorney General's Office and the political subdivisions would all experience cost savings due to the standardization of the Property Tax Oversight Commission's practices and procedures. A cost savings was also expected because of the streamlining and increased definitiveness of the contested issues and facts required by the rules. In addition, by placing the responsibility for arranging for special services on the party that makes the request, the burden on Department of Revenue clerical support is reduced, thereby reducing the costs to the Department and possibly increasing the costs of the political subdivision that makes the special request. These amounts could not be quantified. The Department also estimated minimal costs associated with the publishing of the rules and the public hearing process. Political subdivisions, other state agencies and the public would incur costs in obtaining copies of the rules.

On October 7, 1997, the Governor's Regulatory Review Council approved the amendment of R15-12-105, R15-12-202, R15-12-203, R15-12-305, and R15-12-307 through R15-12-312. In addition, a new R15-12-104 was added to replace the old R15-12-104 that was repealed. The economic impact statement estimated decreased costs from increased clarity of the rules to operate the Commission. This would eliminate the need to provide individual instruction to each representative of the 72 political subdivisions governed by the Commission. The Department of Revenue would decrease costs by not having to provide a hearing officer to the Commission. The Commission would save by not having to pay the Office of Administrative Hearings to administer the hearings. The only increased costs were the result of the rulemaking process and were estimated to be minimal. "Minimal" is defined as an impact of less than $1,000 in costs.

On October 4, 2000, the Department amended R15-12-101 and R15-12-103. The economic impact statement expected that the benefits of the rules would be greater than the costs. The amendment of these rules would benefit the political subdivisions that deal with the Property Tax Oversight Commission and the public by making the rules more accurate as well as clearer and easier to understand. The Department would incur the costs associated with the

rulemaking process. The political subdivisions and the public were not expected to incur any expense in the amendment of these rules other than the cost of obtaining copies.

On May 13, 2006, the Department amended R15-12-101 and R15-12-204. The economic impact statement expected minimal costs in amending the rules to conform to current rule writing standards and statutory changes. The Department and the Commission expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions from the political subdivisions on issues that are addressed by each rule. The political subdivisions would experience cost savings due to the increased clarity and correctness of the rules. The public was not expected to incur any expense in the amendment of these rules other than the cost of obtaining copies.

The Department of Revenue believes that the economic impacts projected in the original adoption of the rules and in the subsequent amendments in 1997, 2000 and 2006 are generally accurate. However, the Department believes that one aspect that may generate costs that outweigh benefits is in the engagement of the Commission members and staff as well as a political subdivision, special taxing district or fire district that disputes the Commission's findings in a rehearing process that is unnecessary prior to the petitioner's appeal of the matter to tax court.

9. Has the agency received any business competitiveness analyses of the rules?

No analysis regarding the property tax commission rules' impact on business competitiveness in this state compared with the impact on businesses in other states has been submitted to the Department within the last five years.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

The 2019 five-year report stated that the Department would amend thirteen (13) rules. However, since June 2024, the Commission was named in a lawsuit, *Coconino Community College v. Property Tax Oversight Commission* (No. TX2024-000143), in regards to the interpretation of the language in the Arizona Constitution Art. IX, § 19 and A.R.S. §§ 42-17051 and 17056 and how those statutes relate to the calculation of the levy limits by the Commission. Accordingly, the Department has held off on making any substantive changes to the rules, pending a final adjudication of the court case.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

After analysis, the probable benefits of the rules outweigh the probable costs and the rules impose the least burden and costs to persons regulated by them, including paperwork and other costs necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes __ No __X_

There are no corresponding federal laws. The rules are based on state law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

None of the rules were adopted after July 29, 2010 and none of the rules being reviewed require the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action

The 2019 five-year report stated that the Department would amend thirteen (13) rules. However, since June 2024, the Commission was named in a lawsuit, *Coconino Community College v. Property Tax Oversight Commission* (No. TX2024-000143), in regards to the interpretation of the language in the Arizona Constitution Art. IX, § 19 and A.R.S. §§ 42-17051 and 17056 and how those statutes relate to the calculation of the levy limits by the Commission. While the Department has not prioritized making substantive changes to the rules pending final adjudication of the court case, it may do so if it becomes apparent that the rulemaking will neither create confusion for the public nor adversely impact the case.

At that time the Department would include the following rules:

Rule	Explanation
R15-12-106	*Decisions*
R15-12-201	*Primary Property Tax Calculations*
R15-12-203	*Levy Limit Worksheets*
R15-12-204	*Political Subdivision Agreement*

R15-12-205	*Actual Levies*
R15-12-301	*Notice of Violation*
R15-12-302	*Petition*
R15-12-303	*Grounds for Petition*
R15-12-304	*Manner of Filing*
R15-12-305	*Supplementing the Petition*
R15-12-306	*Withdrawal of Petition*
R15-12-308	*Evidence*
R15-12-311	*Prehearing Issue Resolution*
R15-12-312	*Rehearing*

TITLE 15. REVENUE

CHAPTER 12. DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT COMMISSION

ARTICLE 1. GENERAL PROVISIONS

Section

ARTICLE 2. PROPERTY TAX LEVY LIMITS

Section

ARTICLE 3. HEARING AND APPEAL PROCEDURE

Section

ARTICLE 1. GENERAL PROVISIONS

R15-12-101. Definitions

Unless the context requires otherwise, the following definitions shall apply:

1. "Excess collections" means the amount collected during the previous fiscal year in excess of the previous fiscal year's maximum allowable primary property tax levy.
2. "Excess expenditures" means the amount under A.R.S. § 42-17051(C) that is certified by the Auditor General's office.
3. "Quorum" means a majority of the members of the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Amended by final rulemaking at 6 A.A.R. 4114, effective October 4, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 1096, effective May 13, 2006 (Supp. 06-1).

R15-12-102. Principal Office of the Property Tax Oversight Commission

The principal office of the Property Tax Oversight Commission shall be the Department of Revenue Building, 1600 West Monroe, Phoenix, Arizona 85007. All inquiries, correspondence, and filings shall be delivered to the Property Tax Oversight Commission at this location. All meetings and hearings shall be held at this location unless designated in writing by the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-103. Quorum

The Commission shall have a quorum for making orders and decisions or transacting other official business, as delineated in A.R.S. § 42-17003.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Amended by final rulemaking at 6 A.A.R. 4114, effective October 4, 2000 (Supp. 00-4).

R15-12-104. Hearings

A quorum of the Commission shall directly conduct all hearings regarding contested cases before the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Section repealed; new Section adopted effective October 10, 1997 (Supp. 97-4).

R15-12-105. Voting

A. A Commission member may vote on decisions if:
   1. The member was present at all hearings during which the matter being voted on was discussed;
   2. The member was not present at all hearings but the member reviewed the evidence submitted at the hearings and attended or listened to tape recordings of all hearings during which the matter being voted on was discussed; or
   3. The parties submitted the matter for a decision based on a joint stipulation of facts.

B. Any member who dissents may state the reasons for the member's dissent.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Section amended effective October 10, 1997 (Supp. 97-4).

R15-12-106. Decisions

A. A Commission decision is rendered when signed by the Chairman.

B. Decisions of the Commission shall be sent to the affected political subdivision and the affected County Board of Supervisors.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-107. Copying and Recording Costs

A. The costs of copying shall be paid by the person making the request.

B. Court reporting arrangements and costs shall be the responsibility of the person employing the court reporter.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

ARTICLE 2. PROPERTY TAX LEVY LIMITS

R15-12-201. Primary Property Tax Calculations

A. The Commission shall calculate the maximum allowable primary property tax levy limits for political subdivisions as follows:
   1. The maximum allowable primary property tax rate shall equal the resulting value of the following rounded to four decimal places:
      a. 102% of the sum of the previous fiscal year's maximum primary property tax levy divided by;
      b. the sum of the values provided by the County Assessor's office and the Department for the current year's value of the previous year's centrally assessed, locally assessed real, locally assessed secured personal, and locally assessed unsecured personal property, divided by 100.
   2. The maximum allowable primary property tax levy limit shall equal the sum of the current value of the current year's property as provided by the County Assessor and the Department including centrally assessed, locally real, locally assessed secured personal, and locally assessed unsecured personal property, divided by 100 and multiplied by the maximum allowable primary property tax rate.
   3. Political subdivisions may request that a specific alternative methodology be considered by the Commission. If the Commission determines the alternative methodology will more accurately calculate the levy limit of the political subdivision, such alternative methodology shall be used.

B. The Commission shall calculate the allowable primary property tax levy limit by reducing the maximum allowable primary property tax levy limit by the sum of the amount of excess levies, excess collections and excess expenditures.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-202. Involuntary Tort Judgments

A. A political subdivision that paid an involuntary tort judgment may only use the judgment to:
   1. Offset excess collections from the previous fiscal year; or
   2. Justify a primary property tax levy limit being set above the maximum allowable rate in the current fiscal year.

B. The Commission shall recognize an involuntary tort judgment if:
   1. The judgment is pursuant to a court order or settlement agreement;
   2. The judgment is approved for payment by the political subdivision's governing board;
   3. The Attorney General certifies that the judgment is an involuntary tort judgment; and
   4. The political subdivision submits copies of the court order or settlement agreement and the minutes of the governing board's pay approval to the Commission on or before the 1st Monday of July.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Spelling of the word "tort" in subsection (A) corrected (Supp. 94-3). Amended effective October 10, 1997 (Supp. 97-4).

R15-12-203. Levy Limit Worksheets

A. The counties shall simultaneously submit copies of the final levy limit worksheets for all political subdivisions in their respective counties to the Commission and the affected political subdivision. The County Assessor shall verify that the copies are true and correct and, if so, certify the copies.

B. The counties shall deliver the worksheets to affected political subdivisions and the Commission on or before the 2nd Monday of August.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Amended effective October 10, 1997 (Supp. 97-4).

R15-12-204. Political Subdivision Agreement

A. If a political subdivision disagrees with the county's final levy limit worksheet calculations, the political subdivision shall, within 10 days of receipt of the county's calculations, file in writing with the Commission a statement of disagreement and the figures it deems appropriate. Failure to act within the 10 days shall be deemed agreement by the political subdivision.

B. Upon timely petition of the political subdivision for good cause shown, or on its own motion, the Commission may permit the political subdivision to present objections to specific items at a later date.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Amended by final rulemaking at 12 A.A.R. 1096, effective May 13, 2006 (Supp. 06-1).

R15-12-205. Actual Levies

The chief county fiscal officers shall certify and submit to the Commission the amount of the primary property tax levied for each political subdivision within their counties within three days after each levy is determined.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

ARTICLE 3. HEARING AND APPEAL PROCEDURE

R15-12-301. Notice of Violation

The notice of violation shall specify the violations found and the monetary amount in dispute. The notice shall inform the political subdivision of the right to petition on or before October 1 for a hearing on the Commission's finding of violation.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-302. Petition

A. All objections to the Commission's notice of violation shall be by written petition to the Commission. The petition shall include the following information:
   1. Name, title, address, and phone number of the political subdivision's contact person;
   2. A particularized statement of the errors allegedly committed by the Commission in its findings;
   3. A statement of facts upon which the political subdivision relies to support the assignment of errors alleged to have been committed by the Commission;
   4. The relief sought; and
   5. Whether an oral hearing is requested.

B. The petition shall be addressed to the Chairman of the Commission.

C. The petition shall be in a form that can readily be duplicated on standard office equipment.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-303. Grounds for Petition
A. Objections to notices of violation shall be limited to disputing the factual findings and conclusions of law of the Commission.
B. The Commission shall refuse all petitions not based on a dispute of its factual findings or conclusions of law. Financial impacts on the political subdivision shall not be considered by the Commission in its decision-making.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-304. Manner of Filing
A. An original and six copies of the petition and any supporting memoranda shall be filed with the Chairman.
B. No fee shall be charged for the filing of any petition or supporting memoranda.
C. Upon receipt of a petition, the Commission staff shall record the filing of the petition and supporting memoranda.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-305. Supplementing the Petition
The Commission may grant a political subdivision's request for an additional period of time, not to exceed 15 days, within which to supplement a timely filed petition. The Commission shall not consider a supplement to the petition that the political subdivision files after the additional period of time granted.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3). Amended effective October 10, 1997 (Supp. 97-4).

R15-12-306. Withdrawal of Petition
A. The petition may be withdrawn at the written request of the political subdivision before a final decision by the Commission is issued.
B. When the petition is withdrawn, the Commission's finding shall be deemed final and shall not be subject to any further appeal.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-307. Rescheduling of Hearing
The Commission may postpone or recess the hearing for good cause shown. The Commission shall specify the date, time, and place for the hearing to continue.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3).

R15-12-308. Evidence
A. The political subdivision and the Commission may:
1. Call and examine witnesses,
2. Introduce exhibits,
3. Cross-examine opposing witnesses on any matter relevant to the issues, even though the matter was not covered in the direct examination,
4. Impeach any witness regardless of which party first called the witness to testify,
5. Rebut the evidence against it, and
6. Call and examine as if under cross-examination a party or its employees, agents, or officers.
B. The Commission shall be liberal in admitting evidence, but the Commission shall consider objections to the admission of and comments on the weakness of evidence in assigning weight to the evidence.
C. The Commission shall take oral evidence only on oath or affirmation.
D. Legible copies may be admitted into evidence or substituted in place of the original documents.
E. The original records and files of the Commission or the Department of Revenue shall not be removed from their offices for use as evidence or for other purposes.
F. The Commission may take official notice of the records maintained by the Department of Revenue.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3). Amended effective October 10, 1997 (Supp. 97-4).

R15-12-309. Subpoena
The Commission may, on request of a party or on its own initiative, issue subpoenas.

Historical Note
Adopted effective September 14, 1990 (Supp. 90-3). Amended effective October 10, 1997 (Supp. 97-4).

R15-12-310. Post-Hearing Memoranda

If the Commission desires the submission of post-hearing memoranda or information, the Commission shall, at the time of the hearing, direct the parties to submit the post-hearing memoranda or information within a period of time set by the Commission.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Amended effective October 10, 1997 (Supp. 97-4).

R15-12-311. Prehearing Issue Resolution

If the Commission and a political subdivision agree as to the resolution of some or all of the issues prior to the hearing, the Commission shall stipulate to the agreed issues in the record and shall consider those issues withdrawn. The Commission shall then issue an order of partial resolution that becomes part of the Commission's record. The Commission shall forward copies of the order to the political subdivision, County Assessor and the Department of Revenue.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Amended effective October 10, 1997 (Supp. 97-4).

R15-12-312. Rehearing

A. Any party in a contested case before the Commission may file a petition for rehearing or review with the Commission within 30 days after receiving the final decision. The party shall attach a supporting memorandum, specifying the grounds for the petition.

B. The party who filed the petition for rehearing or review may amend it at any time before the Commission rules. Any other party to the original hearing may file a response within 5 days after the Commission's receipt of the petition for rehearing or review. The party shall support the response with a memorandum discussing the legal and factual issues. Either party or the Commission may request oral argument.

C. The Commission may grant a rehearing or review of the decision for any of the following causes that materially affect a party's rights:

1. Irregularity in the administrative proceedings, or any order or abuse of discretion which deprived a party of a fair hearing;
2. Misconduct of the Commission, its staff, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
6. The decision is not justified by the evidence or is contrary to law.

D. The Commission shall not consider the financial impact to the political subdivision as a cause for rehearing.

E. The Commission may grant a rehearing or review within 15 days after its receipt of the petition for rehearing or review. The Commission may grant a petition for rehearing or review for a reason not stated in the petition. An order modifying a decision or granting a rehearing shall specify the ground or grounds for the order, and any rehearing shall only cover those matters. If the Commission fails to take action on a petition for rehearing or review within 15 days of the Commission's receipt of the petition, the petition shall be deemed denied.

F. The Commission may on its own initiative order a rehearing or review within 15 days after its decision is rendered for any reason set forth in subsection (C) of this rule. The order shall specify the grounds for rehearing or review.

G. The petitioner shall include all affidavits with the petition for rehearing or review when the petition for rehearing is based upon affidavits. An opposing party may, within 5 days after the petition for rehearing or review is filed, submit opposing affidavits. The Commission may extend this period for an additional period of time not to exceed 5 days for good cause shown. Reply affidavits may be permitted.

Historical Note

Adopted effective September 14, 1990 (Supp. 90-3). Amended effective October 10, 1997 (Supp. 97-4).

General and Specific Authorizing Statutes:

42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.

2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.

3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.

4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.

5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.

6. Provide such assistance to the governor and the legislature as they may require.

7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

42-17001. Definitions

In this chapter, unless the context otherwise requires:

1. "Commission" means the property tax oversight commission established by section 42-17002.

2. “Fire district” means a fire district established pursuant to title 48, chapter 5.

2. "Political subdivision" means a county, charter county, city, charter city, town, community college district or school district.

42-17002. Property tax oversight commission

A. The property tax oversight commission is established to:

1. Further the public confidence in property tax limitations.

2. Provide a uniform methodology for determining those limitations.

3. Provide a continuing review of practices for ensuring a fair and equitable administration of the property tax laws.

B. The commission consists of:

1. The director of the department of revenue, who serves as chairman.

2. Four persons who are knowledgeable in the area of property tax assessment and levy, one appointed by the governor and three appointed jointly by the president of the senate and the speaker of the house of representatives. The appointive members' terms are three years.

C. An appointment to fill a vacancy on the commission resulting from other than expiration of a term is for the unexpired portion of the term only.

D. The department shall provide secretarial and staff support services to the commission.

E. The private citizen members of the commission shall receive fifty dollars per day for time spent in performing their duties.

F. The commission shall meet at least annually and, in addition, at the call of the chairman. The commission shall meet at such other times and places as convenient or necessary to conduct its affairs and shall render its findings, reports and recommendations in writing to the governor, to the director of the department of revenue and to the legislature.

42-17003. Duties

A. The commission shall:

1. Establish procedures for deriving the information required by sections 15-905.01, 15-1461.01 and 42-17107 and article 2 of this chapter, section 48-254 and paragraph 4 of this subsection.

2. Review the primary property tax levy of each political subdivision to determine violations of sections 15-905.01, 15-1461.01 and 42-17107 and article 2 of this chapter.

3. Beginning in tax year 2017, review the secondary property tax levy of each special taxing district to determine violations of section 48-254.

4. Review the secondary property tax levy of each county, city, town and community college district to identify violations of constitutional and statutory requirements.

5. Review the secondary property tax levy of each fire district to determine violations of section 48-807.

6. Review for accuracy the tax levy and rate as prescribed by section 15-992.

7. Review the reports made by the department concerning valuation accuracy.

8. Hold hearings to determine the adequacy of compliance with articles 2 and 3 of this chapter.

9. Upon the request of a county, city, town or community college district, hold hearings as prescribed in section 42-17004 regarding the calculation of the maximum allowable primary property tax levy limits prescribed in section 42-17051, subsection A.

B. If the commission determines that a political subdivision has violated section 15-905.01, 15-1461.01 or 42-17107 or article 2 of this chapter, that a special taxing district has violated section 48-254, that a fire district has violated section 48-807 or that a school district incorrectly calculated the tax levy and rate as prescribed by section 15-992, on or before September 15 the commission shall notify the political subdivision or district, and the county board of supervisors, in writing, of:

1. The nature of the violation.

2. The necessary adjustment to:

(a) The primary property tax levy and tax rate to comply with section 15-905.01, 15-1461.01 or 42-17107 or article 2 of this chapter.

(b) The secondary property tax levy and tax rate to comply with sections 48-254 and 48-807.

(c) For school districts, the tax levy and rate to comply with section 15-992.

C. If the commission determines that a county, city, town or community college district has levied a secondary property tax in violation of constitutional or statutory law, on or before December 31 the commission shall notify in writing the affected political subdivision, the county board of supervisors, the county attorney and the attorney general of the violation.

42-17004. Hearing and appeals of commission findings

A. If the commission notifies a political subdivision of a violation of section 15-905.01, 15-1461.01 or 42-17107 or article 2 of this chapter, notifies a special taxing district of a violation of section 48-254, notifies a fire district of a violation of section 48-807 or notifies a school district of an incorrect calculation of the tax levy and rate as prescribed by section 15-992, and the political subdivision, special taxing district or fire district disputes the commission's findings, then on or before October 1 the political subdivision, special taxing district or fire district may request a hearing before the commission to attempt to resolve the dispute.

B. A governing body of a county, city, town, community college district, school district or fire district may request a hearing before the commission regarding the calculation of the maximum allowable primary or secondary property tax levy limits prescribed in section 42-17051 or 48-807 or the calculation of the tax levy and rate as prescribed in section 15-992, as applicable. The commission may resolve any disputes.

C. The commission shall conduct the hearing as prescribed in title 41, chapter 6, article 10.

D. If the dispute is resolved at the hearing, the commission shall immediately notify the county board of supervisors of the proper primary or secondary tax levy and tax rate.

E. If a political subdivision, special taxing district or fire district continues to dispute the commission's findings after the hearing under this section, the political subdivision, special taxing district or fire district may:

1. Appeal the matter to tax court within thirty days after the commission renders the decision.

2. Levy primary or secondary property taxes in the amount that the political subdivision, special taxing district or fire district considers to be proper, pending the outcome of the appeal.

42-17005. Adjustments to levy

A. If a governing body of a political subdivision or a fire district receives written notice of a violation of its allowable levy limit or truth in taxation limit under section 42-17003, and has not appealed the commission's decision pursuant to section 42-17004, the governing body shall correct its property tax levy and tax rate to properly reflect the

allowable levy for the current year. The county board of supervisors shall make the necessary adjustments to the political subdivision's or district's property tax levy and tax rate to ensure that the corrected information is contained in the assessment and tax roll that is transmitted to the county treasurer pursuant to section 42-18003. If the governing body receives the notice after it is too late to correct the levy in the current year, the difference between the amount actually levied and the allowable property tax levy shall be set aside in a special fund and used to reduce the property taxes levied in the following year.

B. If, after a hearing under section 42-17004, the commission determines that errors were made in the calculation of the maximum allowable primary property tax levy limit pursuant to section 42-17051, subsection A, the primary property tax levy pursuant to section 15-992 or the secondary property tax levy limit pursuant to section 48-807, the commission shall have five days to notify the governing body of the county, city, town, community college district, school district or fire district of the corrected levy limit. The commission shall also notify the county board of supervisors within five days. The corrected maximum allowable primary property tax levy shall be used in section 42-17051, subsection A, paragraph 1 in determining the following year's levy limit. The corrected maximum allowable secondary property tax levy shall be used in section 48-807 in determining the following year's levy limit.

C. If, after a hearing under section 42-17004, it is impossible for the board of supervisors to correct a property tax levy in the current year, the political subdivision or fire district shall hold the difference between the amount the political subdivision or district actually levied and the allowable property tax levy prescribed by the commission in a separate fund to be used to reduce the property taxes levied by the political subdivision or district in the following year.

D. If the commission discovers that it has made an error in computing the levy limit after September 15, it shall notify the political subdivision's or fire district's governing body about the error. The error shall be corrected as prescribed in subsection A of this section. If the error results in the maximum allowable property tax levy being raised:

1. The corrected maximum allowable primary property tax levy shall be used in section 42-17051, subsection A, paragraph 1 in determining the following year's levy limit.

2. The corrected maximum allowable secondary property tax levy shall be used for the purposes of section 48-807 in determining the following year's levy limit.

E. If, on appeal under section 42-17004, subsection E, the ruling of the court provides for a property tax levy in an amount that is less than the amount levied by the political subdivision or fire district, the political subdivision or district shall hold the difference between the amounts in a separate fund to be used to reduce the property taxes levied by the political subdivision or district in the following year.

42-17051. Limit on county, municipal and community college primary property tax levy

A. In addition to any other limitation that may be imposed, a county, charter county, city, charter city, town or community college district shall not levy primary property taxes in any year in excess of an aggregate amount computed as follows:

1. Determine the maximum allowable primary property tax levy limit for the jurisdiction for the preceding tax year.

2. Multiply the amount determined in paragraph 1 of this subsection by 1.02.

3. Determine the assessed value for the current tax year of all property in the political subdivision that was subject to tax in the preceding tax year.

4. Divide the dollar amount determined in paragraph 3 of this subsection by one hundred and then divide the dollar amount determined in paragraph 2 of this subsection by the resulting quotient. The result, rounded to four decimal places, is the maximum allowable tax rate for the political subdivision.

5. Determine the finally equalized valuation of all property, less exemptions, appearing on the tax roll for the current tax year including an estimate of the personal property tax roll determined pursuant to section 42-17053.

6. Divide the dollar amount determined in paragraph 5 of this subsection by one hundred and then multiply the resulting quotient by the rate determined in paragraph 4 of this subsection. The resulting product is the maximum allowable primary property tax levy limit for the current year for all political subdivisions.

7. The allowable levy of primary property taxes for the current fiscal year for all political subdivisions is the maximum allowable primary property tax levy limit less any amounts required to reduce the levy pursuant to subsections B and C of this section.

B. Any monies that a political subdivision received from primary property taxation in excess of the sum of the amount of taxes collectible pursuant to section 42-15053, subsection G, paragraph 2 and the allowable levy determined under subsection A of this section shall be maintained in a separate fund and used to reduce the primary property tax levy in the following year. Monies that are received and that are attributable to the payment of delinquent taxes that were properly assessed in prior years shall not be applied to reduce the levy in the following year.

C. If, pursuant to section 41-1279.07, the auditor general determines that in any fiscal year a county has exceeded its expenditure limitation, the allowable levy of primary property taxes of the county determined under subsection A of this section shall be reduced in the fiscal year following the auditor general's hearing by the amount of the expenditures that exceeded the county's expenditure limitation.

D. The limitations prescribed by this section do not apply to levies made pursuant to article 5 of this chapter.

E. The levy limitation for a political subdivision is considered to be increased each year to the maximum permissible limit under subsection A of this section regardless of whether the county, city, town or district actually levies taxes in any year up to the maximum permissible amount.

F. For purposes of determining a county's levy limit under this article, remote municipal property, as defined in section 42-15251, is considered to be taxable property in the county.

42-17054. Levy limit worksheet

A. When the county assessor transmits valuations under section 42-17052, the assessor shall prepare and transmit a final levy limit worksheet to each city, town and community college district that imposes a primary property tax, to each fire district that imposes a secondary property tax and to the property tax oversight commission.

B. Each city, town, community college district and fire district shall notify the property tax oversight commission in writing within ten days of its agreement or disagreement with the final levy limit worksheet.

STATE OF ARIZONA

Department of Revenue

Katie Hobbs
Governor

Robert Woods
Director

December 31 , 2024

Via e-mail: grrc@azdoa.gov

Ms. Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Revenue, Title 15 Revenue, Chapter 12 Department of Revenue, Property Tax Oversight Commission, Five Year Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report of the Department of Revenue for Title 15 Revenue, Chapter 12 Department of Revenue, Property Tax oversight Commission, which is due on December 31, 2024.

The Department of Revenue hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Ranjana Burke or Rburke@azdor.gov.

Sincerely,

Hsin Pai (Dec 30, 2024 17:31 MST)

Hsin Pai
General Counsel

DEPARTMENT OF REVENUE
Title 15, Chapter 10 Articles 1-5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 20, 2025

SUBJECT: **DEPARTMENT OF REVENUE**
Title 15, Chapter 10 Articles 1-5

Summary

This Five-Year Review Report (5YRR) from the Arizona Department Revenue ("Department") covers thirty-four (34) rules in Title 15, Chapter 10, Articles 1-5 relating to the General Administration. Article 1 covers Appeal Procedures (17 rules), Article 2 covers administration (1 rule), Article 3 covers authorized transfer of funds (7 rules), Article 4 covers reimbursement of fees and other costs related to an administrative proceeding (4 rules), and Article 5 covers the electronic filing program (5 rules).

The Department has not completed the proposed course of action from their previous 5YRR, which stated that they would amend R15-10-101, R15-106, R15-10-107, R15-10-131, and R15-10-132 by September 1, 2020. The previous 5YRR was approved by the Council in February 2020. The Department indicated that the previous Course of Action was not completed because of a lack of human resources. Additionally, the Department indicated that these amendments were non-substantive and did not require immediate attention.

Proposed Action

The Department indicates that they still intend on amending the 5 rules identified in the previous reports. The Department did not provide a month or year of when they intend on completing a rulemaking.

1. Has the agency analyzed whether the rules are authorized by statute?

The Department cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states that based on information received from Department personnel responsible for the administration of these Articles, the Department believes that the economic impacts previously projected are accurate. The rules in Chapter 10 deal with the General Administration of the Department of Revenue.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department believes that after analysis, the probable benefits of all of Chapter 10's rules within this state outweigh the probable costs and the rules impose the least burden and costs to persons regulated by them, including paperwork and other costs necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are mostly clear, concise, and understandable but that the following 4 rules can be improved

- R15-10-101: The Department is proposing to remove the definition of "day" because the term is already defined in statute.
- R15-10-106: The Department is proposing to amend the rule relating to incomplete petitions by switching the term "dismiss" with "reject'.
- R15-10-107: The Department is proposing to amend the rule relating to timeliness of petitions by adding a reference to A.R.S. § 42-1251(B), which includes the time frame for filing a petition protesting a deficiency.
- R15-10-131: The Department is proposing to amend the rule relating to review of a decision by a hearing officer by clarifying how it is determined that a claimant receives notice.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are generally consistent with other rules and statutes, with the exception of the R15-10-101, which includes a duplicative definition of the term day. The term does not impact enforcement of the rule.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives with the exception of R15-10-132. The Department has indicated that this rule can be improved by allowing a taxpayer to skip Director review during the appeal process. The Department has stated that the Director review increases the delay in taxpayer appeals and adds an extra unnecessary step in the appeal process.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are enforced as written outside of those listed that are not compliant with statute, in which the statutes would govern.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department indicates there are no corresponding federal laws.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department has indicated that the rules do not require a permit or a license.

11. Conclusion

This Five-Year Review Report (5YRR) from the Arizona Department Revenue ("Department") covers thirty-four (34) rules in Title 15, Chapter 10, Articles 1-5 concerning general administration. The Department did not complete the previous course of action as a result of lack of human resources. The Department has indicated that in this report they intend on amending 5 rules but have not provided Council staff with an expected timeframe.

The Department has not provided a course of action with a date and year in accordance with R1-6-301. Council staff recommends that the Council ask the Department to clarify when the Department intends on completing a rulemaking.

STATE OF ARIZONA

Department of Revenue

Katie Hobbs
Governor

Robert Woods
Director

December 31 , 2024

Via e-mail: grrc@azdoa.gov

Ms. Jessica Klein, Chair
Governor's Regulatory Review Council 100
North 15th Avenue, Suite 305 Phoenix,
Arizona 85007

RE: Department of Revenue, Title 15 Revenue, Chapter 10 Department of Revenue, General Administration, Five Year Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report of the Department of Revenue for Title 15 Revenue, Chapter 10 Department of Revenue, General Administration which is due on December 31, 2024.

The Department of Revenue hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Ranjana Burke or Rburke@azdor.gov.

Sincerely,

Hsin Pai (Dec 30, 2024 17:31 MST)

Hsin Pai
General Counsel

Arizona Department of Revenue

FIVE-YEAR-REVIEW REPORT

Title 15 Revenue
Chapter 10 Department of Revenue
General Administration

Articles 1, 2, 3, 4 and 5

For the

GOVERNOR'S REGULATORY REVIEW COUNCIL

December 31, 2024

5 YEAR REVIEW REPORT

Title 15 Revenue

Chapter 10 Department of Revenue

General Administration

Articles 1, 2, 3, 4 and 5

December 31, 2024

1. **Authorization of the rule by existing statutes**

General Statutory Authority:

- A.R.S. § 42-1005
- A.R.S. § 41-1003

Specific Statutory Authority:

1. A.R.S. §§ 41-1003 and 42-1251 are the specific statutes on which the following rules are based.

R15-10-101 Definitions
R15-10-102 Scope of Article 1
R15-10-103 Taxpayer Hearing Rights
R15-10-105 Petition
R15-10-106 Incomplete Petition
R15-10-107 Timeliness of Petition
R15-10-110 Withdrawal of Petition
R15-10-115 Request for Hearings; Waiver
R15-10-116 Hearing Procedure
R15-10-117 Evidence
R15-10-119 Stipulation of Facts
R15-10-120 Official Notice
R15-10-121 Subpoena by Petitioner
R15-10-122 Transcripts and Records
R15-10-130 Decisions and Orders
R15-10-131 Review of Decision of the Hearing Officer or ALJ
R15-10-132 Appeal of the Final Order of the Department of Revenue

2. A.R.S. § 42-2056 is the specific statute on which the following rule is based.

R15-10-201 Closing Agreements Relating to Tax Liability

3. A.R.S. § 42-1129 is the specific statute on which the following rules are based.

R15-10-301 Definitions
R15-10-302 General Requirements
R15-10-303 Voluntary Participation
R15-10-304 Authorization Agreement

R15-10-305 Methods of Electronic Funds Transfer
R15-10-306 Procedures for Payment
R15-10-307 Timely Payment

4. A.R.S. § 42-2064 is the specific statute on which the following rules are based.

R15-10-401 Application for Reimbursement of Fees and Other Costs Related to an Administrative Proceeding
R15-10-402 Documentation of Payment of Fees and Other Costs
R15-10-403 Filing an Application
R15-10-404 Decisions

5. A.R.S. §§ 42-1103.03, 42-1105, 42-1105.01, 42-1105.02, and 42-1125.01 are the specific statutes on which the following rules are based.

R15-10-501 Definitions
R15-10-502 Recordkeeping Requirements
R15-10-503 Electronic Signatures for Income Tax Returns
R15-10-504 Electronic Signatures for Withholding Tax
R15-10-505 Electronic Signatures for Transaction Privilege and Use Tax
R15-10-506 Transaction Privilege and Use Tax Electronic File Bulk Transmitters

2. **The objective of each rule:**

Rule	Objective
R15-10-101	(*Definitions*) This rule defines terms used in the rules governing the Department's hearing procedures.
R15-10-102	(*Scope of Article 1*) This rule clarifies the applicability of hearing procedure rules to any administrative matter for which a formal departmental hearing is required.
R15-10-103	(*Taxpayer Hearing Rights*) This rule informs taxpayers of their right in a protest hearing to review and obtain documents applicable to their protest.
R15-10-105	(*Petition*) This rule explains how to file a petition and delineates what must be included in the petition.
R15-10-106	(*Incomplete Petition*) This rule informs taxpayers that so long as the petition is complete within the original or extended time allowed to file a petition, they may correct incomplete petitions initially filed. The Hearing Officer may grant additional time upon a showing of good cause.
R15-10-107	(*Timeliness of Petition*) This rule delineates the specific time frames for filing petitions regarding taxes administered by the Department, provides that the Hearing Officer may grant an extension of time not to exceed 60 days to file the petition, and informs taxpayers who fail to timely file the petition that they may apply for a refund after paying the assessment in full.
R15-10-110	(*Withdrawal of Petition*) This rule allows taxpayers to withdraw petitions prior to the Hearing Officer issuing a decision.
R15-10-115	(*Request for Hearings; Waiver*) This rule requires an oral hearing if requested by either the taxpayer or the Department, and delineates the actions the Hearing Officer may take if any party to the hearing fails to appear.
R15-10-116	(*Hearing Procedure*) This rule explains how a hearing may be conducted and conveys that the procedure is open and relaxed.
R15-10-117	(*Evidence*) This rule explains the types of evidence that may be presented at a hearing.

R15-10-119	(*Stipulation of Facts*) This rule allows the taxpayer and the Department to file a stipulation of facts.
R15-10-120	(*Official Notice*) This rule allows the Hearing Officer to take official notice of certain items.
R15-10-121	(*Subpoena by Petitioner*) This rule addresses the procedure for requesting a subpoena.
R15-10-122	(*Transcripts and Records*) This rule requires the Hearing Office to record all oral proceedings, allows a party to arrange for the hearing to be manually transcribed at that party's expense, requires that the party citing a transcript submit a copy of the transcript to the Department's Hearing Officer, and gives the parameters for the use of the Department's records.
R15-10-130	(*Decisions and Orders*) This rule requires the Hearing Officer to issue a written decision containing the reasons for the decision and to forward the decision to applicable parties.
R15-10-131	(*Review of Decision of the Hearing Officer or ALJ*) This rule addresses the process by which the Director may review a decision of the Hearing Officer or Administrative Law Judge.
R15-10-132	(*Appeal of the Final Order of the Department of Revenue*) This rule informs taxpayers that if they dispute the final order of the Department, they may appeal to the State Board of Tax Appeals or, if the amount in dispute is not an individual income tax dispute less than $5,000, bring an action in Tax Court.
R15-10-201	(*Closing Agreements Relating to Tax Liability*) This rule explains the application of closing agreements and addresses the procedure for entering into a closing agreement.
R15-10-301	(*Definitions*) This rule defines terms used in the rules regarding the authorized transmission of funds.
R15-10-302	(*General Requirements*) This rule specifies which taxpayers are required to remit tax payments by electronic funds transfer.
R15-10-303	(*Voluntary Participation*) This rule allows taxpayers that do not meet the tax liability threshold to voluntarily participate in or withdraw from the electronic funds transfer program.
R15-10-304	(*Authorization Agreement*) This rule requires participants in the electronic funds transfer program to complete an authorization agreement and delineates the information required in an authorization agreement.
R15-10-305	(*Methods of Electronic Funds Transfer*) This rule prescribes the methods of electronic funds transfer that are acceptable to the Department and specifies the conditions under which each method may be used.
R15-10-306	(*Procedures for Payment*) This rule prescribes the procedures for making tax payments under the automated clearing house debit method and under the automated clearing house credit method.
R15-10-307	(*Timely Payment*) This rule prescribes the procedures to follow to ensure timely payment of taxes and informs taxpayers of the penalty if payments are not timely made.
R15-10-401	(*Application for Reimbursement of Fees and Other Costs Related to an Administrative Proceeding*) This rule delineates the procedures for applying for reimbursement of fees and other costs related to an administrative proceeding.
R15-10-402	(*Documentation of Payment of Fees and Other Costs*) This rule explains what documentation a taxpayer must submit with an application for reimbursement of fees and other costs related to an administrative hearing.
R15-10-403	(*Filing an Application*) This rule explains to the taxpayer how to determine when the conclusion of administrative proceedings has occurred for purposes of filing an application for reimbursement of fees.

R15-10-404	(*Decisions*) This rule tells the taxpayer when and how the problem resolution officer will inform the taxpayer of the decision made concerning the taxpayer's application for reimbursement.
R15-10-501	(*Definitions*) This rule defines terms used in the rules regarding the electronic filing program.
R15-10-502	(*Recordkeeping Requirements*) This rule sets forth the length of time an electronic return preparer must keep the documents specified in A.R.S. § 42-1105(F).
R15-10-503	(*Electronic Signatures for Income Tax Returns*) This rule lists the methods by which an electronically filed individual income tax return may be signed by an individual taxpayer.
R15-10-504	(*Electronic Signatures for Withholding Tax*) This rule provides taxpayers with information regarding the use of the taxpayer's signature, as obtained through either the business registration process or the taxpayer service center registration process, to sign the taxpayer's withholding tax returns.
R15-10-505	(*Electronic Signatures for Transaction Privilege and Use Tax*) This rule provides taxpayers with information regarding the use of the taxpayer's signature, as obtained through either the business registration process or the taxpayer service center registration process, to sign the taxpayer's transaction privilege and use tax returns.
R15-10-506	(*Transaction Privilege and Use Tax Electronic File Bulk Transmitters*) This rule provides a taxpayer with instructions on what is required to participate in the Department's bulk electronic filing program.

3. **Are the rules effective in achieving their objectives?** **Yes____** **No X**

The rule below is not effective in meeting its stated objective.

Rule	Explanation
R15-10-132	(*Appeal of the Final Order of the Department of Revenue*). The Department proposes to amend this rule to remove R15-10-132(B) to allow a taxpayer to continue with its appeal to the Board of Tax Appeals or the Tax Court without the Director having to complete a review of the decision. This would reduce regulation and allow the taxpayer to continue with its appeal without delay.

4. **Are the rules consistent with other rules and statutes?** **Yes____** **No X**

The rule below is not consistent with other rules and statutes

Rule	Explanation
R15-10-101	(*Definitions*) The Department proposes to amend the rule to remove the definition of the term "day." This rule is considered unnecessary because the issues dealt with in the definition are already dealt with in statute. See A.R.S.§1-218 (filing by mail; date of filing) and A.R.S.§42-1105.02 (date of filing by electronic means; definition).

5. **Are the rules enforced as written?** **Yes X** **No __**

The rules are enforced as written.

6. **Are the rules clear, concise, and understandable?** **Yes___No** X

The following rules are not clear, concise, and understandable.

Rule	Explanation
R15-10-101	(*Definitions*) The Department proposes to amend the rule to remove the definition of the term "day." This definition is considered unnecessary because the issues dealt with in the definition are already addressed in statute. See A.R.S.§1-218 (filing by mail; date of filing) and A.R.S.§42-1105.02 (date of filing by electronic means; definition).
R15-10-106	(*Incomplete Petition*) The Department proposes to amend the rule to remove the term "dismiss" and replace it with the term "reject."
R15-10-107	(*Timeliness of Petition*) The Department proposes to amend rule 15-10-107(F) to include a statutory reference to A.R.S. § 42-1251(B) which prescribes the exact time for filing a petition protesting a deficiency.
R15-10-131	(*Review of Decision of the Hearing Officer or ALJ*). The Department proposes to amend the rule to add a section to clarify when a taxpayer is deemed to receive a notice and clarify when a decision is deemed to be received.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes___No** X

The Department has not received any written criticisms during the last five years of any of the rules in Chapter 10.

8. **Economic, small business, and consumer impact comparison:**

1. Rules in A.A.C. Title 15, Chapter 10, Article 1

The majority of the rules in Article 1 were adopted effective June 22, 1981. There is no available economic, small business, and consumer impact statement ("EIS") or other economic impact documentation regarding the predicted economic impact at the time of the original adoption of Article 1.

Effective December 23, 1993, Article 1 was repealed and a new article was adopted. The July 15, 1991 impact statement provided that the Department, the Attorney General, the Board of Tax Appeals, and private entities were expected to benefit from increased clarity of the hearing procedures. The Department would incur the costs of meeting Administrative Procedure Act requirements and other state agencies would incur the cost of reviewing, publishing, or obtaining copies of the rules. The impact statement stated that the Department's hearing office would experience time and cost savings in the more efficient running of hearings and in the enhanced flow of information from the taxpayer.

R15-10-131 was amended effective October 11, 1995. The proposed economic impact statement provided that the Department would incur costs meeting the Administrative Procedure Act but that the Department would benefit from having additional time to file a petition for review by the Director of the Department. The economic impact statement stated that other state agencies would incur costs noticing, obtaining copies and reviewing the proposed amendment to the rule. It was believed that private entities would incur a direct cost of obtaining copies of the new rule but would benefit from having additional time to prepare and file a petition for review of the hearing office decision to the Director.

R15-10-101, R15-10-105, R15-10-107, R15-10-117, R15-10-121, R15-10-130, R15-10-131 and R15-10-132 were amended effective January 20, 1998. In addition, R15-10-102 was repealed and a new R15-10-102 was added effective January 20, 1998. The EIS provided that the Department would incur the costs of

meeting the Administrative Procedure Act requirements and other state agencies would incur the cost of reviewing, publishing, or obtaining copies of the rules. The economic impact statement stated that rules would result in time and cost savings to the Department since it would reduce the need for Department personnel to explain to taxpayers the requirements and procedures addressed in the rules. The Department also expected taxpayers to benefit from these rules by having definitive requirements and procedures to follow when appealing a decision of the Department.

Rules 15-10-102, 15-10-105, 15-10-106, 15-10-110, 15-10-115, 15-10-116, 15-10-119, 15-10-120 and 15-10-122, were amended effective June 13, 2001. The EIS provided that the Department, the Governor's Regulatory Review Council and the Secretary of State's Office would incur costs because of the rulemaking. However, the EIS provided that the Department and public would benefit from increased clarity of the rule.

Rule R15-10-122 was amended effective January 30, 2010. The EIS stated that changes to the rule are intended to allow the Hearing Office to be efficient in the administration of hearing procedures by allowing the Hearing Office to use recording equipment other than a tape recorder. The EIS provided that the amended rule may result in time and cost savings from the use of recording devices other than outdated tape recorders.

Effective January 7, 2016 rule R15-10-105 was amended. The probable costs were minimal, if any, as the rule change required no additional hiring of Department personnel, and the benefit was found to exceed the cost as the rule change allowed for a streamlined and quicker processing of a taxpayer's assessment appeal.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

2. Rules in A.A.C. Title 15, Chapter 10, Article 2

Rule 15-10-201 was adopted effective September 16, 1987. Former Section R15-10-201 was later renumbered to R15-5-2207 and new Section R15-10-201 was renumbered from R15-2-231. R15-2-231 was adopted effective December 22, 1981. There was no EIS requirement for administrative rules adopted in 1981.

The February 11, 1994 letter to the Governor's Regulatory Review Council stated that the proposed amendment and renumbering of R15-10-201 would result in costs to the Department, the Department of Administration, the Office of the Attorney General, and the Secretary of State's Office. This statement provided that the rule making would result in clarification and guidance to the Department, private entities and taxpayers.

The EIS for the amendment of Rule 15-10-201 effective January 20, 1998 stated that the Department would incur minimal costs in meeting the Administrative Procedure Act requirements, and that the Secretary of State and other state agencies would incur minimal costs amending R15-10-201.

When Rule 15-10-201 was amended effective June 13, 2001, the EIS provided that the Department, the Governor's Regulatory Review Council, and the Secretary of State's Office would incur costs because of the rulemaking. However, the EIS provided that the Department and public would benefit from increased clarity of the rule.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

3. Rules in A.A.C. Title 15, Chapter 10, Article 3

The rules in Article 3 were adopted as a group effective July 30, 1993. At the time the rules were adopted, the Department determined that the Department would incur the costs of meeting the Administrative

Procedure Act requirements, but would have time and cost savings from relieving personnel of explaining the requirements and procedures covered in the rules to taxpayers. Other state agencies would incur the costs of reviewing, publishing, or obtaining copies of the rules. The Department estimated that private entities could incur the direct cost of obtaining copies of the new rule. The Department stated that there would be no direct or indirect costs or benefits to consumers. The Department estimated that there would be no additional reporting or compliance requirements for small businesses.

R15-10-302 and R15-10-303 were amended effective December 17, 1993. In the 1993 rules package the estimated consequences to the Department, other state agencies, private entities, consumers, and small businesses were similar to those estimated at the time the rules were originally adopted.

R15-10-302 and R15-10-303 were amended effective October 4, 1996. The Department estimated that these changes would increase the number of taxpayers using electronic funds transfer to pay corporate income and withholding taxes and that the number of taxpayers using electronic funds transfer for the additional tax types would also increase. The Department estimated the lower thresholds would result in increased cash flow of an additional day's interest with a positive impact on the general fund.

Effective June 15, 1998, R15-10-301, R15-10-303, R15-10-304, R15-10-305, R15-10-306, and R15-10-307 were amended. The Department expected that the Department would incur minimal costs in meeting the Administrative Procedure Act requirements and that other state agencies would incur minimal costs in processing the rules and obtaining copies. Private entities could also incur a minimal cost in obtaining copies of the rules and changing their processing and accounting systems.

Effective June 13, 2001, Rule 15-10-307 was amended. The EIS stated that the Department, the Governor's Regulatory Review Council, the Secretary of State and businesses would incur costs associated with the rulemaking. The Department estimated that the Department and businesses would benefit from the increased clarity of the rules regarding the Department's hearing process.

Effective July 1, 2017, rules R15-10-301, R15-10-302, R15-10-303, R15-10-303, R15-10-304, R15-10-305 and R15-10-306 were amended. The EIS found the changes resulting from the rule change did not require the Department to hire additional personnel and any costs associated with the change were minimal in comparison to the anticipated economic benefit. Accordingly, the Department anticipated the rule change benefits would exceed the costs as they lead to improved cash flows.

Effective January 1, 2018, rules R15-10-302, and R15-10-303 were amended. The EIS anticipated minimal costs to the Department, as the implementation did not require any additional personnel or capital expenditures, and only minimal costs to certain taxpayers who might be affected by the rulemaking. The Department estimated the savings in processing returns and payments and increased accuracy and efficiency, would exceed the anticipated costs.

Effective October 1, 2019, rules R15-10-301 and R15-10-532 were amended. Laws 2019, 1st Reg. Sess., Ch. 273, § 32 exempted the rulemaking package from the requirements of an EIC.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

4. Rules in A.A.C. Title 15, Chapter 10, Article 4

All the rules in Article 4 were adopted as a group effective March 13, 1998. The economic impact statement estimated minimal costs to the Department for meeting Administrative Procedure Act requirements, to other state agencies for printing and obtaining copies of the rules, and to taxpayers or consumers for obtaining copies of the rules and preparing an application, as prescribed by the rules, when the reimbursement of fees and other costs is sought. Both taxpayers or consumers and the Department benefit from time and cost savings in having definitive requirements and procedures available for those who wish to apply for

reimbursement of fees and other costs relating to administrative procedures.

Rule 15-10-401 was amended effective June 13, 2001. The EIS stated that the Department, the Governor's Regulatory Review Council, the Secretary of State and businesses would incur costs associated with the rulemaking. The Department estimated that the Department and businesses would benefit from the increased clarity of the rules regarding the reimbursement of fees and other costs related to an administrative proceeding.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

5. Rules in A.A.C. Title 15, Chapter 10, Article 5

Rule 15-10-501, R15-10-502 and R15-10-503 were adopted effective November 8, 2001. The EIS estimated that the Department would incur minimal costs in meeting the Administrative Procedure Act rulemaking requirements and in changing the instructions to the Arizona tax forms. The Department was expected to experience time and cost savings in processing electronically filed returns instead of paper tax returns. Taxpayers were expected to incur minimal costs with the adoption of these rules. The EIS stated that the Secretary of State, other state agencies and the Governor's Regulatory Review Council would incur costs in noticing, printing, reviewing and analyzing the new rules. Overall, the benefits were expected to be greater than the costs.

R15-10-501 and R15-10-502 were amended effective November 4, 2003. R15-10-504 was adopted effective November 4, 2003. The EIS provided that the Department, Governor's Regulatory Review Council and the Secretary of State would incur costs because of the rulemaking. The Department stated that Department personnel would experience time and cost savings in processing electronically filed returns because the Department would not have to process any paper documents related to the electronic return.

Effective January 7, 2016, rules R15-10-501, R15-10-502 and R15-10-504 were amended. R15-10-505 was adopted effective January 7, 2016. The EIS anticipated that the Department would bear the burden of the cost and any costs to the political subdivisions would be minimal. However, the benefits to the political subdivisions of the State and current and prospective TPT license holders outweighed any associated costs. The EIS stated that the Department would experience savings in time and costs in processing license applications with the rule changes.

Effective January 1, 2018, rule R15-10-505 was amended. The EIS anticipated minimal costs to the Department, as the implementation did not require any additional personnel or capital expenditures, and only minimal costs to certain taxpayers who might be affected by the rulemaking. The Department estimated the savings in processing returns and payments and increased accuracy and efficiency would exceed the anticipated costs.

Effective October 1, 2019, rules R15-10-501 and R15-10-502 were amended. Laws 2019, 1st Reg. Sess., Ch. 273, § 32 exempted the rulemaking package from the requirements of an EIC.

Effective December 1, 2019, rules R15-10-502 and R15-10-503 were amended. The EIS found the benefits of having a simplified procedure for both filing and processing returns which piggy backed on the federal filing authorization would exceed the costs of implementation. It was anticipated that if the new rules were not adopted, taxpayers would incur costs of increased return preparation time and the Department would incur costs of providing education and customer assistance in assisting taxpayers.

Based on information received from Department personnel responsible for the administration of this Article, the Department believes that the economic impacts previously projected are accurate.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes____ No** X

No analysis regarding the Department's general administration rules impact on business competitiveness in this state compared with the impact on businesses in other states has been submitted to the Department within the last five years.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In the previous five year review the Department's anticipated amendments to the following five (5) rules, R15-10-101, R15-106, R15-10-107, R15-10-131 and R15-10-132 were not made. The Department did not seek an exception to the rule moratorium. The Department did not have available human resources and did not believe the proposed changes required immediate response but would change the rules when more substantive changes were necessary.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

After analysis, the probable benefits of all of Chapter 10's rules within this state outweigh the probable costs and the rules impose the least burden and costs to persons regulated by them, including paperwork and other costs necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** **Yes____** **No _X_**

The Department has determined after analysis that there are no federal laws that apply or correspond to the rules being reviewed.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

None of the rules being reviewed require the issuance of a regulatory permit, license or agency authorization.

14. **Proposed course of action**

The Department proposes to amend the following rules to update administrative code references, add/or delete statutory references, remove archaic language, and to update to be consistent with statute when more substantive and immediate changes to the rules are necessary.

Rules	
R15-10-101	Definitions The Department proposes to amend the rule to remove the definition of the term "day." This rule is considered unnecessary because the issues dealt with in the definition are already dealt with in statute. See A.R.S.§1-218 (filing by mail; date of filing) and A.R.S.§42-1105.02 (date of filing by electronic means; definition).
R15-10-106	Incomplete Petition The Department proposes to amend the rule to remove the term "dismiss" and replace it with the term "reject."

R15-10-107	Timeliness of Petition The Department proposes to amend rule 15-10-107(F) to include a statutory reference to A.R.S. § 42-1251(B) which prescribes the exact time for filing a petition protesting a deficiency.
R15-10-131	Review of Decision of the Hearing Officer or ALJ The Department proposes to amend the rule to add a section to clarify when a taxpayer is deemed to receive a notice and clarify when a decision is deemed to be received.
R15-10-132	Appeal of the Final Order of the Department of Revenue The Department proposes to amend this rule to remove R15-10-132(B) to allow a taxpayer to continue with its appeal to the Board of Tax Appeals or the Tax Court without the Director having to complete a review of the decision. This would reduce regulation and allow the taxpayer to continue with its appeal without delay.

Arizona Department of Revenue

FIVE-YEAR-REVIEW REPORT

Arizona Administrative Code

Title 15 Revenue
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Articles 1, 2, 3, 4 and 5

December 2024

ARTICLE 1. APPEAL PROCEDURES

R15-10-101. Definitions For purposes of this Article:

1. "ALJ" means an administrative law judge who issues decisions on behalf of the Office of Administrative Hearings established by A.R.S. § 41-1092.01.
2. "Day" means a calendar day. If the last day for filing a document under the provisions of this Article falls on a Saturday, Sunday, or legal holiday, the document is considered timely if filed on the following business day.
3. "Department" means the Arizona Department of Revenue as represented by personnel of the applicable section or area.
4. "Notice" means a written notification, issued by the Department, of a tax assessment, refund denial, or any other action taken or proposed to be taken that is subject to appeal as a contested case or an appealable agency action under A.R.S Title 41, Chapter 6.
5. "Petition" means a written request for hearing, correction, or redetermination, including all applicable attachments.
6. "Petitioner" means the taxpayer or the representative of the taxpayer who files a petition.
7. "Refund denial" means a taxpayer's claim for a refund of tax, penalty, interest, or refundable credit that has been denied by the Department.
8. "Tax assessment" means any tax issue whether associated with a proposed amount due or the application of penalties and interest.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Section repealed, new Section adopted effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-102. Scope of Article 1

A Department hearing officer shall conduct all hearings regarding the taxes under A.R.S. § 42-1101, unless A.R.S. § 41-1092.02 requires that an ALJ hear the matter.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Section repealed, new Section adopted effective December 23, 1993 (Supp. 93-4). Section repealed, new Section adopted effective January 20,

1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-103. Taxpayer Hearing Rights

With respect to a protest hearing, the taxpayer has the right, subject to confidentiality laws, to:

1. Review documents applicable to the protest, or
2. Obtain from the Department copies of documents relevant to the taxpayer at the discretion of the Hearing Officer.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-103 renumbered to R15-10-105, new Section R15-10-103 adopted effective December 23, 1993 (Supp. 93-4). R15-10-104. Repealed Historical Note Adopted effective June 22, 1981 (Supp. 81-3). Repealed effective December 23, 1993 (Supp. 93-4).

R15-10-105. Petition

A. A taxpayer may protest a tax assessment or a refund denial by filing a petition that includes the following:

1. The taxpayer's name, address, federal identification number, and all applicable state identification numbers;
2. An explanation of the difference between the taxpayer's name in the notice and the taxpayer's name in the petition, if applicable;
3. The last known name and address of both individuals if the petition concerns a married-filing-joint return;
4. A copy of the notice or a statement that references the:
    a. Tax type,
    b. Tax period involved,
    c. The amount of the tax assessment or refund claimed including tax, penalties, interest, and refundable credits, and
    d. The jurisdiction or jurisdictions to which the tax assessment or refund denial relates.
5. A statement of the amount of the tax assessment or refund denial being protested;

6. A statement of any alleged error committed by the Department in determining the tax assessment or refund denial being protested;

7. A statement of facts and legal arguments upon which the taxpayer relies to support the petition;

8. The relief sought;

9. The payment for all unprotested amounts of tax, interest, and penalties; and

10. The petitioner's signature.

B. A taxpayer may protest a matter other than a tax assessment or refund denial by filing a petition that includes the following:

1. The taxpayer's name, address, federal identification number, and all applicable state identification numbers;

2. An explanation of the difference between the taxpayer's name in the notice and the taxpayer's name in the petition, if applicable;

3. A copy of the notice or a statement describing the Department's action, proposed action, or determination for which a hearing is sought;

4. A statement of any alleged error committed by the Department in its action, including the jurisdiction or jurisdictions to which the alleged error relates;

5. A statement of facts and legal arguments upon which the taxpayer relies to support the petition;

6. The relief sought; and

7. The petitioner's signature.

C. The petitioner shall file the petition by:

1. Mailing the petition to the applicable section at the Department of Revenue headquarters in Phoenix, Arizona; or

2. Hand-delivering the petition to the applicable section at the Department of Revenue headquarters in Phoenix, Arizona. A petitioner who hand-delivers a petition shall clearly mark the envelope to indicate that it is a petition. The Department shall provide a receipt to a petitioner who hand-delivers a petition.

D. The Department shall not charge a fee for filing a petition or any supporting documents.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-105 renumbered to R15-10-107, new Section R15-10-105 renumbered from R15-10-103 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R.

R15-10-106. Incomplete Petition

A. The Department hearing officer may dismiss a petition for a hearing that does not contain all of the information required by R15-10-105, unless the petitioner completes the petition within the time allowed to file the petition under R15-10-107, including any extension.

B. The Department hearing officer may, on a showing of good cause by the petitioner, grant additional time to complete a timely-filed petition.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Section repealed, new Section adopted effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-107. Timeliness of Petition

A. A petition regarding taxes other than individual income tax is timely filed with the Department if it is filed as prescribed by R15-10-105(A) within 45 days after the taxpayer receives the tax assessment or refund denial from the Department.

B. A petition for an individual income tax assessment or refund denial is timely filed with the Department if it is filed as prescribed by R15-10-105(A) within 90 days after the Department mails a notice to the taxpayer.

C. A petition or an extension request filed by mail is considered filed on the date shown by its U.S. Postal Service postmark.

D. A taxpayer or the taxpayer's representative may request that the Hearing Office grant an extension of time to file a petition.

1. The taxpayer or the taxpayer's representative shall submit an extension request before the expiration of the time allowed for filing the petition in subsection (A) or subsection (B). The request shall be in writing and shall show good cause for the extension. The

Department may grant additional time not to exceed 60 days at the discretion of the Hearing Office or on stipulation of the parties.

2. If the Hearing Office does not grant the request for an extension in writing, the petition is due on the date specified in subsection (A) or (B).

E. The Hearing Office shall dismiss a petition which the Hearing Office determines is not timely filed.

F. If the taxpayer does not file a petition protesting a deficiency assessment within the time prescribed, the taxpayer may, after paying the tax assessment in full, apply for a refund according to statutory provisions.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-107 renumbered to R15-10-109, new Section R15-10-107 renumbered from R15-10-105 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-115. Request for Hearings; Waiver

A. The hearing officer shall schedule an oral hearing upon request of the petitioner or the Department. If neither the petitioner nor the Department requests an oral hearing, the hearing officer shall:

1. Consider the petition submitted for decision based on the petition and any memoranda filed, or

2. Schedule an oral hearing.

B. The hearing officer may, for good cause shown by any party to the hearing, postpone, recess, or continue an oral hearing to a specified date, time, and place. The hearing officer shall notify all the parties regarding a rescheduled hearing.

C. If any party to the hearing fails to appear at the oral hearing without good cause, the hearing officer may:

1. Proceed with the hearing,

2. Reschedule the hearing, or

3. Issue a decision based on the petition and memoranda provided.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-115 renumbered to R15-10-120, new Section R15-10-115 renumbered from R15-10-109 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-116. Hearing Procedure

A. The hearing officer may hold hearings:

1. In person,
2. By telephone,
3. By the submission of memoranda, or
4. By a combination of these methods.

B. For hearings by memoranda, the hearing officer shall prescribe a schedule for the submission of the memoranda.

C. The hearing officer may:

1. Conduct the hearing in an informal manner,
2. Accept a stipulation of facts,
3. Allow any party in the hearing to make an opening statement,
4. Allow each party to state its position and present evidence,
5. Allow each party to reply to any statements or arguments, and 6. Allow any party to make closing statements or arguments.

D. The hearing officer may remand any matter to the applicable section of the Department at the request of either party or at the hearing officer's discretion.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-116 renumbered to R15-10-121, new Section R15-10-116 renumbered from R15-10-112 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-117. Evidence

A. Each party to a hearing may:

1. Call and examine witnesses,

2. Introduce exhibits,

3. Cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination,

4. Dispute the testimony of any witness regardless of which party first called the witness to testify, and

5. Challenge the evidence presented.

B. The Hearing Officer shall admit any relevant evidence, but shall consider objections to the admission of and comments on the weakness of evidence in assigning weight to the evidence. The Hearing Officer may deny admission of evidence that the Hearing Officer considers irrelevant, immaterial, or unduly repetitious.

C. A party may substitute an exact copy of an original exhibit.

D. The Hearing Officer may call anyone at the hearing to testify.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-117 renumbered to R15-10-118, new Section R15-10-117 renumbered from R15-10-114 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1). R15-10-118. Expired Historical Note Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-118 renumbered to R15-10-122, new Section R15-10-118 renumbered from R15-10-117 and amended effective December 23, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 1197, effective July 7, 2015 (Supp. 15-3).

R15-10-119. Stipulation of Facts

The petitioner and the Department may file a stipulation of facts stating:

1. The facts upon which they agree,

2. The facts that are in dispute, and

3. The reasons for the dispute.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Amended effective July 24, 1986 (Supp. 86-4). Former Section R15-10-119 renumbered to R15-10-130, new Section R15-10-119 renumbered from R15-10-113 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-120. Official Notice

The Department hearing officer may take official notice of the following:

1. The records that the Department maintains,

2. Tax returns filed with the Department for or on behalf of the taxpayer or any affiliated person together with related records on file with the Department, or

3. A fact that is generally known in this state or that is capable of accurate and ready determination by reference to a source whose accuracy cannot reasonably be questioned.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-120 repealed, new Section R15-10-120 adopted effective July 24, 1986 (Supp. 86-4). Former Section R15-10-120 renumbered to R15-10-131, new Section R15-10-120 renumbered from R15-10-115 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-121. Subpoena by Petitioner

A. A petitioner requesting a subpoena shall apply, to the Hearing Officer submitting a proposed subpoena at least 10 days before the hearing.

B. The Hearing Office shall not issue a subpoena for confidential or privileged information.

Historical Note

Adopted effective June 22, 1981 (Supp. 81-3). Former Section R15-10-121 repealed, new Section R15-10-121 adopted effective July 24, 1986 (Supp. 86-4). Former Section R15-10-121 renumbered to Section R15-10-132, new Section R15-10-121 renumbered from R15-10-116 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-122. Transcripts and Records

A. The hearing officer shall record all oral hearings. Upon request of any party to the hearing, the hearing office shall provide a copy of the recording of the hearing, without charge, to the requesting party.

B. A party to an oral hearing may:

1. Transcribe the hearing at the party's own expense; and

2. Cite a transcript in any proceeding, if the party provides a full copy of the transcript to the opposing party and the hearing officer.

C. The petitioner shall not remove the records and files of the Department from the Department for use as evidence or other purposes. The Department shall, as permitted by law, provide a certified copy of Department records and files as requested by the petitioner for use in the proceedings. The Department shall provide the copy at a reasonable charge not to exceed the commercial rate for the service.

Historical Note

Renumbered from R15-10-118 and amended effective December 23, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 15 A.A.R. 2140, effective January 30, 2010 (Supp. 09-4).

R15-10-130. Decisions and Orders

A. The Hearing Officer shall issue a written decision, which sets forth the reasons for the decision, after reviewing the evidence submitted by the petitioner and the Department.

B. A decision dismissing a petition as incomplete or not timely filed shall be based on the Hearing Officer's review of the petition, documents available, and any information officially noticed.

C. The Hearing Office shall mail the decision of the Hearing Officer, by certified mail, to the last known address of the taxpayer. The Hearing Office shall immediately forward a copy of the decision to the applicable section in the Department of Revenue and to the Director.

Historical Note

Renumbered from R15-10-119 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-131. Review of Decision of the Hearing Officer or ALJ

A. The decision of the Hearing Officer or ALJ is the final order of the Department of Revenue 30 days after the taxpayer receives the decision unless prior to that time:

1. The petitioner or the Department petitions the Director to review the decision, or

2. The Director independently determines that the decision requires review.

B. The Director may grant an extension of time for filing a petition for review on a showing of good cause, if the request for an extension is in writing and is filed with the Director before the expiration of the 30-day period prescribed in subsection (A).

C. A petition or an extension request filed by mail is considered filed on the date shown by the U.S. Postal Service postmark. D. The Director may grant a review of the decision of the Hearing Officer or ALJ if one of the parties asserts that any of the following causes has materially affected the party's rights:

1. The findings of fact, conclusions of law, order, or decision are not supported by the evidence or are contrary to law;
2. The party seeking review was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct of the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Material evidence which has been newly discovered;
5. Error in admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the action; or 6. That the decision is the result of bias or prejudice.

E. The Director may independently determine to review a decision of the Hearing Officer or ALJ if it appears that any of the causes listed in subsection (D) may have materially affected a party's rights.

F. The petition for review of the Hearing Officer's or ALJ's decision shall be in writing, shall state the grounds upon which the petition is based, and the Director may grant leave to amend the petition at any time before it is ruled upon by the Director. At the time of filing, the petitioning party shall also serve a copy of the petition on the other party.

G. If the Director has independently determined that the decision requires review, the Director shall send, by certified mail, notification of intent to review to the taxpayer, not more than 30 days after the taxpayer's receipt of the Hearing Officer's or ALJ's decision.

H. On petition for review, or on the Director's independent review:

1. The Director may open the decision of the Hearing Officer or ALJ, take additional evidence, amend findings of fact and conclusions of law, or make new findings and conclusions, and issue a new decision;

2. The Director may issue a decision that summarily affirms the decision of the Hearing Officer or ALJ; or

3. The Director may remand any matter to the Hearing Office, the Office of Administrative Hearings, or the appropriate section or area of the Department at the request of either party or at the Director's discretion.

I. The Director's decision shall be sent by certified mail to the taxpayer, at the taxpayer's last known address.

J. The taxpayer may appeal a Director's decision or a decision that is final according to subsection (A) to the State Board of Tax Appeals or tax court under R15-10-132.

Historical Note

Renumbered from R15-10-120 and amended effective December 23, 1993 (Supp. 93-4). Amended effective October 11, 1995 (Supp. 95-4). Amended effective January 20, 1998 (Supp. 98-1).

R15-10-132. Appeal of the Final Order of the Department of Revenue

A. Within 30 days of the date an order of the Department becomes final, a taxpayer disputing the final order of the Department of Revenue may:

1. File an appeal with the State Board of Tax Appeals, or

2. Bring an action in tax court, unless the case involves an individual income tax dispute of less than $5,000.

B. If the Director is reviewing the Hearing Officer's or ALJ's decision under R15-10-131, such review by the Director shall be completed before an appeal can be taken to the State Board of Tax Appeals or an action can be brought in tax court.

Historical Note

Renumbered from R15-10-121 and amended effective December 23, 1993 (Supp. 93-4). Amended effective January 20, 1998 (Supp. 98-1).

ARTICLE 2. ADMINISTRATION

R15-10-201. Closing Agreements Relating to Tax Liability

A. A closing agreement under A.R.S. § 42-1113 or A.R.S. § 42- 2056 may relate to any taxable period.

1. The Department and a taxpayer may enter into a closing agreement for:

a. A taxable period that ends before the date of the agreement that: i. Relates to one or more separate items affecting the liability of the taxpayer, or ii. Relates to the total liability of the taxpayer.

b. A taxable period that ends after the date of the agreement only if the agreement relates to one or more separate items affecting the liability of the taxpayer.

2. The Department and the taxpayer may enter into a closing agreement even if under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates.

3. The Department and a taxpayer may enter into more than one closing agreement for a taxable period relating to the liability of the taxpayer.

B. A closing agreement shall be in writing and shall state the conditions of the agreement.

C. A closing agreement is not effective until it is signed by the taxpayer or an authorized representative of the taxpayer and by an authorized representative of the Department.

Historical Note

Adopted effective September 16, 1987 (Supp. 87-3). Former Section R15-10-201 renumbered to R15-5-2207 (Supp. 94-1).New Section R15-10-201 renumbered from R15-2-231 (Supp. 94-1). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

ARTICLE 3. AUTHORIZED TRANSMISSION OF FUNDS

R15-10-301. Definitions In this Article:

1. “ACH” means an automated clearing house that is a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.

2. “ACH credit” means an electronic funds transfer generated by a payor, cleared through an ACH for deposit to the Department account.

3. “ACH debit” means an electronic transfer of funds from a payor’s account, as indicated on a signed authorization agreement, that is generated at a payor’s instruction on AZTaxes.gov and cleared through an ACH for deposit to the Department account.

4. “Addenda record” means the information required by the Department in an ACH credit transfer or wire transfer, in the approved electronic format prescribed in R15-10- 306(B).

5. “ALTO” is the Arizona Luxury Tax Online web site, luxury.aztaxes.gov or such other web site as the Department may determine from time to time, and means the Department’s luxury taxpayer service center web site that provides luxury taxpayers with the ability to conduct transactions, make electronic funds transfer payments and review tax account information over the internet.
6. “Authorized means of transmission” means the deposit of funds into the Department account by electronic funds transfer.
7. “AZTaxes.gov” means the Department’s taxpayer service center web site, or such other web site as the Department may determine from time to time, that provides taxpayers with the ability to conduct transactions, make electronic funds transfer payments and review tax account information over the internet.
8. “Cash Concentration or Disbursement plus” or “CCD plus” means the standardized data format approved by the National Automated Clearing House Association for remitting tax payments electronically.
9. “Department” means the Arizona Department of Revenue.
10. “EFT Program” means the payment of taxes by electronic funds transfer as specified by this Article.
11. “Electronic Funds Transfer” or “EFT” means the electronic transfer of funds from one bank account to another via computer based systems, where the person initiating the transfer orders, instructs, or authorizes a financial institution to debit or credit an account using the methods specified in these rules.
12. “Financial institution” means a state or national bank, a trust company, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union.
13. “Marketplace facilitator” has the same meaning as prescribed in A.R.S. § 42-5001.
14. “Payment information” means the data that the Department requires of a payor making an electronic funds transfer payment.
15. “Payor” means a taxpayer or payroll service.
16. “Payroll service” means a third party, under contract with a taxpayer to provide tax payment services on behalf of the taxpayer.
17. “Remote seller” has the same meaning as prescribed in A.R.S. § 42-5001.
18. “State Servicing Bank” means a bank designated under A.R.S. Title 35, Chapter 2, Article 2.

19. “Tax type” means a tax that is subject to electronic funds transfer, each of which shall be considered a separate category of payment. 20. “Wire transfer” or “Fedwire” means an instantaneous electronic funds transfer initiated by a payor.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2). Amended by exempt rulemaking at 25 A.A.R. 3023, effective October 1, 2019 (Supp. 19-3).

R15-10-302. General Requirements

A. For tax periods beginning on or after January 1, 1997, corporations that had an Arizona income tax liability during the prior tax year of $20,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.

B. For tax periods beginning on or after July 1, 2017, taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $5,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission.

C. The average Arizona quarterly withholding tax liability is determined by dividing the taxpayer’s total Arizona withholding tax liability for the calendar year by 4.

D. For tax periods beginning on and after July 1, 2017, any taxpayer who under A.R.S. Title 42 Chapter 5 and Chapter 6, Articles 1 and 3, had an annual tax liability during the prior calendar year of $20,000 or more shall remit these tax payments by an authorized means of transmission.

E. For tax periods after July 1, 2015, tobacco tax taxpayers are required to remit tobacco tax payments by an authorized means of transmission.

F. Unless otherwise waived, according to A.R.S. § 42-1129, for tax periods beginning on or after the following tax years, any taxpayer, other than an individual income taxpayer, that had a tax liability equal to or more than the following amounts during the prior tax year or that can reasonably anticipate tax liability in the current tax year exceeding the following amounts, shall remit tax payments to the Department by an authorized means of transmission. For periods on or after:

1. January 1, 2018, prior tax year or expected current year tax liability of $20,000;
2. January 1, 2019, prior tax year or expected current year tax liability of $10,000;

3. January 1, 2020, prior tax year or expected current year tax liability of $5,000;

4. January 1, 2021, prior tax year or expected current year tax liability of $500.

G. For tax periods beginning on and after October 1, 2019, marketplace facilitators and remote sellers who, at the time of registering for a transaction privilege tax license, can reasonably anticipate their tax liability will exceed the thresholds detailed in subsection (F) above are required to remit any applicable taxes to the Department by an authorized means of transmission, unless granted a waiver according to A.R.S. § 42-1129.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective December 17, 1993 (Supp. 93-4). Amended effective October 4, 1996 (Supp. 96-4). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 23 A.A.R. 3308, effective January 1, 2018 (Supp. 17-4). Amended by exempt rulemaking at 25 A.A.R. 3023, effective October 1, 2019 (Supp. 19-3).

R15-10-303. Voluntary Participation

A. For tax periods beginning on or after January 1, 1997, a taxpayer who, during the prior tax year, had a corporate income tax liability of less than $20,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

B. For tax periods beginning on or after July 1, 2017, a taxpayer who, during the prior tax year, had an average quarterly withholding tax liability of less than $5,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

C. For tax periods beginning on and after July 1, 2017, any taxpayer who has a liquor tax liability may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

D. For tax periods beginning on and after July 1, 2017, any taxpayer who, under Title 42 Chapter 5 and Chapter 6, Articles 1 and 3, had an annual tax liability of less than $20,000 during the prior calendar year may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10- 304.

E. For tax periods beginning on or after January 1, 2018, any taxpayer, other than an individual income taxpayer, that does not meet the statutory requirements under A.R.S. § 42-1129 and A.A.C. R15-10-302(F) to remit tax payments to the Department electronically, may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10- 304.

F. A taxpayer authorized to participate in the EFT Program shall provide at least 30 days prior written notice to the Department if the taxpayer elects to cease voluntary participation in the EFT Program.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective December 17, 1993 (Supp. 93-4). Amended effective October 4, 1996 (Supp. 96-4). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 23 A.A.R. 3308, effective January 1, 2018 (Supp. 17-4).

R15-10-304. Authorization Agreement

A. The payor shall register for an account and complete an electronic funds transfer authorization agreement on AZTaxes.gov, ALTO or ACH Credit Form prescribed by the Department, as applicable, or such other form prescribed by the Department at least 30 days prior to initiation of the first applicable transaction. The form shall include the following information:

1. Name and address of the taxpayer;
2. The taxpayer's tax identification number including a federal identification number, withholding tax identification number, transaction privilege tax identification number or other tax identification number, as appropriate;
3. Name and phone number of taxpayer's EFT contact person;
4. Name and address of any payroll service, if applicable;
5. Name and phone number of the payroll service's EFT contact person, if applicable;
6. For payments initiated on AZTaxes.gov or ALTO, the information must include the type of bank account, the bank account number and the bank routing transit number.

B. A payor shall submit a revised authorization agreement to the Department at least 30 days prior to any change in the information required in subsection (A).

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2).

R15-10-305. Methods of Electronic Funds Transfer

A. Payors shall use the ACH debit transfer method available through registration on AZTaxes.gov or ALTO to remit payment by electronic funds transfer unless the Department grants permission to use the ACH credit method.

B. The Department may authorize under a form prescribed by the Department in R15-10-304 the use of the ACH credit method for payors desiring to use this method. A payor that chooses to use the ACH credit method shall provide the payment information required in R15-10-306(B)(2).

C. The Department may withdraw permission to use the ACH credit method of payment if the payor shows disregard for the requirements and specifications of these rules by failing to:

1. Make timely electronic funds transfer payments,
2. Provide timely payment information,
3. Provide the required addenda record with the electronic funds transfer payment, or
4. Make correct payment.

D. Payors who are unable to use their established method of payment may request that the Department accept deposits to the Department account via wire transfer in accordance with the following:

1. The payor shall contact the Department, and obtain verbal approval to wire transfer the tax payment to the Department account prior to initiating the transmission.
2. Approved wire transfers shall be accompanied by an addenda record, that includes the same information required for ACH credit transfers under R15-10- 306(B)(2).

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2).

R15-10-306. Procedures for Payment

A. Payors using the ACH Debit Method shall log in to their account on AZTaxes.gov or ALTO as appropriate and, unless registering for the first time, shall arrange for electronic payment of the applicable taxes no later than the time prescribed by the AZTaxes.gov or ALTO on the last

business day before the due date of the payment. Payment information shall be communicated automatically to the Department through AZTaxes.gov or ALTO, as applicable, once payment arrangements have been made by payors and accepted by AZTaxes.gov or ALTO.

B. Payors authorized to use the ACH credit method shall initiate payment transactions directly with a financial institution in a timely manner to ensure that the payment is deposited to the Department account on or before the payment due date.

1. All ACH credit transfers shall be in the CCD-plus addenda format. Payments not in this format may be rejected.

2. The addenda format, as specified in subsection (B)(1), shall include the following information:

a. Taxpayer identification number,

b. Tax type,

c. Payment amount,

d. Tax period,

e. Taxpayer verification number,

f. Department account number, and g. American Bank Association 9-digit number of the receiving bank.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 23 A.A.R. 1899, effective July 1, 2017 (Supp. 17-2).

R15-10-307. Timely Payment

A. A taxpayer remitting a tax payment through an electronic funds transfer shall initiate the transfer so that the payment is deposited to the Department account on or before the payment due date.

B. If a tax due date falls on a Saturday, Sunday, or legal holiday, the deposit by an electronic funds transfer shall be made no later than 5:00 p.m. on the next banking day.

C. A taxpayer required to, or who voluntarily elects to, participate in the EFT Program is subject to the penalty prescribed by A.R.S. § 42-1125(D) if the payment is not deposited to the Department account on or before the payment due date.

Historical Note

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

ARTICLE 4. REIMBURSEMENT OF FEES AND OTHER COSTS RELATED TO AN ADMINISTRATIVE PROCEEDING

R15-10-401. Application for Reimbursement of Fees and Other Costs Related to an Administrative Proceeding

A. To apply for reimbursement of reasonable fees and other costs, as provided in A.R.S. § 42-2064, a taxpayer shall file a written application with the Department's problem resolution officer.

B. An application shall include the following:

1. Taxpayer's name, address, and identification number;
2. Identification of the tax type and the administrative proceeding for which reimbursement is sought;
3. An explanation of why the taxpayer alleges that the position of the Department in the administrative proceeding was not substantially justified;
4. If multiple issues were presented in the administrative proceeding and the taxpayer did not prevail on all issues, an explanation of:
    a. The issue or set of issues on which the taxpayer prevailed,
    b. The issue or set of issues on which the taxpayer did not prevail, and
    c. The issue or set of issues on which the taxpayer prevailed and why the issue or set of issues presented in the administrative proceeding is the most significant.
5. A statement that the taxpayer did not unduly and unreasonably protract the administrative proceeding for which reimbursement is sought;
6. A statement that the reason the taxpayer prevailed is not due to an intervening change in the applicable law; and
7. A detailed explanation of the nature and amount of each specific item for which reimbursement is sought.

C. An application may also include any other matters that the taxpayer wishes the Department's problem resolution officer to consider in determining whether and in what amount reimbursement should be made.

D. The taxpayer shall sign the application and verify under penalty of perjury that the information provided in the application and any accompanying material is accurate and complete.

E. If a paid representative of the taxpayer prepares the application, the representative shall also sign the application and verify under penalty of perjury that the information provided in the application and all accompanying material is accurate and complete.

F. Fees and costs incurred in making application for reimbursement or regarding an appeal of a decision for reimbursement do not relate to an administrative proceeding in connection with an assessment, determination, collection, or refund of tax and are not reimbursable.

Historical Note

Adopted effective March 13, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 2900, effective June 13, 2001 (Supp. 01-2).

R15-10-402. Documentation of Payment of Fees and Other Costs

The taxpayer shall submit with the application documentation which shows payment of the fees and costs for which the taxpayer seeks reimbursement. The taxpayer shall submit a separate itemized statement for each firm or individual that provided services covered by the application. The itemized statement shall show the hours spent in connection with the administrative proceeding by each individual, a description of the specific services performed, and the rates used in computing each fee. Each statement shall reflect payment or the taxpayer shall attach proof of payment to the statement. Separate, itemized statements of any other costs incurred by the taxpayer, together with proof of payment, shall also accompany an application.

Historical Note

Adopted effective March 13, 1998 (Supp. 98-1).

R15-10-403. Filing an Application

A. A taxpayer shall file an application for reimbursement of fees and other costs only after the conclusion of administrative proceedings, but not later than 30 days after the conclusion of administrative proceedings.

B. For purposes of this rule, the conclusion of administrative proceedings is determined as follows:

1. For a decision of a hearing officer or administrative law judge, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the decision unless, within the 30-day period, one of the following occurs:

a. The taxpayer appeals the decision, or any part of the decision, to the State Board of Tax Appeals;

b. The taxpayer or the Department petitions the Director to review the decision, or any part of the decision;

c. The Director independently determines that the decision, or any part of the decision, requires review.

2. When a decision of a hearing officer or administrative law judge is subject to a review by the Director, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the Director's decision unless, within the 30-day period, the taxpayer appeals the decision, or any part of the decision to the State Board of Tax Appeals.

3. When a taxpayer appeals a decision, or any part of a decision, to the State Board of Tax Appeals, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the decision of the State Board of Tax Appeals.

Historical Note

Adopted effective March 13, 1998 (Supp. 98-1).

R15-10-404. Decisions

A. The Department's problem resolution officer shall issue a written decision on each application for reimbursement of fees and other costs. The problem resolution officer shall issue the decision within 30 days after receipt of the application and shall set forth the reason for the decision.

B. The problem resolution officer's decision is issued when mailed to the taxpayer's address furnished in the application.

Historical Note

Adopted effective March 13, 1998 (Supp. 98-1).

ARTICLE 5. ELECTRONIC FILING PROGRAM

R15-10-501. Definitions

In addition to the definitions provided in A.R.S. §§ 42-1101.01, 42- 1103.01, 42-1103.02, 42-1103.03, and 42-1105.02, unless the context provides otherwise, the following definitions apply to this Article and to A.R.S. Title 42, Chapter 2:

1. "AZTaxes.gov" means the Department's taxpayer service center web site that provides taxpayers with the ability to conduct transactions and review tax account information over the internet.
2. "Authorized user" means an individual, primary user, or delegate user, including a return preparer or electronic return preparer, who has been granted authority by the taxpayer, an owner of the taxpayer or an authorized officer of the taxpayer to access taxpayer information available on AZTaxes.gov.
3. "Bulk Transmitter" is an electronic return transmitter that submits multiple electronic returns, statements or other documents to the Department for filing or processing at one time.
4. "Delegate user" means a registered customer of AZTaxes.gov, other than a primary user, who is authorized by a taxpayer, an owner of the taxpayer or an authorized officer of the taxpayer to access the taxpayer's account information on AZTaxes.gov. A Delegate user who uses a PIN to sign and file transaction privilege or use tax returns on behalf of a taxpayer shall be presumed to be authorized by that taxpayer to take such action on behalf of the taxpayer.
5. "Department" means the Arizona Department of Revenue.
6. "Electronic return preparer" has the same meaning as prescribed in A.R.S. § 42-1101.01.
7. "Electronic return, statement or other document" means all data entered into a return, statement, or other document that is prepared using computer software and transmitted electronically to the Department.
8. "Electronic return transmitter" includes a person who is part of the chain of transmission of an electronic return, statement, or other document from the taxpayer or from an electronic return preparer to the Department even though the person did not receive the transmitted return, statement, or other document directly from the taxpayer or electronic return preparer.
9. "Electronic signature" has the same meaning as prescribed in A.R.S. § 18-106.

10. “License” means one or more transaction privilege, use, or withholding tax licenses or registrations obtained from the Department by completing and submitting a mail-in paper application or by completing the AZTaxes.gov registration process and, where applicable, submitting an executed AZTaxes.gov Registration Signature Card.
11. “Marketplace facilitator” has the same meaning as prescribed in A.R.S. § 42-5001.
12. “PIN” means a user-created personal identification number made up of a prescribed number of characters and used as an electronic signature to sign returns, statements or other documents submitted to the Department through AZTaxes.gov or by any other electronic means.
13. “Primary user” means the taxpayer, an owner of the taxpayer or any authorized officer of the taxpayer who registers to use AZTaxes.gov. A primary user has the unlimited ability to access the taxpayer’s online accounts, conduct online transactions for the taxpayer, designate delegate users, specify the level of access granted to a delegate user and modify or terminate the access of any delegate user.
14. “Registered customer” means any individual who has, by means of providing specific information requested by the Department through the AZTaxes.gov registration process, selected a username and password entitling that individual to conduct transactions and access information through AZTaxes.gov.
15. “Remote seller” has the same meaning as prescribed in A.R.S. § 42-5001.
16. “Return preparer” has the same meaning as prescribed in A.R.S. § 42-1101.01.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5383, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5044, effective November 4, 2003 (Supp. 03-4). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 116, effective January 7, 2016 (Supp. 16-1). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 1852, effective June 24, 2016 (Supp. 16-2). Amended by exempt rulemaking at 25 A.A.R. 3023, effective October 1, 2019 (Supp. 19-3).

R15-10-502. Recordkeeping Requirements

For each electronic return of income tax or withholding tax filed with the Department, the electronic return preparer shall keep the documents listed in A.R.S. § 42-1105(F) for four years

following the later of the date on which the return was due to be filed with the Department or was presented to the taxpayer for signature.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5383, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5044, effective November 4, 2003 (Supp. 03-4). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 116, effective January 7, 2016 (Supp. 16-1). Amended by final rulemaking at 25 A.A.R. 3057, effective December 1, 2019 (Supp. 19-4).

R15-10-503. Electronic Signatures for Income Tax Returns

A. If a taxpayer electronically signs the taxpayer's federal income tax return, the taxpayer may elect to use the electronic signature from the federal return to sign the taxpayer's Arizona income tax return. By electing to use the federal electronic signature for the Arizona electronic return, the taxpayer is declaring, under penalties of perjury, that the electronic return is, to the best of the taxpayer's knowledge and belief, true, correct, and complete.

B. A taxpayer makes an election under subsection (A) by doing the following:

1. If the taxpayer is preparing the taxpayer's Arizona electronic return, the taxpayer makes the election by signifying the election during the electronic filing process.

2. If the taxpayer uses an electronic return preparer to prepare the taxpayer's Arizona electronic return, the taxpayer makes the election by:

a. Signifying the election during the electronic filing process, or

b. Authorizing, in writing on a form prescribed by the Department, the electronic return preparer to make the election on behalf of the taxpayer.

C. A taxpayer that does not elect to electronically sign the taxpayer's electronic federal income tax return shall not electronically sign the taxpayer's electronic Arizona income tax return.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5383, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 3057, effective December 1, 2019 (Supp. 19-4).

R15-10-504. Electronic Signatures for Withholding Tax

A. A taxpayer that has obtained a withholding tax license from the Department shall do the following to become a registered customer of the AZTaxes.gov web site:

1. Provide the following information during the AZTaxes.gov web site registration process:

a. The legal name of the registrant and any one of the following numbers:

i. The registrant's federal employer identification number, and

ii. The registrant's social security number, if the registrant is a sole proprietor, or

iii. Any other identification number assigned to the registrant by the Department or the Internal Revenue Service for the purpose of electronic filing.

b. The registrant's e-mail address,

c. Agree to the Department's Terms of Service, and

2. Submit to the Department an executed AZTaxes.gov Registration Signature Card as evidence of the following:

a. If submitted during web site registration, the information provided during the AZTaxes.gov registration process is true and correct,

b. If previously submitted, the information contained in the Arizona Joint Tax Application or submitted during the online business registration is true and correct, and

c. The signatory is duly authorized to act on behalf of the business, receive confidential information, and waive any rights of confidentiality.

B. A taxpayer that has not obtained a withholding tax license from the Department shall do the following to become a registered customer of the AZTaxes.gov web site:

1. Obtain a withholding tax license by completing either the mail-in Arizona Joint Tax Application or the online business registration,

2. Provide the following information during the AZTaxes.gov web site registration process:

a. The legal name of the registrant and any one of the following numbers:

i. The registrant's federal employer identification number,

ii. The registrant's social security number, if the registrant is a sole proprietor, or

iii. Any other identification number assigned to the registrant by the Department or the Internal Revenue Service for the purposes of electronic filing, and

3. Submit to the Department either the executed, mail-in Arizona Joint Tax Application or the AZTaxes.gov Registration Signature Card as evidence of the following:

a. If submitted during web site registration, the information provided during the AZTaxes.gov registration process is true and correct,

b. The information contained in the Arizona Joint Tax Application or submitted during the online business registration is true and correct, and

c. The signatory is duly authorized to act on behalf of the business, receive confidential information, and waive any rights of confidentiality.

C. A taxpayer or authorized user shall use the taxpayer's signature on the document submitted under subsection (B)(3) to electronically sign a taxpayer's electronic withholding tax returns. Use of the taxpayer's signature is the taxpayer's declaration, under penalties of perjury that the electronic return is, to the best of the taxpayer's knowledge and belief, true, correct, and complete.

D. To file an electronic withholding tax return under subsection (C):

1. If the taxpayer is preparing the taxpayer's electronic return, the taxpayer, shall access the AZTaxes.gov web site and electronically file the return.

2. If the taxpayer's authorized user is preparing the taxpayer's electronic return, the taxpayer shall:

a. Access the AZTaxes.gov web site and electronically file the return, or

b. Authorize, in writing on a form prescribed by the Department, the authorized user to access the taxpayer's account on the AZTaxes.gov web site and electronically file the return on behalf of the taxpayer.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5044, effective November 4, 2003 (Supp. 03-4). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 116, effective January 7, 2016 (Supp. 16-1).

R15-10-505. Electronic Signatures for Transaction Privilege and Use Tax

A. As a registrant for AZTaxes.gov, a taxpayer, primary user or delegate user shall do the following to become a registered customer of AZTaxes.gov for transaction privilege and use tax purposes:

1. Provide the registrant's legal name and e-mail address,

2. Create a unique username and password entitling the registrant access to AZTaxes.gov,

3. Select a prescribed number of security questions and submit their answers,

4. Create a PIN, and

5. Agree to the Department's Terms of Service.

B. By becoming a registered customer of AZTaxes.gov and continuing to use AZTaxes.gov, the registrant declares that:

1. The information provided during the AZTaxes.gov registration process is accurate and complete, and

2. If a mail-in paper application was previously submitted, the information contained in the application is accurate and complete.

C. A taxpayer that has not obtained a transaction privilege or use tax license from the Department shall obtain a license by completing either the mail-in paper application or the AZTaxes.gov online application. From and after January 9, 2016, a taxpayer, primary user or delegate user may use the PIN created according to subsection (A)(4) to electronically sign the taxpayer's online application.

D. A delegate user shall do the following to become associated with a taxpayer on the AZTaxes.gov web site:

1. Provide answers to prescribed questions about the taxpayer if the taxpayer has a license, or

2. Complete the online or mail-in paper application and provide answers to prescribed questions about the taxpayer.

E. If filing a taxpayer's transaction privilege or use tax return by electronic means, an authorized user shall, from and after July 5, 2016, use the authorized user's PIN to electronically sign a taxpayer's electronic transaction privilege tax or use tax returns. By using the PIN, the

authorized user declares under penalties of perjury that the electronic return is, to the best of the authorized user's knowledge and belief, true, correct, and complete.

F. To file an electronic transaction privilege or use tax return under subsection (E) above, a taxpayer, primary user, or delegate user preparing the electronic return may access AZTaxes.gov and electronically file the return after signing the return with the PIN created under subsection (A)(4).

G. From and after July 5, 2016, unless otherwise required by Article 3 of this Title and Chapter, an authorized user may pay its transaction privilege and use tax liability by electronic check.

H. For tax periods beginning on or after the following years, any taxpayer that, under A.R.S. Title 42 Chapters 5 and 6, had total annual tax liability of at least the following amounts during the prior tax year or can reasonably anticipate that its current year tax liability will exceed the following amounts, shall, unless otherwise waived according to A.R.S. § 42-5014, file the required return using an electronic filing program established by the Department. For periods on or after:

1. January 1, 2018, prior tax year or expected current year total tax liability of $20,000;

2. January 1, 2019, prior tax year or expected current year total tax liability of $10,000;

3. January 1, 2020, prior tax year or expected current year total tax liability of $5,000;

4. January 1, 2021, prior tax year or expected current year total tax liability of $500.

I. For tax periods beginning on and after October 1, 2019, marketplace facilitators and remote sellers who, at the time of registering for a transaction privilege tax license, can reasonably anticipate their tax liability will exceed the thresholds detailed in subsection (G) above shall, unless granted a waiver or if instructed to file by paper by the Department according to A.R.S. § 42-5014, file the required return using an electronic program established by the Department.

J. Any taxpayer that, under A.R.S. Title 42 Chapters 5 and 6, was required to file a return using an electronic filing program according to subsection (H) or (I) of this rule and that fails to do so after notice and demand by the Department shall, unless reasonable cause exists, be subject to the penalty imposed under A.R.S. § 42-1125(X) and (Y).

Historical Note

New Section made by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 116, effective January 7, 2016 (Supp. 16-1). Amended by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 1852, effective June 24, 2016 (Supp. 16-2). Amended by final rulemaking

at 23 A.A.R. 3308, effective January 1, 2018 (Supp. 17-4). Amended by exempt rulemaking at 25 A.A.R. 3023, effective October 1, 2019 (Supp. 19-3).

R15-10-506. Transaction Privilege and Use Tax Electronic File Bulk Transmitters

A. A transaction privilege and use tax Bulk Transmitter shall complete and submit to the Department an application to participate in the Department's bulk electronic filing program as a direct transmitter of transaction privilege or use tax returns. The application shall contain the following information:

1. The company name;

2. The product name, software ID and specifications;

3. The company's website address and IP address or addresses;

4. Contact name and information; and

5. Such other information as the Department may require to be completed from time to time in its application form.

B. As part of the application process the Bulk Transmitter shall sign a memorandum of understanding with the Department outlining the terms under which it will be allowed to transmit electronic returns directly to the Department.

C. After the application is reviewed by the Department, the Bulk Transmitter shall submit any software it created or will use for the transmittal process to the Department for testing and certification.

D. Upon certification by the Department, the Department shall issue authorization codes to the Bulk Transmitter for the purpose of accessing its servers.

Historical Note

New Section made by exempt rulemaking under Laws 2014, Ch. 263, § 25 at 22 A.A.R. 1852, effective June 24, 2016 (Supp. 16-2).

Arizona Department of Revenue

FIVE-YEAR-REVIEW REPORT

Authorizing General and Specific Arizona Revised Statutes

Title 15 Revenue
Chapter 10 Department of Revenue
General Administration

Articles 1, 2, 3, 4 and 5

December 2024

42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.

2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.

3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.

4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.

5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.

6. Provide such assistance to the governor and the legislature as they may require.

7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

41-1003 Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

42-1103.03. Suspension from electronic filing program

A. The department may suspend an electronic return preparer from participating in the electronic filing program if the department determines that the electronic return preparer has failed to comply with any of the department's electronic filing program requirements, including requirements that are set forth in rules, manuals, rulings or procedures prescribed by the department for the program.

B. Within one hundred eighty days of the mailing date of the notice of suspension from the electronic filing program, the electronic return preparer may petition the department to review the action taken pursuant to section 42-1251. The petition shall set forth the reasons why the suspension should be lifted. Within fifteen days after the request for review, the department shall determine whether the suspension should be lifted.

C. Within thirty days after the department notifies the electronic return preparer of the determination under subsection B of this section, the electronic return preparer may bring a civil action in tax court for a determination under this subsection. Within twenty days after service of process is made on the department, the tax court shall determine whether the suspension should be lifted. If the electronic return preparer requests an extension of the twenty day period and establishes reasonable grounds why an extension should be granted, the court may grant an extension of not more than forty additional days. A determination made by the tax court under this subsection is final except as provided in section 12-170, subsection C.

42-1105. Taxpayer identification, verification and records; retention

A. The federal taxpayer identification number, assigned pursuant to section 6109 of the internal revenue code, is the taxpayer identifier for purposes of the taxes administered pursuant to this article. Each person who is required to make a return, statement or other document shall include the identifier in order to secure the person's proper identification. If the return, statement or other document is made, electronically or otherwise, by another person on behalf of the taxpayer, the

taxpayer shall furnish the identifier to the other person, and the person shall furnish both the taxpayer's identifier and the person's own identifier with the return, statement or document.

B. The department may prescribe by administrative rule alternative methods for signing, subscribing or verifying a return, statement or other document required or authorized to be filed with the department that have the same validity and consequence as the actual signature or written declaration of the taxpayer or other person required to sign, subscribe or verify the return, statement or other document. While the department is adopting a rule prescribing alternative methods for signing, subscribing or verifying a return, statement or other document, the director, by tax ruling, may waive the requirement of a signature for a particular type or class of return, statement or other document required to be filed with the department. This subsection does not apply if the alternative method for signing a return, statement or other document is an electronic signature. The department shall accept or require electronic signatures in the manner prescribed in section 42-1131. For purposes of this subsection, "tax ruling" has the same meaning prescribed in section 42-2052.

C. A person who is a return preparer or an electronic return preparer shall furnish a completed copy of the return, statement or other document to the taxpayer no later than the time the return, statement or other document is presented for the taxpayer's signature.

D. Except as provided in section 42-3010, every person who is subject to the taxes administered pursuant to this article shall keep and preserve copies of filed tax returns, including any attachments to the tax return, any signature documents used for the tax return, suitable records and other books and accounts necessary to determine the tax for which the person is liable for the period prescribed in section 42-1104. The books, records and accounts shall be open for inspection at any reasonable time by the department or its authorized agent.

E. Except as provided in section 42-3010, a return preparer or electronic return preparer shall keep copies of the return, statement or other document for six years for transaction privilege and use tax returns and four years for all other returns, statements and other documents following the date on which the return, statement or other document was due to be filed or was presented to the taxpayer for signature, whichever is later.

F. Except as provided in section 42-3010, the department may require by administrative rule electronic return preparers to keep for each prepared return, statement or other document the following documents for six years for transaction privilege and use tax returns and four years for

all other returns, statements and other documents following the later of either the date on which the return, statement or other document was due to be filed with the department or was presented to the taxpayer for signature:

1. The signature document or tax return form bearing the taxpayer's original signature in a manner prescribed by the department by administrative rule or tax ruling.

2. Any attachments to the return, statement or other document required to be submitted to the department if the return, statement or other document had not been electronically transmitted to the department.

G. The operator of a swap meet, flea market, fair, carnival, festival, circus or other transient selling event shall maintain a current list of vendors conducting business on the premises as sellers. The list shall include each vendor name, business name and business address. On written notice, the department may require an operator to submit a copy of the list at any time to the department.

H. For at least the period of time prescribed by section 42-1104, the department shall retain any return, statement or other document as a record pursuant to sections 41-151.14, 41-151.15, 41-151.16, 41-151.17 and 41-151.19. Anything submitted with the return, statement or other document that is not required, authorized or requested by the department is not part of the record and may be destroyed, unless it is, at the department's reasonable discretion, of more than de minimis value. Copies of original documents of which the department reasonably expects the taxpayer has retained any originals are presumed to be of de minimis value for purposes of this section. If the department determines that any document that is not required, authorized or requested by the department pursuant to this subsection is of more than de minimis value, within ten days after receipt the department shall notify the taxpayer in writing or by electronic means of its intent to destroy the document. If the taxpayer requests the return of any document included in the notice, the department shall immediately comply, although the director may require the taxpayer to pay any shipping costs to return the document. If the taxpayer does not request the return of the documents within thirty days after the date on the notice or the taxpayer consents to the destruction of the documents, whichever occurs first, the department may destroy the documents included in the notice.

42-1105.01. Signatures; return preparers and electronic return preparers; definition

Any person who is a return preparer or an electronic return preparer shall sign the prepared return, statement or other document according to the department's administrative rules or tax rulings. For the purposes of this section, "tax ruling" has the same meaning prescribed in section 42-2052.

42-1105.02. Date of filing by electronic means; definitions

A. Any return, statement or other document that is electronically filed pursuant to an electronic filing program established by the department shall be deemed filed and received by the department on the date of the electronic postmark. If the taxpayer and the electronic return preparer or the electronic return transmitter are in different time zones, it is the taxpayer's time zone, as determined by the taxpayer's address, that controls the timeliness of the electronically filed return, statement or other document. When a return, statement or other document has been electronically received on the host system of more than one electronic return preparer or electronic return transmitter during its ultimate transmission to the department, the return, statement or other document shall be deemed filed and received by the department on the date of the earliest electronic postmark.

B. Any return, statement or other document that is filed under subsection A of this section and that is not received by the department shall be deemed filed and received on the date of the electronic filing, as evidenced by the electronic postmark if the sender:

1. Establishes the date of the electronic filing.
2. Files a duplicate filing with the department within ten days after the department notifies the sender in writing of the nonreceipt of the filing.

C. If the due date of any return, statement or other document filed under subsection A of this section falls on a Saturday, Sunday or legal holiday, the filing shall be considered timely if it is performed on the next business day.

D. In this section, unless the context otherwise requires:

1. "Electronic filing program" means any program established by the department that authorizes the electronic filing of a return, statement or other document.

2. "Electronic postmark" means a record of the date and time in a particular time zone that the return, statement or other document is electronically received on the host system of the electronic return preparer or electronic return transmitter that participates in the transmission of the electronic return, statement or other document to the department.

42-1113. Closing agreements

The department or any person authorized in writing by the department may enter into a written agreement with a taxpayer relating to the liability of the taxpayer, or relating to the liability of the person or estate for whom he acts, in respect of any tax administered pursuant to this article for any taxable period. If an agreement is approved by the department within the time stated in the agreement, or later agreed to, it is final and conclusive, except on a showing of fraud, malfeasance or misrepresentation of a material fact. The case shall not be reopened as to the matters agreed on or the agreement modified by any officer, employee or agent of this state. In any suit, action or proceeding, the agreement, or any determination, assessment, collection, payment, abatement, refund or credit made pursuant to the agreement, shall not be annulled, modified, set aside or disregarded.

42-1125.01. Civil penalties for return preparers, electronic filing and payment participants

A. If a return preparer or electronic return preparer fails to furnish a completed copy of any return, statement or other document to the taxpayer when the return, statement or other document is presented for the taxpayer's signature, the return preparer shall pay a penalty of fifty dollars unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The maximum penalty amount for a return preparer under this subsection during any calendar year shall not exceed twenty-five thousand dollars.

B. If a return preparer or electronic return preparer fails to sign any return, statement or other document, the return preparer or electronic return preparer shall pay a penalty of fifty dollars unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The maximum penalty amount for a return preparer or electronic return preparer under this subsection during any calendar year shall not exceed twenty-five thousand dollars.

C. If a return preparer or electronic return preparer fails to furnish the preparer's identifying number on any return, statement or other document, the return preparer or electronic return preparer shall pay a penalty of fifty dollars unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The maximum penalty amount for a return preparer or electronic return preparer under this subsection during any calendar year shall not exceed twenty-five thousand dollars.

D. If a return preparer or electronic return preparer fails to retain a copy of any return, statement or other document for six years for transaction privilege and use tax returns and four years for all other returns, statements or other documents following the later of either the date on which the return, statement or other document was due to be filed with the department or was presented to the taxpayer for signature, the return preparer or electronic return preparer shall pay a penalty of fifty dollars unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The maximum penalty amount for a return preparer or electronic return preparer under this subsection during any calendar year shall not exceed twenty-five thousand dollars.

E. If a return preparer or electronic return preparer fraudulently endorses or negotiates any check that is issued to a taxpayer, the return preparer or electronic return preparer shall pay a penalty of five hundred dollars.

F. An electronic return preparer or electronic return transmitter that fails to comply with any electronic filing program requirement shall pay a penalty of fifty dollars for each failure unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The maximum penalty amount for a return preparer, electronic return preparer or electronic return transmitter under this subsection during any calendar year shall not exceed twenty-five thousand dollars.

G. The penalties provided in this section are in addition to other penalties provided by law.

H. All penalties are payable on notice and demand from the department.

I. This section applies to all taxes administered by the department.

42-1129. Payment of tax by electronic funds transfer or other immediately available monies

A. The department may require by rule, consistent with the state treasurer's cash management policies, that any tax administered pursuant to this article, except for individual income tax or as required under section 42-3053, be paid on or before the payment date prescribed by law in

monies that are immediately available to this state on the date of the transfer as provided by subsection B of this section by any taxpayer that owes:

1. $20,000 or more for any taxable year beginning before January 1, 2019.
2. $10,000 or more for any taxable year beginning from and after December 31, 2018 through December 31, 2019.
3. $5,000 or more for any taxable year beginning from and after December 31, 2019 through December 31, 2020.
4. $500 or more for any taxable year beginning from and after December 31, 2020.

B. A payment in immediately available monies shall be made by electronic funds transfer, with the state treasurer's approval, that ensures the availability of the monies to this state on the date of payment.

C. A taxpayer may apply to the director, on a form prescribed by the department, for an annual waiver from the electronic payment requirement prescribed by subsection B of this section. The application must be received by the department on or before December 31. The director may grant the waiver, which may be renewed, if any of the following applies:

1. The taxpayer has no computer.
2. The taxpayer has no internet access.
3. Any other circumstance considered to be worthy by the director exists, including the taxpayer having a sustained record of timely payments and no delinquent tax account with the department.

D. The taxpayer shall furnish evidence as prescribed by the department that an electronic payment was remitted on or before the due date. For the purposes of determining the timeliness of electronic payments made under this section, an electronic payment is deemed to have been made at the date and time, consistent with section 1-242, that the taxpayer successfully authorizes the electronic funds transfer from the taxpayer's financial institution to the department as evidenced by an electronic payment confirmation issued by any of the following:

1. The department.
2. The taxpayer's financial institution.
3. A vendor certified by the department.

E. A taxpayer who is required to pay by electronic funds transfer but who fails to do so may be subject to the civil penalties prescribed by section 42-1125, subsection O.

F. A failure to make a timely payment in immediately available monies as prescribed pursuant to this section is subject to the civil penalties prescribed by section 42-1125, subsection D.

42-1251. Appeal to the department; hearing

A. Except in the case of individual income taxes, a person from whom an amount is determined to be due under article 3 of this chapter may apply to the department by a petition in writing within forty-five days after the notice of a proposed assessment made pursuant to section 42-1109, subsection B or the notice required by section 42-1108, subsection B is received, or within such additional time as the department may allow, for a hearing, correction or redetermination of the action taken by the department. In the case of individual income taxes, the period is ninety days after the date the notice is mailed. The petition shall set forth the reasons why the hearing, correction or redetermination should be granted and the amount in which any tax, interest and penalties should be reduced. If only a portion of the deficiency assessment is protested, all unprotested amounts of tax, interest and penalties must be paid at the time the protest is filed. The department shall consider the petition and grant a hearing, if requested. To represent the taxpayer at the hearing or to appear on the taxpayer's behalf is deemed not to be the practice of law.

B. Except in the case of individual income taxes, at any time during which an appeal to the department under subsection A of this section is pending, a person that has conferred with a designated appeals officer of the department to clarify any fact or legal issue in dispute and to discuss the availability of additional documentation that may assist in resolving outstanding issues may bypass the hearing process before the department's hearing officer or the office of administrative hearings and either:

1. Appeal to the state board of tax appeals by filing a notice of appeal in writing pursuant to section 42-1253, subsection A.
2. Bring an action in tax court by filing a notice of appeal in writing pursuant to section 42-1254, subsection C.

C. If the department fails to schedule a meeting within forty-five days after the time a person files a written request with the department to confer with a designated appeals officer about bypassing the hearing process before the department's hearing officer or the office of

administrative hearings, the person may bypass the meeting and appeal directly to the state board of tax appeals or bring an action in tax court.

D. If the taxpayer does not file a petition for hearing, correction, redetermination or appeal within the period provided by subsection A, B or C of this section, the amount determined to be due becomes final at the expiration of the period. The taxpayer is deemed to have waived and abandoned the right to question the amount determined to be due, unless the taxpayer pays the total deficiency assessment, including interest and penalties. The taxpayer may then file a claim for refund pursuant to section 42-1118 within six months after paying the deficiency assessment or within the time limits prescribed by section 42-1106, whichever period expires later.

E. All orders or decisions made on the filing of a petition for a hearing, correction or redetermination under subsection A of this section become final thirty days after notice has been received by the petitioner, unless the petitioner appeals the order or decision to the state board of tax appeals.

42-1253. Appeal to state board of tax appeals; definition

A. Except for the provisions of section 42-1251, subsection B and section 42-1254, subsection C that provide for an option to bypass all or part of the administrative appeals process in certain tax disputes, a person aggrieved by a final decision or order of the department under section 42-1251, article 3 of this chapter or section 42-2065, 42-2068, 42-2069, 42-2074, 42-2201 or 42-2202 may appeal to the state board of tax appeals by filing a notice of appeal in writing within thirty days after the decision or order from which the appeal is taken has become final.

B. The board shall take testimony and examine documentary evidence as necessary to determine the appeal, all pursuant to administrative rules to govern such appeals.

C. On determining the appeal the board shall issue a decision consistent with its determination. The board's decision is final on the expiration of thirty days from the date when notice of its action is received by the taxpayer, unless either the department or the taxpayer brings an action in tax court as provided in section 42-1254.

D. If the amount in any single dispute before the board is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by:

1. A certified public accountant.

2. A person who is enrolled to practice before the United States internal revenue service and is recognized as an enrolled agent.
3. Any other person who is authorized by the taxpayer under a properly executed power of attorney and who was previously or is currently retained by the taxpayer for purposes other than representation in a hearing before the board.
E. If a practitioner who represents a taxpayer before the board pursuant to subsection D of this section fails to comply with an order or rule of the board, the board may impose sanctions including one or both of the following:
1. Order that the stipulation of the facts proposed by the department of revenue be accepted.
2. Suspend the practitioner from further practice before the board either for a specific period of time or until the board removes the suspension.
F. For the purposes of this section, "practitioner" means a person, other than a party, who files documents with or appears before the board in connection with a matter before the board.

42-1254. Appeal to tax court

A. The department or a taxpayer aggrieved by a decision of the state board of tax appeals may bring an action in tax court.
B. If the department is aggrieved by a decision of the board and the amount in dispute is less than five thousand dollars, the department may not bring an action in tax court unless the department determines that the decision of the board involves an issue of substantial significance to the state. A taxpayer aggrieved by a determination of the department that an issue is of substantial significance to the state may file a motion with the tax court to dismiss the action brought by the department on the grounds that the determination constitutes an abuse of discretion.
C. Except in the case of individual income tax cases in which the amount in dispute is less than five thousand dollars, a person who is aggrieved by a final decision or order of the department under section 42-1251 or article 3 of this chapter, in lieu of appealing to the state board of tax appeals under section 42-1253, may bring an action in tax court by filing a notice of appeal in writing within thirty days after the decision or order from which the appeal is taken has become final. In addition, as provided by section 42-1251, subsections B and C, a person may bypass all or part of the administrative appeals process in certain tax disputes by bringing an action in tax

court by filing a notice of appeal in writing within the time prescribed by section 42-1251, subsection B.

D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:

1. An injunction, writ of mandamus or other legal or equitable process may not issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.

2. The action shall not begin more than thirty days after the order or decision of the board or department becomes final. Failure to bring the action within thirty days after the order or decision of the board or department becomes final constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality in the tax, penalties and interest at issue, except that within the time limits set forth in section 42-1106, a taxpayer who fails to bring an action within thirty days may pay the tax under protest stating the grounds of objection to the legality of the tax and then file a claim for refund of the taxes paid. The refund claim shall then be governed by section 42-1119 and this section.

3. The tax court shall hear and determine the appeal as a trial de novo.

4. Either party to such an action may appeal to the court of appeals or supreme court as provided by law.

5. If a final judgment is rendered in favor of the taxpayer in the action, the amount or such portion of the judgment as may be necessary shall first be credited to any taxes, penalties and interest due from the plaintiff taxpayer, and the amount of the balance remaining due the taxpayer shall be certified by the department of revenue to the department of administration, with a certified copy of the final judgment and a claim for refund authenticated by the department of revenue. On receipt, the department of administration shall draw a warrant payable to the taxpayer in an amount equal to the amount of the tax found by the judgment to be illegal, minus the amount of any taxes, penalties and interest due from the taxpayer. The department of administration shall draw a separate warrant payable to the taxpayer in an amount equal to the interest and other costs recovered against the department of revenue by the judgment, which shall be paid from the appropriate tax account.

42-2056. Closing agreements in cases of extensive taxpayer misunderstanding or misapplication; attorney general approval; rules; definition

A. If the department determines that noncompliance with tax obligations results from extensive misunderstanding or misapplication of provisions of this title or title 43 it may enter into closing agreements with those taxpayers under the following terms and conditions:

1. Extensive misunderstanding or misapplication of the tax laws occurs if the department determines that more than sixty per cent of the persons in the affected class have failed to properly account for their taxes owing to the same misunderstanding or misapplication of the tax laws.

2. The department shall make an initial determination as to the existence of an affected class of taxpayers. After a review of the taxpayer's request, the department may determine that there has not been an extensive misunderstanding or misapplication of the tax laws by an affected class of taxpayers. At that time, the department will notify the taxpayer that the request is denied.

3. The department shall publicly declare the nature of the possible misunderstanding or misapplication and the proposed definition of the class of affected taxpayers and shall conduct a public hearing to hear testimony regarding the extent of the misunderstanding or misapplication and the definition of the affected class. Within sixty days after close of the public hearing, the department shall notify the attendees at the public hearing and publish a public notice on its website stating whether relief will be granted.

4. If, after the public hearing, the department determines that a class of affected taxpayers has failed to comply with their tax obligations because of extensive misunderstanding or misapplication of the tax laws it shall issue a tax ruling announcing that finding and publish the ruling in a newspaper of general circulation.

5. A closing agreement under this section may abate some or all of the penalties, interest and tax that the taxpayers have failed to remit, or the agreement may provide for the prospective treatment of the matter as to the class of affected taxpayers. Notwithstanding section 42-1113, all taxpayers in the class shall be offered the opportunity to enter into a similar agreement for the same tax periods.

6. Taxpayers in the affected class who have properly accounted for their tax obligations for these tax periods shall be offered the opportunity to enter into a similar closing agreement providing

for a pro rata credit or refund of their taxes previously paid, subject to section 42-1104, subsection A and section 42-1106, subsection A.

7. The closing agreement shall require the taxpayers to properly account for and pay such taxes in the future. If a taxpayer fails to comply with that requirement, the agreement is voidable by the department and the department may assess the taxpayer for the delinquent taxes. The department may issue such a proposed assessment within six months after the date that it declares the agreement void or within the period prescribed by section 42-1104, whichever is later.

B. A person who filed a written request for relief under this section but has been denied relief as the result of the department's determination that the elements of subsection A, paragraph 3 of this section have not been established may appeal that determination pursuant to the same procedure as provided in chapter 1, article 6 of this title. A person who files an appeal under this subsection, who also has another appeal pending pursuant to chapter 1, article 6 of this title on a matter solely related to the matter at issue in the department's determination under this section, may petition the relevant appellate forum to hold that appeal in abeyance pending the resolution of the person's appeal pursuant to this section, and the agency, tribunal or court must grant the petition.

C. Before entering into closing agreements pursuant to this section, the department shall secure the approval of the attorney general of the tax ruling and the agreements. The department may not enter into the agreements without such approval from the attorney general.

D. After a closing agreement has been signed pursuant to this section, and subject to the taxpayer's compliance with the requirements of subsection A, paragraph 6 of this section, it is final and conclusive except on a showing of fraud, malfeasance or misrepresentation of a material fact. The case shall not be reopened as to the matters agreed on, and the agreement shall not be modified by any officer, employee or agent of the state. The agreement or any determination, assessment, collection, payment abatement, refund or credit made pursuant to the agreement shall not be annulled, modified, set aside or disregarded in any suit, action or proceeding.

E. The department shall report in writing its activities under this section to the governor, the president of the senate and the speaker of the house of representatives on or before February 1 of each year.

F. The department may adopt rules to implement this section.

G. For the purposes of this section, "affected class" means taxpayers who are similarly situated and directly affected by the department's position in a tax matter. For transaction privilege or use tax purposes, affected class may include taxpayers in the same industry code under the North American industrial classification system code, if applicable to the tax matter or taxpayers that directly compete with each other. For the purposes of this section, affected class shall not be broadly described unless such description increases the number of taxpayers who are eligible for relief.

42-2064. Reimbursement of fees and other costs; definitions

A. A taxpayer who is a prevailing party may be reimbursed for reasonable fees and other costs related to an administrative proceeding that is brought by or against the department in connection with an assessment, determination, collection or refund of any tax listed in section 42-1101. For the purposes of this subsection, a taxpayer is considered to be a prevailing party only if both of the following are true:

1. The department's position was not substantially justified.
2. The taxpayer prevails as to the most significant issue or set of issues.

B. Reimbursement under this section may be denied if any of the following circumstances apply:

1. During the course of the proceeding the taxpayer unduly and unreasonably protracted the final resolution of the matter.
2. The reason that the taxpayer prevailed is due to an intervening change in the applicable law.

C. The taxpayer shall present an itemization of the reasonable fees and other costs to the taxpayer problem resolution officer within thirty days after the conclusion of the administrative proceedings. The taxpayer problem resolution officer shall determine the validity of the fees and other costs within thirty days after receiving the itemization. The taxpayer problem resolution officer's decision is considered the department's final decision or order and is subject to appeal to the state board under section 42-1253.

D. The department of revenue shall pay the fees and other costs awarded as provided in this section from any monies appropriated for such purpose. If the department of revenue does not pay the fees and other costs within thirty days after demand by a person who has received an award pursuant to this section, and if no further review or appeals of the award are pending, the

person may file a claim for the fees and other costs with the department of administration, which shall pay the claim within thirty days, in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1. If, at the time the department of revenue failed to pay the award, it had appropriated monies either designated or assignable for the purpose of paying such awards, the legislature shall reduce the department of revenue's operating appropriation for the following year by the amount of the award and appropriate the amount of the reduction to the department of administration, risk management division, as reimbursement for the loss.

E. Reimbursement to a taxpayer under this section shall not exceed seventy-five thousand dollars or actual monies spent, whichever is less. The reimbursable attorney or other representative fees shall not exceed three hundred fifty dollars per hour or actual monies spent, whichever is less, unless the state board of tax appeals determines that an increase in the cost of living or a special factor such as the limited availability of qualified attorneys for the proceeding involved justifies a higher fee.

F. For each calendar year beginning from and after December 31, 2015, the income dollar amounts for maximum awards made pursuant to subsection E of this section shall be adjusted by the attorney general according to the average annual change in the metropolitan phoenix consumer price index published by the United States bureau of labor statistics. The revised dollar amounts shall be raised to the nearest whole dollar. The income dollar amounts may not be revised below the amounts prescribed in the prior calendar year.

G. The department shall adopt administrative rules to implement this section.

H. Notwithstanding any provision of title 12, chapter 3, article 5, a taxpayer who is a prevailing party may only be reimbursed pursuant to this section.

I. For the purposes of this section:

1. "Administrative proceeding" means any review proceeding or appeal pursuant to section 42-1251 that is conducted under the authority of section 42-1003 and an appeal to the state board of tax appeals pursuant to section 42-1253.

2. "Reasonable fees and other costs" means fees and other costs that are based on prevailing market rates for the kind and quality of the furnished services, but not exceeding the amounts actually spent for expert witnesses, the cost of any study, analysis, report, test or project that is found to be necessary to prepare the party's case and necessary fees for attorneys or other representatives.

E-8.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6, Article 24

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 20, 2025

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 6, Article 24

Summary

This Five-Year Review Report (5YRR) from the Arizona Department of Insurance and Financial Institutions (Department) covers six (6) rules in Title 20, Chapter 6, Article 24 related to Out of Network Claim Dispute Resolutions. Specifically, these rules cover the Surprise Billing Act.

These rules became effective on January 2, 2019 and this is the first time that a Five-Year Review Report has been completed. The Department requested a one year extension to submit the report on November 1, 2023 and that request was approved by the Council on December 5, 2024. The Department requested the extension because the Federal government approved the No Surprises Act which provides the same protections as the Arizona Surprise Billing Act. The Department requested the extension with the expectation that the rules would be unnecessary by the new due date, as a result of the subject matter being pre-empted and ultimately resulting in the rules being repealed.

Proposed Action

The Department indicates that the rules cannot be repealed right now but they should be able to repeal them within the next five years. The Department has indicated that while the

subject matter is pre-empted, there are still appeals for plans that were renewed in 2022 under the state laws. Once those appeals have been resolved then these 6 rules will be repealed.

1. Has the agency analyzed whether the rules are authorized by statute?

The Department cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states this is the first review of this article since its adoption in 2019. The Department is unaware of any economic impact of the rules that varies from the original economic impact statement it filed when it promulgated these rules. The rules in Chapter 6, Article 24 deals with Out-of-Network Claims Dispute resolution.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department believes the probable benefits of the rule to consumers outweigh the probable costs of the rule to insurers. The Department also believes the rule imposes the least burden and costs to regulated person by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are enforced as written

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department has indicated that the Arizona Surprise Billing Act offers the same functions and protections as the Federal No Surprises Act. Act" (Consolidated Appropriations Act, 2021, Public Law 116-260). The Department does indicate that the Arizona Act is more restrictive than the federal counterpart when it comes to appeals, which is found at A.R.S. § 20-3111 through 20-3119.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department has indicated that the rules do not require a permit or a license.

11. Conclusion

This Five-Year Review Report (5YRR) from the Arizona Department of Insurance and Financial Institutions covers six (6) rules in Title 20, Chapter 6, Article 24 related to Out of Network Claim Dispute Resolutions, more specifically the Surprise Billing Act. The rules have not previously undergone a Five-Year Review. The Department has indicated that the Surprise Billing Act has been pre-empted by the Federal No Surprises Act, and the Department intends on repealing the rules once all pending appeals have been resolved.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

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Arizona Department of Insurance and Financial Institutions
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Katie Hobbs
Governor

Barbara D. Richardson
Director

January 8, 2025

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions
Insurance Division ("Department")
Article 24 Out-of-Network Claim Dispute Resolution
Five-Year Review Report

Dear Chairperson Klein:

Please find enclosed the Five-Year Review Report for Article 24 (Out-of-Network Claim Dispute Resolution) being submitted by the Department which is due on January 30, 2025. This is the first review for Article 24.

The Department's due date for the original Five-Year Review Report on Article 24 was January 31, 2024. However, on November 1, 2023, the Department requested a 1-Year extension to submit the report. On December 5, 2023, the Council approved an extension to January 30, 2025.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Barbara D. Richardson

Barbara D. Richardson
Director

Arizona Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance

Article 24. Out-of-Network Claim Dispute Resolution

January 30, 2025[1]

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. §§ 20-3111, 20-3112, 20-3113, 20-3114, 20-3115, and 20-3116

2. The objective of each rule:

Rule	Objective
R20-6-2401	**Definitions.** The objective of this Section is to augment the definitions found at A.R.S. § 20-3111 that relate to the Out-of-Network Claim Dispute Resolution process so that consumers may understand what qualifies as a surprise bill that can be appealed.
R20-6-2402	**Request for Arbitration.** The objective of this Section is to inform an enrollee who wishes to request arbitration of their Out-of-Network claim how to file the claim and the deadline to file their claim. This Section also outlines the Department's role in determining whether the request qualifies for arbitration. It also defines the enrollee's financial responsibility.
R20-6-2403	**Informal Settlement Teleconference.** The objective of this Section is to define the different parties' roles for participating in the informal settlement teleconference and the duties of the insurer if a settlement is reached. It also instructs the Department to arrange for the arbitration in the event the claim does not settle.
R20-6-2404	**Arbitrators.** The objective of this Section is to establish how the Department will contract with Arbitrators and their qualifications.
R20-6-2405	**Before the Arbitration.** The objective of this Section is to inform the enrollee and the insurer of their duties prior to the arbitration.

[1] The Council granted an extension to the Department to file this Five-Year Review Report for Article 24 on December 5, 2023. A.R.S. § 41-1056(F). This is the first review for this Article.

R20-6-2406	**The Arbitration.** The objective of this Section is to describe the conduct of the arbitration, the arbitrator's determination, the payment of the claim, and the costs of the arbitration. It also ensures the confidentiality of the information considered during the arbitration and the details of the report the arbitrator must submit that summarizes each arbitration.

3. Are the rules effective in achieving their objectives? **Yes _x_ No ___**

4. Are the rules consistent with other rules and statutes? **Yes _x_ No ___**

5. Are the rules enforced as written? **Yes _x_ No ___**

6. Are the rules clear, concise, and understandable? **Yes _x_ No ___**

7. Has the agency received written criticisms of the rules within the last five years?

Yes ___ No _x_

8. Economic, small business, and consumer impact comparison:

This is the first review of this Article since its adoption in 2019[2]. The Department is unaware of any economic impact of the rules that varies from the original economic impact statement it filed when it promulgated these rules.

9. Has the agency received any business competitiveness analyses of the rules?

Yes ___ No _x_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Not applicable. This report is the first five-year-review of this Article. (25 A.A.R. 155, effective January 2, 2019)

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The probable benefits of the rule to consumers outweigh the probable costs of the rule to insurers. The rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

[2] The Department's due date for the original Five-Year Review Report on this Article was January 31, 2024. On November 1, 2023, the Department requested a 1-Year extension to submit the report. On December 5, 2023, the Council approved an extension to January 30, 2025.

12. Are the rules more stringent than corresponding federal laws? Yes _x__ No ___

In 2021, after the Department promulgated this Article, the Federal government passed the "No Surprises Act" (Consolidated Appropriations Act, 2021, Public Law 116-260). The No Surprises Act (the "Federal law") became effective for plans issued on or after January 1, 2022. The Federal law provides to consumers much of the same functions and protections of Arizona's Surprise Billing Act, A.R.S. §§ 20-3111 through 20-3119 (the "Arizona law"). However, the Arizona law is more restrictive than the Federal law for the appeals it will allow.

The Arizona law will eventually be pre-empted in its entirety by the Federal law once all potential appeals for plans renewed in 2022 are expired. Pre-emption of the Arizona law will make the Surprise Billing statutes and rules obsolete.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable. Article 24 does not require the issuance of a regulatory permit.

14. Proposed course of action:

Because the Department anticipates that these rules will eventually be preempted in their entirety by the federal scheme, the only course of action it proposes is to repeal the rules once the statutory sections are repealed. The Department anticipates this to occur before the next Five-Year Review Report is due to the Council in 2029.

liminary justification supporting the rate increase; and

b. Prominently post on its website, on a form and in the manner prescribed by the Secretary under 45 CFR 154.230 the following information:
   i. The Department's determination that the rate increase is unreasonable and Department's explanation of the Department's analysis of the relevant factors set forth in R20-6-2305(A)(1) and (2), and
   ii. The health insurer's final justification for implementing the rate increase.

c. Continue to make the information in subsection (3)(b) available to the public on its website for at least three years.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

R20-6-2305. Threshold Rate Increase Documentation Requirements

A. For a threshold rate increase, a health insurer shall submit to the Department documentation that is sufficient to allow the Department to assess:
1. The reasonableness of the assumptions used by the health insurer to develop the proposed rate increase and the validity of the historical data underlying the assumptions, and
2. The health insurer's data related to past projections and actual experience.

B. To the extent applicable to the submission under review by the Department, the health insurer shall submit documentation that includes all of the following:
1. The impact of medical trend changes by major service categories;
2. The impact of utilization changes by major service categories;
3. The impact of cost-sharing changes by major service categories, including actuarial values;
4. The impact of geographic factors and variations;
5. The impact of changes to all plans within the single risk pool product;
6. The impact of reinsurance and risk adjustment payments and changes;
7. The impact of benefit changes;
8. The impact of changes in enrollee risk profile;
9. The impact of any overestimate or underestimate of medical trend for prior year periods related to the rate increase;
10. The impact of changes in reserve needs;
11. The impact of changes in administrative costs related to programs that improve health care quality;
12. The impact of changes in other administrative costs;
13. The impact of changes in applicable taxes, licensing or regulatory fees;
14. Medical loss ratio;
15. The health insurer's capital and surplus; and
16. Other relevant documentation at the discretion of the Director.

C. A health insurer shall submit all documentation required under subsection (A) or (B) at the same time that:
1. The health insurer submits the preliminary justification required under R20-6-2302, or
2. The health insurer submits any new preliminary justification required under R20-6-2304(2)(b) and (c).

Historical Note

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4). Section amended by final rulemaking at 30 A.A.R. 3767 (December 13, 2024), effective February 3, 2025 (Supp. 24-4).

ARTICLE 24. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

R20-6-2401. Definitions

The definitions in A.R.S. § 20-3111 and this Section apply to this Article.
1. "Allowed Amount" is the amount reimbursable for a covered service under the terms of the enrollee's benefit plan. The allowed amount includes both the amount payable by the insurer and the amount of the enrollee's cost sharing requirements.
2. "Alternative Arbitrator" is an individual who is mutually agreeable to the health insurer and health care provider to act as the arbitrator of a surprise out-of-network billing dispute. If the person is contracted with the State of Arizona to conduct arbitration proceedings, the provisions of that contract shall apply. Department staff may not serve as an Alternative Arbitrator.
3. "Amount of the enrollee's cost sharing requirements" means the amount determined by the insurer prior to the dispute resolution process to be owed by the enrollee for out-of-network copayment, coinsurance and deductible pursuant to the enrollee's health care policy.
4. "Arbitrator" has the same meaning as A.R.S. § 20-3111(2) and may include a mediator, arbitrator or other alternative dispute resolution professional who is contracted with the Department to arbitrate a surprise out-of-network billing dispute. Department staff may not serve as an Arbitrator.
5. "A.R.S. § 20-3113 Disclosure" means a written, dated document that contains the following information:
   a. The name of the billing health care provider;
   b. A statement that the health care provider is not a contracted provider;
   c. The estimated total cost to be billed by the health care provider or the provider's representative for the health care services being provided;
   d. A notice that the enrollee or the enrollee's authorized representative is not required to sign the A.R.S. § 20-3113 Disclosure to obtain health care services;
   e. A notice that if the enrollee or the enrollee's authorized representative signs the A.R.S. § 20-3113 Disclosure, they may have waived any rights to request arbitration of a qualifying surprise out-of-network bill.
6. "Balance bill" means all charges that exceed the enrollee's cost sharing requirements and the amount paid by the insurer.
7. "Date of service" means the latest date on which the health care provider rendered a related health care service that is the subject of a qualifying surprise out-of-network bill.
8. "Days" as used in this Article means calendar days unless specified as business days and does not include the day of the filing of a document.

9. "Department" means the Arizona Department of Insurance and Financial Institutions or an entity with which it contracts to administer the out-of-network claim dispute resolution process.
10. "Enrollee's authorized representative" means a person to whom an enrollee has given express written consent to represent the enrollee, the enrollee's parent or legal guardian, a person appointed by the court to act on behalf of the enrollee or the enrollee's legal representative. An enrollee's authorized representative shall not be someone who represents the provider's interests.
11. "Final resolution of a health care appeal" means that a member has a final decision under the review process provided by A.R.S. Title 20, Chapter 15, Article 2.
12. "Informal Settlement Teleconference" means a teleconference arranged by the Department that is held to settle the enrollee's qualifying surprise out-of-network bill prior to an Arbitration being scheduled. The parties to the Informal Settlement Teleconference are: (a) the enrollee or the enrollee's authorized representative; (b) the health insurer; and (c) the provider or the provider's representative.
13. "Qualifying surprise out-of-network bill" is a surprise out-of-network bill for health care services provided on or after January 1, 2019, that is disputed by the enrollee and:
    a. Is for health care services covered by the enrollee's health plan;
    b. Is for health care services provided in a network health care facility;
    c. Is for health care services performed by a provider who is not contracted to participate in the network that serves the enrollee's health plan;
    d. The enrollee has resolved any health care appeal pursuant to A.R.S. Title 20, Chapter 15, Article 2, that the enrollee may have had against the insurer following the health insurer's initial adjudication of the claim;
    e. The enrollee has not instituted a civil lawsuit or other legal action against the insurer or health care provider related to the surprise out-of-network bill or the health care services provided;
    f. The amount of the surprise out-of-network bill for which the enrollee is responsible for all related health care services provided by the health care provider whether contained in one or multiple bills, after deduction of the enrollee's cost sharing requirements and the insurer's allowable reimbursement, is at least $1,000.00; and
    g. One of the following applies:
        i. The bill is for emergency services, including under circumstances described by A.R.S. § 20-2803(A);
        ii. The bill is for health care services directly related to the emergency services that are provided during an inpatient admission to any network facility;
        iii. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative did not provide the enrollee a written dated A.R.S. § 20-3113 Disclosure:
        iv. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative did not provide the enrollee a written dated A.R.S. § 20-3113 Disclosure within a reasonable amount of time before the enrollee received the service;
        v. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative provided the enrollee a written dated A.R.S. § 20-3113 Disclosure ("Disclosure") and the enrollee or the enrollee's authorized representative chose not to sign the Disclosure;
        vi. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative provided the enrollee a written dated A.R.S. § 20-3113 Disclosure ("Disclosure") and the enrollee or the enrollee's authorized representative signed the Disclosure but the amount actually billed to the enrollee is greater than the estimated cost provided in the signed Disclosure.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1). Section amended by final rulemaking at 29 A.A.R. 3621 (November 24, 2023), effective January 7, 2024 (Supp. 23-4). Effective date corrected (Supp. 23-4, Ver. 2).

R20-6-2402. Request for Arbitration

A. Request for Arbitration. An enrollee may request dispute resolution of a surprise out-of-network bill by filing a timely Request for Arbitration with the Department on a Request for Arbitration form available on the Department's website.

B. Deadline for filing a Request for Arbitration with the Department. A Request for Arbitration must be received by the Department within one year after the date of service listed on the surprise out-of-network bill. If the enrollee filed a health care appeal pursuant to A.R.S. Title 20, Chapter 15, Article 2, the one year deadline is tolled from the date the enrollee filed the health care appeal to the date of the final resolution of the appeal.

C. Evaluation of the Request for Arbitration by the Department. Within 15 days after receipt of a Request for Arbitration, the Department shall do one of the following:
1. Determine that the surprise out-of-network bill is a qualifying surprise out-of-network bill and notify the enrollee, health insurer and health care provider that the Request for Arbitration qualifies for Arbitration;
2. Determine that the surprise out-of-network bill is not a qualifying surprise out-of-network bill and notify the enrollee of the reason for the Department's determination;
3. Determine that the Request for Arbitration is incomplete; or
4. Return the Request for Arbitration to the enrollee without making a determination if the enrollee's request should instead be filed as a health care appeal within the meaning of A.R.S. Title 20, Chapter 15, Article 2.

D. Request for additional information for an incomplete Request for Arbitration. If the Department determines that the Request for Arbitration is incomplete, the Department may send a written request for additional information to the enrollee, health

insurer, health care provider or health care provider's billing company.

E. Time to respond to the Department's Request for Additional Information. The enrollee, health insurer, health care provider or the health care provider's billing company shall have 15 days from the date of the request to respond to the Department's Request for Additional Information.

F. Failure to respond to the Department's Request for Additional Information.
1. If the enrollee fails to respond to the Department's Request for Additional Information, the Department shall deny the enrollee's Request for Arbitration.
2. If either the health insurer or the health care provider or health care provider's billing company fail to respond to the Department's Request for Additional Information, the Department shall deem that the enrollee's Request for Arbitration qualifies for arbitration.

G. Receipt of Additional Information. Upon receipt of the additional information requested by the Department under subsection (D) of this Section, the Department shall determine, within seven days, whether the enrollee's Request for Arbitration qualifies for Arbitration and send the notice required under subsection (C)(1) or subsection (C)(2) of this Section, whichever applies.

H. Final Determination. The Department's determination whether an enrollee's Request for Arbitration qualifies for Arbitration is a final decision and not an appealable agency action within the meaning of A.R.S. § 41-1092(3). A claim that is the subject of a qualifying surprise out-of-network bill is not subject to the timely payment of claims law during the pendency of the Arbitration.

I. Enrollee's payment responsibility.
1. Notwithstanding any informal settlement or Arbitrator's Final Written Decision, the enrollee is responsible for only the following:
   a. The amount of the enrollee's cost sharing requirements; and
   b. Any amount received by the enrollee from the enrollee's health insurer as payment for the health care services at issue in a qualifying surprise out-of-network bill.
2. A health care provider may not issue, either directly or indirectly through its billing company, any additional balance bill to the enrollee for the same health care services.

Historical Note
New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

R20-6-2403. Informal Settlement Teleconference

A. Deadline to arrange the Informal Settlement Teleconference. Upon a determination that an enrollee has made a Request for Arbitration that qualifies for Arbitration, the Department shall arrange an Informal Settlement Teleconference between the parties within 30 days of notifying the enrollee that the enrollee's Request for Arbitration qualifies for Arbitration required by Section R20-6-2402(C)(1).

B. Notice of Informal Settlement Teleconference. At least 14 days prior to the scheduled date, the Department shall send a Notice of Informal Settlement Teleconference to the enrollee, the enrollee's authorized representative, the health insurer, the health care provider and the health care provider's representative informing them of the date, time and instructions on how to participate in the Informal Settlement Teleconference.

C. Health Insurer documentation. On or before the Informal Settlement Teleconference, the health insurer shall provide to the parties the enrollee's cost sharing requirements under the enrollee's health plan based on the qualifying surprise out-of-network bill.

D. Consequences of non-participation in the Informal Settlement Teleconference. If a party fails to participate in the Informal Settlement Teleconference, it shall be subject to the following consequences:
1. If the health insurer, provider or provider's representative fails to participate in an Informal Settlement Teleconference scheduled by the Department, the participating party may notify the Department which shall promptly schedule the Arbitration. The non-participating party shall pay the entire cost of the Arbitration.
2. If the enrollee or the enrollee's authorized representative fails to participate in the original Informal Settlement Teleconference, the original Informal Settlement Teleconference is terminated.
3. If the enrollee or the enrollee's authorized representative fails to participate in a rescheduled Informal Settlement Teleconference, the enrollee's Request for Arbitration is terminated.

E. One-time opportunity for the enrollee to reschedule the Informal Settlement Teleconference. If the enrollee or the enrollee's representative fails to participate in the Informal Settlement Teleconference originally scheduled by the Department, the enrollee may request that the Department reschedule the Informal Settlement Conference. The enrollee's request to reschedule must be received by the Department within 14 days after the originally scheduled Informal Settlement Teleconference. Failure to submit a request to the Department to reschedule the Informal Settlement Teleconference within the 14 day period terminates the enrollee's Request for Arbitration.

F. Notification to the Department after the Informal Settlement Teleconference. Within seven days after the date of the Informal Settlement Teleconference, the health insurer shall:
1. Notify the Department whether a settlement was reached between the parties; and
2. If a settlement was reached, notify the Department of the terms of the settlement on a form prescribed by the Department.

G. Failure to settle. If the parties fail to settle the qualifying surprise out-of-network bill at the Informal Settlement Teleconference, the Department shall arrange for the Arbitration.

H. Settlement. If the parties settle the qualifying surprise out-of-network bill at the Informal Settlement Teleconference, the health insurer shall remit its portion of the payment to the health care provider within 30 days after the Informal Settlement Teleconference. A claim that is reprocessed by a health insurer as a result of informal settlement is not in violation of A.R.S. § 20-3102(L).

Historical Note
New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

R20-6-2404. Arbitrators

A. Contracted entities. The Department shall contract with one or more persons to provide Arbitrators. The Department must have a list of at least four Arbitrators to assign to Arbitrations. The Department shall publish the list of contracted entities and a list of each entity's qualified Arbitrators on its website.

B. Arbitrator Qualifications. Any person contracting with the Department must be able to provide Arbitrators who possess at least three years of experience in health care services claims.

C. Alternative Arbitrators. A health insurer and provider may mutually agree to use an Alternative Arbitrator if either the health insurer or the health care provider objects to an Arbitrator appointed by the Department.

D. Appointment of an Arbitrator.
1. The Department shall appoint an Arbitrator for each Arbitration.
2. If the health insurer and health care provider do not agree to the Arbitrator appointed by the Department, they shall either:
   a. Mutually agree to use an Alternative Arbitrator; or
   b. Participate in the following procedure:
      i. The Department shall assign three Arbitrators.
      ii. The health insurer shall strike one Arbitrator.
      iii. The health care provider shall strike one Arbitrator.
      iv. If one Arbitrator remains, the Department shall appoint the remaining Arbitrator to the Arbitration.
      v. If the health insurer and health care provider strike the same Arbitrator, the Department shall randomly assign the Arbitrator from the remaining two Arbitrators.

Historical Note
New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

R20-6-2405. Before the Arbitration

A. Enrollee's duties. Before the Arbitration, the enrollee shall:
1. Pay or make arrangements in writing to pay to the health care provider the amount stated by the health insurer in the Informal Settlement Teleconference which shall be the total amount of the enrollee's cost sharing requirements due for the health care services that are the subject of the qualifying surprise out-of-network bill.
2. Pay to the health care provider any amount that the enrollee has received from the health insurer as payment for the health care services that are the subject of the qualifying surprise out-of-network bill.

B. Health insurer's duties. Before the Arbitration, the health insurer shall remit any amount due to the health care provider if the health care insurer pays for out-of-network services directly to health care providers and the health insurer has not remitted any amounts due.

Historical Note
New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

R20-6-2406. The Arbitration

A. Conduct of Arbitration. An Arbitration of a qualifying out-of-network surprise bill shall be conducted:
1. Telephonically unless the parties agree otherwise;
2. With or without the enrollee's participation;
3. Within 120 days after the Department's Notice of Arbitration unless agreed otherwise by the parties; and
4. For a maximum duration of four hours unless agreed otherwise by the parties.

B. Arbitrator's Determination. The Arbitrator or Alternative Arbitrator shall determine the amount the health care provider is entitled to receive as payment for the health care services that are the subject of the qualifying surprise out-of-network bill.

C. Allowable Evidence. The Arbitrator or Alternative Arbitrator shall allow each party to provide relevant information for evaluating the qualifying surprise out-of-network bill including:
1. The average contracted amount that the health insurer pays for the health care services at issue in the county where the health care provider performed the health care services;
2. The average amount that the health care provider has contracted to accept for the health care services at issue in the county where the health care provider performed the services;
3. The amount Medicare and Medicaid pay for the health care services at issue;
4. The health care provider's direct pay rate for the health care services at issue, if any, under A.R.S. § 32-3216;
5. Any information that would be evaluated in determining whether a fee is reasonable under title 32 and not excessive for the health care services at issue, including the usual and customary charges for the health care services at issue performed by a health care provider in the same or similar specialty and provided in the same geographic area; and
6. Any other reliable sources of information, including databases, that provide the amount paid for the health care services at issue in the county where the health care provider performed the services.

D. Final Written Decision. Within 10 business days following the Arbitration, the Arbitrator or Alternative Arbitrator shall issue a Final Written Decision and provide a copy to the enrollee, the health insurer, the health care provider, the health care provider's billing company (if applicable) and the health care provider's authorized representative (if applicable).

E. Payment of the claim. The health insurer shall remit its portion of the payment awarded by the Arbitrator or Alternative Arbitrator to the health care provider within 30 days of the date of the Final Written Decision. A claim that is reprocessed by a health insurer as a result of the Arbitration is not in violation of A.R.S. § 20-3102(L).

F. Payment of the Costs of Arbitration. The health insurer and health care provider shall make payment arrangements with the Arbitrator or Alternative Arbitrator to pay their respective shares of the costs of the Arbitration within 30 days after the date of the Final Written Decision. The respective shares of the costs of Arbitration are determined as follows:
1. The enrollee is not responsible for any portion of the cost of the Arbitration.
2. The health insurer and the health care provider shall share the costs of the Arbitration equally unless one of the following exceptions applies:
   a. The health insurer and health care provider agree to share the costs of the Arbitration in non-equal portions.
   b. The health insurer pays the entire cost of the Arbitration for failing to participate in the Informal Settlement Teleconference after receiving proper notice from the Department.
   c. The health care provider or the health care provider's representative pays the entire cost of the Arbitration for failing to participate in the Informal Settlement Teleconference after receiving proper notice from the Department.

G. Confidentiality. In connection with the Arbitration of a qualifying surprise out-of-network bill, all of the following apply:

1. All pricing information provided by a health insurer or health care provider is confidential.
2. Pricing information provided by a health insurer or health care provider may not be disclosed by the Arbitrator, Alternative Arbitrator or any other party participating in the Arbitration.
3. Pricing information provided by a health insurer or health care provider may not be used by anyone, except the party providing the information, for any purpose other than to resolve the qualifying surprise out-of-network bill.
4. All information received by the Department in connection with the Arbitration is confidential and may not be disclosed to any person except the Arbitrator or Alternative Arbitrator.

H. Arbitrator's Report. At the conclusion of each Arbitration, the Arbitrator shall produce a report to the Department that contains the following information:

1. Date of Arbitration;
2. Date the Arbitrator issued the Final Written Decision;
3. Whether the parties settled the qualifying surprise out-of-network bill during the Arbitration;
4. The initial amount billed by the health care provider;
5. The payment amount awarded to the health care provider; and
6. Any other information the Department may request an Arbitrator to report prior to an Arbitration.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

20-143. Rule-making power

A. The director may make reasonable rules necessary for effectuating any provision of this title.

B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.

C. All rules made pursuant to this section shall be subject to title 41, chapter 6.

D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

20-3111. Definitions

In this article, unless the context otherwise requires:

1. "Arbitration" means a dispute resolution process in which an impartial arbitrator determines the dollar amount a health care provider is entitled to receive for payment of a surprise out-of-network bill.

2. "Arbitrator" means an impartial person who is appointed to conduct an arbitration.

3. "Billing company" means any affiliated or unaffiliated company that is hired by a health care provider or health care facility to coordinate the payment of bills with health insurers and to generate or bill and collect payment from enrollees on the health care provider's or health care facility's behalf.

4. "Contracted provider" means a health care provider that has entered into a contract with a health insurer to provide health care services to the health insurer's enrollees at agreed on rates.

5. "Cost sharing requirements" means an enrollee's applicable out-of-network coinsurance, copayment and deductible requirements under a health plan based on the adjudicated claim.

6. "Emergency services" has the same meaning prescribed in section 20-2801.

7. "Enrollee" means an individual who is eligible to receive benefits through a health plan.

8. "Health care facility" has the same meaning prescribed in section 36-437.

9. "Health care provider" means a person who is licensed, registered or certified as a health care professional under title 32 or a laboratory or durable medical equipment provider that furnishes services to a patient in a network facility and that separately bills the patient for the services.

10. "Health care services" means treatment, services, medications, tests, equipment, devices, durable medical equipment, laboratory services or supplies rendered or provided to an enrollee for the purpose of diagnosing, preventing, alleviating, curing or healing human disease, illness or injury.

11. "Health insurer" means a disability insurer, group disability insurer, blanket disability insurer, hospital service corporation or medical service corporation that provides health insurance in this state.

12. "Health plan" means a group or individual health plan that finances or furnishes health care services and that is issued by a health insurer.

13. "Network facility" means a health care facility that has entered into a contract with a health insurer to provide health care services to the health insurer's enrollees at agreed on rates.

14. "Surprise out-of-network bill" means a bill for a health care service that was provided in a network facility by a health care provider that is not a contracted provider and that meets one of the requirements listed in section 20-3113.

20-3112. Applicability

This article does not apply to:

1. Health care services that are not covered by the enrollee's health plan.

2. Limited benefit coverage as defined in section 20-1137.

3. Charges for health care services that are subject to a direct payment agreement under section 32-3216 or 36-437.

4. Health plans that do not include coverage for out-of-network health care services, unless otherwise required by law.

5. State health and accident coverage for full-time officers and employees of this state and their dependents that is provided pursuant to title 38, chapter 4, article 4.

6. A self-funded or self-insured employee benefit plan if the regulation of that plan is preempted by the employee retirement income security act of 1974 (P.L. 93-406; 88 Stat. 829; 29 United States Code section 1144(b)).

20-3113. Surprise out-of-network bill; requirements; notice

A. A bill for a health care service that was provided in a network facility by a health care provider that is not a contracted provider must meet one of the following requirements to qualify as a surprise out-of-network bill:

1. The bill was for emergency services, including under circumstances described by section 20-2803, subsection A and health care services directly related to the emergency services that are provided during an inpatient admission to any network facility.

2. The bill was for a health care service that was not provided in the case of an emergency and the health care provider or the provider's representative did not provide to the enrollee, or did not provide to the enrollee within a reasonable amount of time before the enrollee received the services, a written dated disclosure that contained the following information:

(a) Notice that contains the name of the billing health care provider and that states the health care provider is not a contracted provider.

(b) The estimated total cost to be billed by the health care provider or the provider's representative.

(c) Notice that the enrollee or the enrollee's authorized representative is not required to sign the disclosure to obtain medical care but if the enrollee or the enrollee's representative signs the disclosure, the enrollee may have waived any rights to dispute resolution under this article.

3. The bill was for a health care service that was not provided in the case of an emergency and the enrollee received the disclosure prescribed in paragraph 2 of this subsection, but the enrollee or the enrollee's authorized representative chose not to sign the disclosure.

B. Notwithstanding any provision of this article, a health insurer and any health plan offered by a health insurer shall comply with chapter 17, article 1 of this title.

20-3114. Dispute resolution; settlement teleconference; arbitration; surprise out-of-network bills

A. An enrollee who has received a surprise out-of-network bill and who disputes the amount of the bill may seek dispute resolution of the bill by filing a request for arbitration with the department not later than one year after the date of service noted in the surprise out-of-network bill, except as otherwise provided in this section, if all of the following apply:

1. The enrollee has resolved any health care appeal pursuant to chapter 15, article 2 of this title that the enrollee may have had against the health insurer following the health insurer's initial adjudication of the claim. The one-year time period for requesting arbitration is tolled from the date that the enrollee files a health care appeal until the date of final resolution of the appeal.

2. The enrollee has not instituted a civil lawsuit or other legal action against the insurer or health care provider related to the same surprise out-of-network bill or the health care services provided.

3. The amount of the surprise out-of-network bill for which the enrollee is responsible for all related health care services provided by the health care provider whether contained in one or multiple bills, after deduction of the enrollee's cost sharing requirements and the insurer's allowable reimbursement, is at least one thousand dollars.

B. If an enrollee requests dispute resolution of a surprise out-of-network bill, the enrollee or the enrollee's authorized representative shall participate in an informal settlement teleconference and may participate in the arbitration of the bill. If the enrollee or enrollee's authorized representative fails to attend the informal settlement teleconference, the conference shall be terminated and the enrollee, within fourteen days after the first scheduled informal settlement teleconference, may request that the department reschedule the informal settlement teleconference. If the enrollee does not request that the department reschedule the informal settlement teleconference, the enrollee forfeits the right to arbitrate the surprise out-of-network bill. The health care provider or the provider's representative and the health insurer shall participate in the informal settlement teleconference and the arbitration.

C. An enrollee may not seek dispute resolution of a bill if the enrollee or the enrollee's authorized representative signed the disclosure prescribed in section 20-3113, subsection A, paragraph 2 and the amount actually billed to the enrollee is less than or equal to the estimated total cost provided in the disclosure.

20-3115. Conduct of arbitration proceedings

A. The department shall develop a simple, fair, efficient and cost-effective arbitration procedure for surprise out-of-network bill disputes and specify time frames, standards and other details of the arbitration proceeding, including procedures for scheduling and notifying the parties of the settlement teleconference required by subsection E of this section. The department shall contract with one or more entities to provide arbitrators who are qualified under section 20-3116 for this process. Department staff may not serve as arbitrators.

B. An enrollee may request arbitration of a surprise out-of-network bill by submitting a request for arbitration to the department on a form prescribed by the department, which shall include contact, billing and payment information regarding the surprise out-of-network bill and any other information the department believes is necessary to confirm that the bill qualifies for arbitration. The form shall be made available on the department's website.

C. Within fifteen days after receipt of a request for arbitration, the department shall do one of the following:

1. Determine that the surprise out-of-network bill qualifies for arbitration under this article and notify the enrollee, health insurer and health care provider that the request qualifies.

2. Determine that the surprise out-of-network bill does not qualify for arbitration under this article and notify the enrollee that the surprise out-of-network bill does not qualify and state the reason for the determination.

3. If the department cannot determine whether the surprise out-of-network bill qualifies for arbitration, request in writing any additional information from the enrollee, health insurer or health care provider or its billing company that is needed to determine whether the surprise out-of-network bill qualifies for arbitration and all of the following apply:

(a) The enrollee, health insurer or health care provider or its billing company shall respond to the department's request for additional information within fifteen days after the date of the department's request.

(b) Within seven days after receipt of the additional requested information, the department shall determine whether the surprise out-of-network bill qualifies for arbitration and send the notices required under this subsection.

(c) If the health insurer or health care provider or its billing company fails to respond within the time frame specified in subdivision (a) of this paragraph to a department request for information, the department shall deem the request for arbitration as eligible for arbitration. If the enrollee fails to respond within the time frame specified in subdivision (a) of this paragraph, the request for arbitration is denied.

D. The determination by the department of whether a surprise out-of-network bill qualifies for arbitration is a final and binding decision with no right of appeal to the department. The department's determination is solely an administrative remedy and does not bar any private right or cause of action for or on behalf of any enrollee, health care provider or other person. The court shall decide the matter, including any interpretation of statute or rule, without deference to any previous determination that may have been made on the question by the department.

E. In an effort to settle the surprise out-of-network bill before arbitration, the department shall arrange an informal settlement teleconference within thirty days after the department sends the notices required by this section. The department is not a party to and may not participate in the informal settlement teleconference. As part of the settlement teleconference the health insurer shall provide to the parties the enrollee's cost sharing requirements under the enrollee's health plan based on the adjudicated claim. The health insurer shall notify the department whether the informal settlement teleconference resulted in settlement of the disputed surprise out-of-network bill and, if settlement was reached, notify the department of the terms of the settlement within seven days.

F. If after proper notice from the department or contracted entity either the health insurer or health care provider or the provider's representative fails to participate in the teleconference, the other party may notify the department to immediately initiate arbitration and the nonparticipating party shall be required to pay the total cost of the arbitration.

G. On receipt of notice that the dispute has not settled or that a party has failed to participate in the teleconference, the department shall appoint an arbitrator and shall notify the parties of the arbitration and the appointed arbitrator. The department's notice shall specify whether one party is responsible for the total cost of the arbitration pursuant to subsection F of this section. The health insurer and health care provider must agree on the arbitrator and may mutually agree to use an arbitrator who is not on the department's list. If either the health insurer or health care provider objects to the arbitrator, and the parties are unable to agree on a mutually acceptable alternative arbitrator, the department or contracted entity shall randomly assign three arbitrators. The health insurer and the health care provider shall each strike one arbitrator, and the last arbitrator shall conduct the arbitration unless there are two arbitrators remaining, in which case the department or contracted entity shall randomly assign the arbitrator.

H. Before the arbitration:

1. The enrollee shall pay or make arrangements in writing to pay the health care provider the total amount of the enrollee's cost sharing requirements that is due for the health care services that are the subject of the surprise out-of-network bill as stated by the health insurer in the settlement teleconference.

2. The enrollee shall pay any amount that has been received by the enrollee from the enrollee's health insurer as payment for the out-of-network health care services that were provided by the health care provider.

3. If a health insurer pays for out-of-network health care services directly to a health care provider, the health insurer that has not remitted its payment for the out-of-network health care services shall remit the amount due to the health care provider.

I. Arbitration of any surprise out-of-network bill shall be conducted telephonically unless otherwise agreed by all of the required participants.

J. Arbitration of the surprise out-of-network bill shall take place with or without the enrollee's participation.

K. The arbitrator shall determine the amount the health care provider is entitled to receive as payment for the health care services. The arbitrator shall allow each party to provide information the arbitrator reasonably determines to be relevant in evaluating the surprise out-of-network bill, including the following information:

1. The average contracted amount that the health insurer pays for the health care services at issue in the county where the health care services were performed.

2. The average amount that the health care provider has contracted to accept for the health care services at issue in the county where the services were performed.

3. The amount that medicare and medicaid pay for the health care services at issue.

4. The health care provider's direct pay rate for the health care services at issue, if any, under section 32-3216.

5. Any information that would be evaluated in determining whether a fee is reasonable under title 32 and not excessive for the health care services at issue, including the usual and customary charges for the health care services at issue performed by a health care provider in the same or similar specialty and provided in the same geographic area.

6. Any other reliable databases or sources of information on the amount paid for the health care services at issue in the county where the services were performed.

L. Except on the agreement of the parties participating in the arbitration, the arbitration shall be conducted within one hundred twenty days after the department's notice of arbitration.

M. Except on the agreement of the parties participating in the arbitration, the arbitration may not last more than four hours.

N. The arbitrator shall issue a final written decision within ten business days following the arbitration hearing. The arbitrator shall provide a copy of the decision to the enrollee, the health insurer and the health care provider or its billing company or authorized representative.

O. All pricing information provided by health insurers and health care providers in connection with the arbitration of a surprise out-of-network bill is confidential and may not be disclosed by the arbitrator or any other party participating in the arbitration or used by anyone, other than the providing party, for any purpose other than to resolve the surprise out-of-network bill.

P. All information received by the department or contracted entity in connection with an arbitration is confidential and may not be disclosed by the department or contracted entity to any person other than the arbitrator.

Q. A claim that is the subject of an arbitration request is not subject to article 1 of this chapter during the pendency of the arbitration. A health insurer shall remit its portion of the payment resulting from the informal settlement teleconference or the amount awarded by the arbitrator within thirty days after resolution of the claim.

R. A claim that is reprocessed by a health insurer as a result of a settlement, arbitration decision or other action under this article is not in violation of section 20-3102, subsection N.

S. Notwithstanding any informal settlement or the arbitrator's decision under this article, the enrollee is responsible for only the amount of the enrollee's cost sharing requirements and any amount received by the enrollee from the enrollee's health insurer as payment for the out-of-network health care services that were provided by the health care provider, and the health care provider may not issue, either directly or through its billing company, any additional balance bill to the enrollee related to the health care service that was the subject of the informal settlement teleconference or arbitration.

T. Unless all the parties otherwise agree or unless required by subsection F of this section, the health insurer and the health care provider shall share the costs of the arbitration equally, and the enrollee is not responsible for any portion of the cost of the arbitration. The health insurer and health care provider shall make payment arrangements with the arbitrator for their respective share of the costs of the arbitration.

20-3116. Arbitrator qualifications

To qualify as an arbitrator, a person shall have at least three years' experience in health care services claims and shall comply with any other qualifications established by the department.

E-9.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 5, Article 5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 20, 2025

SUBJECT: **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 5, Article 5

Summary

This Five-Year Review Report (5YRR) from the Arizona Department of Transportation ("Department") covers two (2) rules in Title 17, Chapter 5, Article 5 related to Motor Carrier Financial Responsibility. The rules cover reporting requirements for proof of motor carrier financial responsibility, including the requirements if a vehicle is insured by an insurance carrier that does not electronically report insurance status to the Department.

The Department did not propose any amendments to the rules in Article in the report approved by the Council in April 2020.

Proposed Action

The Department indicates that the rules are clear, concise, understandable, and enforced as written. As a result, the Department does not intend on amending any rules at this time.

1. Has the agency analyzed whether the rules are authorized by statute?

The Department cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states that the economic impact of these rules has been the same as estimated by the Department in the economic impact statement prepared on the last amendment of each rule. Stakeholders include the Arizona Department of Transportation, the Arizona Department of Public Safety, the Arizona Motor Carriers, Arizona Motorists. Commercial Motor Vehicle Insurers, and local law enforcement agencies electing to engage in commercial vehicle enforcement.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department states it is committed to facilitating effective motor vehicle licensing and safety programs in compliance with all state and federal motor vehicle laws. The Department states that in rulemaking, it routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or industry. Therefore, the Department has determined that the benefits provided for these industry partners under the rules far outweigh any costs associated with the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are enforced as written

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department indicates the rules are not more stringent than the corresponding

federal law, 49 U.S.C. 13906, 49 U.S.C. 31138, and 49 U.S.C. 31139, which is the federal motor carrier financial responsibility law and accompanying regulations.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department has indicated that the rules do not require a permit or a license.

11. Conclusion

This Five-Year Review Report (5YRR) from the Arizona Department of Transportation ("Department") covers two (2) rules in Title 17, Chapter 5, Article 5 related to Motor Carrier Financial Responsibility. As with the previous report, the Department indicates that the rules are clear, concise, understandable, and enforced as written. As a result, the Department does not intend on amending any rules at this time.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

ARIZONA DEPARTMENT OF TRANSPORTATION
206 S. 17th Ave.
Phoenix, AZ 85007
KATIE HOBBS
GOVERNOR
JENNIFER TOTH
DIRECTOR

January 31, 2025

VIA EMAIL: grrc@azdoa.gov

Ms. Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

Re: Arizona Department of Transportation Five-year Review Report – 17 A.A.C. 5, Article 5

Dear Ms. Klein:

Please find enclosed the Arizona Department of Transportation's Five-year Review Report covering rules located under 17 A.A.C. Chapter 5, Article 5, which is due to the Council on January 31, 2025. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301.

The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at (480) 267-6543 or email JLindley@azdot.gov.

Sincerely,

Jennifer Toth
Director

Enclosure

ARIZONA DEPARTMENT OF TRANSPORTATION

Government Relations & Rules
Office of the Director

Five-Year Review Report

A.A.C. Title 17 – Transportation

Chapter 5. Department of Transportation

Commercial Programs

Article 5. Motor Carrier Financial Responsibility

Submitted to the Governor's Regulatory Review Council
January 2025

Five-Year-Review Report

Arizona Department of Transportation

17 A.A.C. Chapter 5. Department of Transportation - Commercial Programs

Article 5. Motor Carrier Financial Responsibility

1. **Authorization of the rule by existing statutes**

General Statutory Authority:

The Director of the Department of Transportation (Department) has broad authority under A.R.S. §§ 28-366 and 28-7045 for these rules. This authority allows the Department to adopt rules for the collection of taxes and license fees, public safety and convenience, enforcement of the provisions of the laws the Director administers or enforces, and the use of state highways and routes to prevent abuse and unauthorized use of all highways and routes under the jurisdiction of the Department.

Specific Statutory Authority:

R17-5-501 R17-5-504	The specific statutory authority used by the Department for maintaining these rules is provided under A.R.S. §§ 28-4002 and 28-4034.

2. **The objective of each rule:**

The stated objectives for each of the rules maintained by the Department under 17 A.A.C. 5, Article 5, are as follows:

Rule	Objective
R17-5-501	To clarify the Department's intended meaning for certain terms and phrases used throughout the Article.
R17-5-504	To provide persons subject to the financial responsibility requirements of A.R.S. Title 28, Chapter 9, Article 2, with information regarding a manual process that can be used to certify the existence of adequate financial responsibility if requested by the Department and the person's motor vehicle or vehicle combination is not insured through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and 17 A.A.C. 5, Article 8.

3. **Are the rules effective in achieving their objectives?** **Yes _X_ No ___**

If not, please identify the rules that are not effective and provide an explanation for why the rules are not effective.

The Department believes that these rules are effective in achieving all stated objectives.

4. **Are the rules consistent with other rules and statutes?** **Yes _X_ No ___**

If not, please identify the rules that are not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rules.

Rule	Explanation
R17-5-501 R17-5-504	These rules were written to ensure continuous consistency by referencing all other applicable rules and statutes that govern the various types of evidence the Department may accept as proof of an adequate amount of financial responsibility: A.R.S. § 28-4032 for applicability; A.R.S. § 28-4033 for the minimum amounts of financial responsibility required if operating a motor vehicle or vehicle combination in the furtherance of a commercial enterprise in this state; A.R.S. § 28-4007 and R17-5-810 for options involving self-insurance; A.R.S. § 28-4148 and 17 A.A.C. 8 for the insurance industry's obligation to electronically report financial responsibility information to the Department; and A.R.S. § 28-4135 regarding acceptable evidence of financial responsibility to be carried by any person operating a motor vehicle or vehicle combination on a highway in this state. 49 U.S.C. 31138 prescribes the minimum amounts of financial responsibility that a motor carrier is required to file with the Federal Motor Carrier Safety Administration if operating in interstate commerce.

5. Are the rules enforced as written? **Yes _X_ No ___**

If not, please identify the rules that are not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issues.

The Department enforces these rules as written.

6. Are the rules clear, concise, and understandable? **Yes _X_ No ___**

If not, please identify the rules not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rules to improve clarity, conciseness, and understandability.

The Department believes that these rules are clear, concise, and understandable as written.

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___ No _X_**

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
N/A	N/A	N/A

8. Economic, small business, and consumer impact comparison:

The economic impact of these rules has been the same as estimated by the Department in the economic impact statement prepared on the last amendment of each rule.

At the time of the Department's last rulemaking on motor carrier financial responsibility reporting in 2012, the Department estimated that more than 50% of all motor carriers registering vehicles in Arizona were insuring their vehicles through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and 17 A.A.C. 5, Article 8. Currently, 99% of all Arizona motor carriers use insurance

companies that routinely report this essential information to the Department electronically, as required by law.

These rules support efforts by the Department, in partnership with Arizona's motor carriers and insurance agencies, to prevent unnecessary regulatory burden by recognizing and eliminating any duplicative reporting of motor carrier financial responsibility information. The rules have helped the Department and its industry partners to eliminate the unnecessary administrative costs previously expended by the Department and these industries as a result of the excessive monitoring and record keeping involved with the reporting, maintaining, and storing of duplicative information regarding a motor carrier's evidence of financial responsibility.

According to the most recent edition of *Arizona's Employment Report* (dated December 19, 2024), as published by the Governor's Office of Economic Opportunity, the private sector recorded a gain of 28,300 jobs in November, led by gains in Trade, Transportation & Utilities (18,200 jobs). The Transportation and Warehousing sector, which includes Truck Transportation, added 5,900 jobs between October 2024 and November 2024, and employment in Arizona's Trade, Transportation, and Utilities sector is projected to grow 1.2% by the end of calendar year 2025. Motor carriers in for-hire transit and ground passenger transport continue to play an important role in support of Arizona's booming economy. Airport shuttle, charter, commuter, school bus, sightseeing, tour and transit are just a few of the essential services these motor carriers provide for the state of Arizona using scheduled intercity and other intrastate travel routes.

For-hire motor carriers of passengers support the entire state of Arizona by getting people where they need to be, when they need to be there, in a safe and economical way. Airport shuttle, charter, commuter, school bus, sightseeing, tour, and transit services are all essential services that for-hire motor carriers of passengers may provide or support throughout the state to connect residents and non-residents to all of the amenities Arizona has to offer. The wide array of transport services these motor carriers provide can also increase the profitability of all Arizona businesses they support by delivering customers right to their front door. Whether small or large, profit or non-profit, airports, hospitals, schools, casinos, entertainment venues, and even restaurants, all enjoy the economic benefits generated by the ease of movement enabled by for-hire motor carriers of passengers.

The Department believes that the nonmonetary benefits to all sectors are greater than the cost of the rules.

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___ No _X_**

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Yes _X_ No ___ *Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The Department indicated no course of action in the previous five-year review report for these rules.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives:

The Department is committed to facilitating effective motor vehicle licensing and safety programs in compliance with all state and federal motor vehicle laws. In rulemaking, the Department routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or industry. Since for-hire motor carriers of passengers play such an important role in support of Arizona's booming economy, the Department works consistently to ensure that Arizona motor carriers can effectively report to the Department all statutorily required financial responsibility information as easily and efficiently as possible. Therefore, the Department has determined that the benefits provided for these industry partners under the rules far outweigh any costs associated with the rules.

These rules make the reporting of motor carrier financial responsibility to the Department as easy as possible, and any person or motor carrier that maintains a valid USDOT number and files proof of financial responsibility with the Federal Motor Carrier Safety Administration (FMCSA) under 49 CFR 387 is not required to submit additional proof of financial responsibility under the rules, except on written request by the Department. The Department takes advantage of current technology routinely used by the insurance industry, and service bureaus, to communicate and partner with regulatory agencies. The Arizona Mandatory Insurance Reporting System, prescribed by the Department under 17 A.A.C. 5, Article 8, is an insurance policy reporting system that greatly reduces any need for vehicle owners or drivers to additionally submit proof of insurance coverage.

Currently, the Arizona Mandatory Insurance Reporting System, using electronic data interchange technology and unique numerical insurance company identification numbers issued by the National Association of Insurance Commissioners (NAIC), receives and processes about 725,000 policy report transactions every month, from over 200 reporting entities involving about 500 NAIC identification numbers.

Non-vehicle specific policies are generally referred to as "all owned" or "blanket policies". These are issued to organizational entities for a specific coverage amount to insure all of that organization's vehicles at any given time. With this type of policy, the organizations do not provide the insurance company with specific details to identify each vehicle that will be covered under the policy. The Department can link reports of these types of policies to all vehicles owned by the organization if reported using the organization's unique identification number assigned by the Department's customer database. The customer number may be the organization's Federal Employer Identification Number (FEIN) or a Department issued customer number. Since the Department does not have all FEINs from every possible organization, some non-vehicle-specific reports with an organization's FEIN do not find a match in the Department's system and are returned to the reporting insurance companies as errors. Due to this failure to match, some vehicle owners with this type of policy may be sent a notice by the Department requesting proof of financial responsibility and the information they provide the Department in response to that notice will need to be entered manually by Department personnel.

12. Are the rules more stringent than corresponding federal laws? **Yes ___ No _X_**

Please provide a citation for the federal laws. And if the rules are more stringent, is there statutory authority to exceed the requirements of federal laws?

These rules apply to persons who operate a motor vehicle or vehicle combination in the furtherance of a commercial enterprise *in this state* (intrastate commerce). Therefore, the rules are not more stringent than the federal motor carrier financial responsibility law, 49 U.S.C. 13906, or the federal regulation provided under 49 CFR 387, which would apply only if the person intends to operate in more than one state (interstate commerce).

The minimum levels of financial responsibility covering public liability and property damage applicable to the various types of for-hire motor carriers transporting passengers in interstate or foreign commerce were established under Section 18 of the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261, September 20, 1982, 96 Stat. 1102), as codified under 49 U.S.C. 31138.

The minimum levels of financial responsibility applicable to the various types of for-hire motor carriers of property involved in interstate or foreign transportation and for the transportation of hazardous materials in intrastate or interstate commerce were established under Section 30 of the Motor Carrier Act of 1980 (Pub. L. 96-296, July 1, 1980, 94 Stat. 793, at 820), as codified under 49 U.S.C. 31139.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

These rules were adopted before July 29, 2010, and provide no regulatory permit, license, or agency authorization applicable to any criteria prescribed under A.R.S. § 41-1037.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

No action is necessary. All rules located in this Article were last amended by Final Rulemaking at 18 A.A.R. 2365, effective November 10, 2012, and generally meet objectives, are effective, consistent with statute, enforceable, clear, concise, and understandable. The Department proposes no immediate action for any of the rules under this Article.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT
TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

R17-5-501, R17-5-504, and R17-5-506

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The rules prescribe financial responsibility reporting requirements for certain commercial motor carriers. The Department has determined that over the past several years statutory references and other information contained within the rules have changed. The rules need to be updated to provide accurate references and information for motor carriers to comply with Arizona's financial responsibility requirements.

Currently, applicants for registration of a vehicle subject to the gross weight fees imposed under A.R.S. Title 28, Chapter 15, Article 2, are required under A.R.S. §§ 28-2167, 28-2169, and A.A.C. R17-5-202 to provide the Department with the motor carrier's United States Department of Transportation (USDOT) number and federal taxpayer identification number before registering the vehicle for travel in Arizona. A person or motor carrier that maintains a valid USDOT number and files proof of financial responsibility with the Federal Motor Carrier Safety Administration (FMCSA) under 49 CFR 387 is not required to submit additional proof of financial responsibility under these rules, except on written request by the Department.

This rulemaking updates the Department's existing motor carrier financial responsibility reporting requirements to provide accurate references, information, and clarification for an intrastate motor carrier of non-hazardous commodities when not subject to the electronic financial responsibility reporting requirements of FMCSA under 49 CFR 387. The rules provide the methods that an eligible intrastate motor carrier may use to file evidence of financial responsibility with the Department when the motor carrier does not insure a motor vehicle or vehicle combination through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and 17 A.A.C. 5, Article 8.

Motor carriers that electronically file and maintain proof of a sufficient level of financial responsibility with the Department or FMCSA are not subject to the manual reporting process in these rules, including:

A motor carrier or intermodal equipment provider conducting operations in interstate commerce currently required under 49 CFR 390.19 and R17-5-202 to file a motor carrier identification report (Form MCS-150, MCS-150B, or MCS-150C) with FMCSA before beginning operations and every 24 months thereafter;

A motor carrier with valid operating authority and a United States Department of Transportation (USDOT) number currently required under 49 CFR 387 to file evidence of financial responsibility with FMCSA; or

A motor carrier with a commercial motor vehicle insurance provider that electronically reports motor carrier financial responsibility information to the Department under A.R.S. § 28-4148 and 17 A.A.C. 5, Article 8, by specific vehicle identification number or to FMCSA as provided under 49 CFR 387.

Additionally, the rulemaking repeals an antiquated motor carrier financial responsibility verification process no longer used by the Department. The Department currently uses the procedures prescribed under A.R.S. Title 28, Chapter 9, Article 4, to verify that a motor carrier maintains a sufficient level of financial responsibility.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Insurance companies authorized to transact business in Arizona are required under A.R.S. § 28-4148 and 17 A.A.C. 5, Article 8, to report motor vehicle insurance information to the Department electronically. However, an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state may not always have the ability to electronically report VIN-specific insurance information to the Department. In the interest of public safety, a motor carrier who wishes to remain in good standing, but has no control over how its insurance company chooses to report motor vehicle insurance information to the Department, may file the required information with the Department using the alternative manual filing method provided by these rules.

The Department estimates that more than 50% of all motor carriers registering vehicles in Arizona currently insure the vehicles through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and 17 A.A.C. 5, Article 8.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

If the rules are not updated, motor carriers and intermodal equipment providers subject to financial responsibility reporting may continue to report duplicative financial responsibility information to the Department. The motor carriers and the Department will continue to absorb unquantifiable administrative costs for the monitoring, record keeping, and reporting of duplicative financial responsibility information under the rules.

To preserve the public peace, health, and safety, ADOT and Department of Public Safety (DPS) officers inspect commercial trucks and buses under these rules. It is necessary to update the rules to include the most recent guidelines generally accepted by the motor carrier industry and law enforcement agencies. The rules ensure that all motor carriers are held to the same regulatory standards and ADOT and DPS officers are able to more expediently place commercial motor vehicles

out-of-service when finding non-compliance issues severe enough to warrant concern for public safety. The Department currently uses the statutory authority and procedures provided under A.R.S. Title 28, Chapter 9, Article 4, for financial responsibility verification.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

Since minimum levels of financial responsibility are required by law for every motor vehicle being operated in Arizona, updating these rules will provide clear direction for all affected carriers seeking to remain in compliance with the Department's financial responsibility requirements. Those no longer required to separately submit paper copies of their proof of financial responsibility to the Department may experience an unquantifiable reduction in administrative costs for the monitoring, record keeping, and reporting of duplicative financial responsibility information.

FMCSA requires exempt for-hire and private hazardous materials carriers and all freight forwarders providing transfer, collection, and delivery service to file and maintain proof of liability insurance to obtain and retain active operating authority and a USDOT number. All affected for-hire motor carriers, brokers, and certain freight forwarders will continue to file evidence of current financial responsibility with FMCSA to retain commercial operating authority. If an insurance company or surety notifies FMCSA of cancellation of coverage, the carrier, broker, or freight forwarder must file evidence of replacement coverage before the policy termination date. The FMCSA will deactivate the USDOT number of non-compliant entities, who are then required to pay a reinstatement fee (generally $80) for reactivation before resuming operations subject to FMCSA jurisdiction. In addition to the reinstatement fee, there may be a $10 fee for filing proof of replacement insurance coverage.

2. Brief summary of the information included in the economic, small business and consumer impact statement:

The Department is amending these rules to provide motor carriers operating in Arizona with updated procedures regarding the reporting and verification of sufficient levels of financial responsibility. The Department intends to ease a regulatory burden, without compromising public safety, by eliminating a duplicative reporting practice no longer necessary for motor carriers that have already provided adequate financial responsibility information to FMCSA. Under A.R.S. § 28-5432(A), persons subject to these rules include motor carriers and intermodal equipment providers who, unless exempt under A.R.S. § 28-5432(B), operate only in Arizona:

A trailer or semitrailer with a gross weight of ten thousand pounds or less and that is used in the furtherance of a commercial enterprise;

A motor vehicle or vehicle combination if the motor vehicle or vehicle combination is designed, used or maintained primarily for the transportation of passengers for compensation or for the transportation of property;

A hearse, an ambulance, or any other vehicle that is used by a mortician in the conduct of the mortician's business; and

A commercial motor vehicle as defined under A.R.S. § 28-5201(1), which includes a motor vehicle or combination of motor vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise on a highway in this state, that is not exempt from the gross weight fees as prescribed under A.R.S. § 28-5432(B), and that includes any of the following:

A single vehicle or combination of vehicles that has a gross vehicle weight rating of eighteen thousand one or more pounds and that is used for the purposes of intrastate commerce;

A single vehicle or combination of vehicles that has a gross vehicle weight rating of ten thousand one or more pounds and that is used for the purposes of interstate commerce;

A school bus;

A bus;

A vehicle that transports passengers for hire and that has a design capacity for eight or more persons; and

A vehicle that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and that is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to this chapter.

FMCSA additionally regulates the levels of financial responsibility covering for-hire motor carriers of passengers operating in interstate commerce. However, these carriers are not always required to provide proof of insurance or other financial responsibility as a condition of receiving a USDOT Number. Instead, FMCSA verifies financial responsibility as a part of its compliance review process. The actual review of financial responsibility requires that an enforcement official ensure that there is at the motor carrier's place of business a valid endorsement (Form MCS-90 or Form MCS-82), or valid authorization to self-insure that indicates that the carrier possesses the required financial responsibility coverage meeting the minimum prescribed limits.

Certain information is collected and maintained by FMCSA at the time a motor carrier makes application for, or updates, its operating authority or USDOT number. The Department is able to verify a motor carrier’s insurance information using the FMCSA’s Licensing & Insurance (L&I) system. The real-time, up-to-date licensing and insurance information of authorized for-hire motor carriers, freight forwarders, and property brokers is contained in the L&I database and is provided to the public free-of-charge. Licensing application and insurance information will appear on the FMCSA website as soon as it is manually entered into the L&I database by FMCSA staff or electronically filed by authorized insurance filers. All information displayed via a database query is public information which has long been available under the Freedom of Information Act. FMCSA provides authorized for-hire motor carrier, freight forwarder, and property broker licensing and insurance data to the industry and public via telephone request, paper report, or electronically at http://li-public.fmcsa.dot.gov (choose carrier search at the top of the web page).

The FMCSA filing requirements provide the public with assurances that all for-hire motor carriers, and private carriers transporting hazardous materials in interstate commerce, have the financial means to compensate members of the public for injuries or damages caused by their negligence. These filings also increase public accessibility to insurance information and enable FMCSA to more effectively track insurance cancellations. The Department electronically verifies the existence of motor carrier financial responsibility under A.R.S. § 28-2167 and will not complete the registration of a motor carrier until the requirements under A.R.S. § 28-4033 are met.

The manual reporting methods provided in these rules are not applicable to the majority of motor carriers subject to financial responsibility reporting under A.R.S. § 28-4032 who currently insure their vehicles through insurance companies that electronically report coverage information directly to the Department under A.R.S. § 28-4148 and 17 A.A.C. 8. Additionally, a person listed on the department's records as the owner of a taxi, livery vehicle, or limousine used to transport passengers for hire already provides annual evidence of an adequate level of financial responsibility to the Arizona Department of Weights and Measures as a condition of vehicle registration. Duplicative reporting is no longer necessary.

The minimum levels of financial responsibility required to be maintained by Arizona motor carriers are provided under 49 CFR 387 and A.R.S. § 28-4033.

Minimum Coverage		Motor carriers subject to these rules are required under A.R.S. § 28-4033 to carry motor vehicle combined single limit liability insurance at or above the following minimum amounts:
Liability	Uninsured Motorist	
		For the transportation of nonhazardous property:
$750,000		A vehicle with a gross vehicle weight of more than 26,000 pounds.
$300,000		A vehicle with a gross vehicle weight of 20,001 to 26,000 pounds.
		For the transportation of passengers:
$5 million	$300,000	In a vehicle with a seating capacity of 16 passengers or more.
$750,000	$300,000	In a vehicle with a seating capacity of less than 16 passengers including the driver, but more than eight passengers including the driver.
$300,000	$300,000	In a vehicle with a seating capacity of not more than eight passengers including the driver.
		For the transportation of hazardous materials, hazardous substances, or hazardous wastes:
$5 million		(i) Hazardous substances, as defined in 49 Code of Federal Regulations part 171, transported in a cargo tank, portable tank or hopper-type vehicle with capacities in excess of three thousand five hundred water gallons. (ii) Any quantity of class A or B explosives.

$1 million		(iii) Any quantity of poison gas (poison A). (iv) Liquefied compressed gas or compressed gas transported in a cargo tank, portable tank or hopper-type vehicle with capacities in excess of three thousand five hundred water gallons. (v) The quantity of radioactive materials that requires specialized handling and transportation controls as indicated in 49 Code of Federal Regulations part 173. For the transportation of the following: (i) Any quantity of oil listed in 49 Code of Federal Regulations part 172. (ii) Any quantity of hazardous wastes, hazardous materials or hazardous substances as defined and listed in 49 Code of Federal Regulations part 171 and in 49 Code of Federal Regulations part 172 but not included above.

The Department of Public Safety's compliance review unit regularly conducts compliance reviews of interstate and intrastate motor carriers to improve safety ratings and meet the FMCSA strategic goals and objectives. The Arizona motor carrier enforcement and safety program, consisting of the Department of Public Safety and trained commercial motor vehicle inspectors from 36 state and local agencies, conducted over 65,894 commercial vehicle inspections in 2009. Roadside inspectors continue to ensure drivers are properly licensed, that motor carriers are operating as currently authorized, and that the carrier has met current and proper financial responsibility requirements. These activities are required on each commercial motor vehicle traffic stop and inspection. All available FMCSA databases are queried for commercial driver license and carrier status.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: John Lindley, Administrative Rules
Address: Arizona Department of Transportation
Government Relations and Policy Development Office
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007
Telephone: (602) 712-8804
Fax: (602) 712-3232
E-mail: jlindley@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

2. **Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:**

Persons to bear costs	**Persons directly benefiting**
Arizona Department of Transportation	Arizona Department of Transportation
	Arizona Department of Public Safety
	Arizona Motor Carriers
	Arizona Motorists
	Commercial Motor Vehicle Insurers
	Local law enforcement agencies electing to engage in commercial vehicle enforcement

3. **Analysis of costs and benefits occurring in this state:**

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than $10,000

Moderate $10,000 to $99,999

Substantial $100,000 or more

Commercial motor vehicle insurers that hold a valid certificate of authority or that are permitted to transact surplus lines insurance in this state should experience no economic impact as a result of these rules. They will continue to report motor carrier financial responsibility information to FMCSA or the Department as they do today. All operators of commercial motor vehicles registered with a declared Gross Vehicle Weight of over 26,000 lbs. provide proof of commercial financial responsibility to the Department or to FMCSA as a condition of receiving a Use Fuel/Motor Carrier account.

Required filings vary based on the types of registration involved. This rulemaking is intended to decrease duplicative financial responsibility monitoring, record keeping, administrative costs, and reporting burdens on the Department and the following registered motor carriers:

Commercial Motor Vehicles with a Declared Gross Vehicle Weight Over 8,000 lbs. by Registration Type	Commercial Motor Vehicles Registered as of March 31, 2012
Allocated	62,348
Apportioned	137,129
Permanent Fleet	20,441
Special Interstate	1,525
Total Commercial Motor Vehicle Registrations	221,443

The Department believes that the nonmonetary benefits to all sectors are greater than the cost of the rules and estimates that the alternative reporting requirements provided in the rules may be used by the owners of up to 4,207 vehicles registered intrastate as either buses or taxis.

Buses	922
Taxis	3,285

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The Department does not anticipate any significant increase or decrease in costs or benefits to the agency or other agencies for implementation and enforcement of these rules. Any economic impact to the Department is minimal and includes the resources necessary for making and implementing the rules and updating internal policies and procedures. The Department may experience a moderate benefit by not having to process and store duplicative commercial motor vehicle insurance information received from Arizona motor carriers.

Since all outdated terms and references are being updated for clarity, and to reflect recent reorganizational changes made within the Department, the Department may benefit by not having to spend resources on providing individual clarification of the rules to regulated persons attempting to register an interstate or intrastate commercial motor vehicle.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking:

ADOT and DPS officers currently inspect commercial trucks and buses under these rules. The Department anticipates no costs to a political subdivision of this state as a result of the implementation and enforcement of these rules. A political subdivision of this state operating as a motor carrier will benefit by not having to provide duplicative commercial motor vehicle insurance information to the Department if the information is already on file with FMCSA.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to commercial vehicle enforcement or incorporate commercial vehicle enforcement together with other duties. Accordingly, local law enforcement electing to engage in commercial vehicle enforcement could stand to benefit moderately by not having to reconcile information received from multiple databases to determine if a motor carrier maintains a sufficient level of financial responsibility.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

The Department anticipates no direct increase in revenue for businesses affected by the rulemaking. An interstate commercial fleet operator operating a vehicle exclusively in Arizona, or operating a vehicle

if the sole purpose of operation in this state is for use in the conduct of intrastate business, may continue to file electronic proof of financial responsibility for those vehicles with the Department or FMCSA. Administrative costs may decrease slightly for businesses no longer required to file a paper copy of Form E with the Department if the appropriate financial responsibility information is electronically filed with either FMCSA or the Department.

There are no new fees associated with this rulemaking. However, any motor carrier not currently in compliance with the federal law, state law, or existing rules may incur minimal costs to achieve compliance in relation to the electronic filing and verification of adequate levels of financial responsibility with FMCSA. Those costs arise from federal and state laws rather than from this rulemaking. If a motor carrier is found to be non-compliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from $5,000 to $25,000 per citation and the possible loss of a commercial driver license as prescribed under A.R.S. § 28-5238.

Benefits to motor carriers who maintain compliance with these rules include increased safety, lower financial responsibility premiums, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement.

4. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking:

The Department anticipates no economic impact on private and public employment as a result of this rulemaking. Additionally, the Department has not notified the Joint Legislative Budget Committee (JLBC) under A.R.S. § 41-1055(B)(3)(a), since no new full time employees are necessary to enforce and implement these rules.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

a. Identification of the small businesses subject to the proposed rulemaking:

The small businesses subject to these rules, as defined under A.R.S. § 41-1001(20), include any Arizona motor carriers and commercial motor vehicle insurance providers that are currently exempt from the FMCSA financial responsibility reporting requirements, or that do not electronically report motor carrier financial responsibility information to the Department using specific vehicle identification numbers. The manual reporting procedures authorized under these rules apply to Arizona motor carriers operating intrastate only.

b. Administrative and other costs required for compliance with the rulemaking:

Uniform safety and compliance costs for small businesses are the same as discussed under paragraph (B)(3)(c) above. The Department anticipates no new economic impact to persons and business entities as a result of this rulemaking. Motor carriers subject to this rulemaking are currently either required to file proof of financial responsibility with FMCSA on application for operating authority and issuance of a USDOT number, or with the Department under A.R.S. Title 28, Chapter 9, Articles 2 and 4, on

initial motor vehicle registration or on written request by the Department. Currently, all insurance companies that hold a valid certificate of authority or that are permitted to transact surplus lines insurance in this state have the opportunity to electronically report motor carrier financial responsibility information to the Department as a Certificate of Liability. Therefore, the Department does not anticipate any increase in motor carrier administrative or other costs as a result of this rulemaking.

Once electronically filed with the Department, a motor carrier's Certificate of Liability remains valid until electronically cancelled by the responsible insurance company. The responsible insurance company will systematically notify the Department if the motor carrier subsequently updates or changes financial responsibility coverage. If a motor carrier subsequently drops financial responsibility coverage, the insurance company will notify the Department for immediate corrective action under A.R.S. Title 28, Chapter 9, Article 4.

FMCSA requires motor carriers to update their financial responsibility information if the information changes or every two years if no changes were made. If a motor carrier subsequently drops financial responsibility coverage, the insurance company must notify FMCSA for immediate suspension of the motor carriers operating authority.

c. Description of the methods that ADOT may use to reduce the impact on small businesses:

The rules provide a more expedient and less-stringent application process for Arizona motor carriers and commercial motor vehicle insurers that already file and maintain evidence of a sufficient level of financial responsibility with FMCSA, while preserving some existing manual reporting methods for:

i. Insurance companies that hold a valid certificate of authority or that are permitted to transact surplus lines insurance in this state, but do not have the ability to electronically report VIN-specific insurance information to the Department; and

ii. Motor carriers who wish to remain in good standing, but have no control over how their insurance company reports insurance information to the Department.

The Department is unable to further reduce any impact on small businesses since uniform procedures and sanctions are required by federal and state mandates.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

The rules support the public interest and the interests of concerned parties by ensuring that all federal motor carrier safety and hazardous materials regulations and requirements of motor carriers are uniformly applied and enforced. The public benefits when all motor carriers remain in compliance with these rules as they ensure increased safety, lower financial responsibility premiums, provide

opportunity for increasing profit margins through better customer service, and facilitate more expedient administrative processing by law enforcement.

6. **Statement of the probable effect on state revenues:**

   This rulemaking will have no effect on state revenues.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:**

   In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. See 5(c).

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

Due to the variety of commercial motor vehicle registration options available to Arizona motor carriers (allocated, apportioned, permanent fleet, etc.) the Department can only estimate the number of currently registered commercial motor vehicles that may be subject to these rules.

1. The motor vehicle is physically located in this state;
2. A notice of lien is filed with the Department;
3. A completed affidavit from the lienholder is submitted to the Department stating that the motor vehicle is physically located in this state and was repossessed on default pursuant to the terms of the lien and applicable law and that this state, its agencies, employees, and agents shall not be held liable for relying on the contents of the affidavit; and
4. In addition to the information required in subsection (A)(3), the affidavit contains the following information:
   a. The (VIN),
   b. The vehicle model year,
   c. The vehicle make,
   d. The registered owner's name,
   e. The date of repossession,
   f. The state in which the vehicle is titled,
   g. The lienholder company name,
   h. The lienholder agent or representative name,
   i. The lienholder signature, and
   j. The notary or Department agent signature.

B. The Department shall accept out-of-state affidavits of repossession that comply with the requirements in subsections (A)(3), (A)(4), and subsection (C) if all of the following apply:
1. The affidavit is submitted by an Arizona licensed dealer, and
2. The Arizona licensed dealer is transferring the title into the dealership's name.

C. A lienholder may sell a repossessed motor vehicle without transferring the title into the lienholder's name by completing a Bill of Sale for submission to the Department. The Bill of Sale may be combined with the affidavit of repossession and shall contain the following information:
1. The buyer's name;
2. The sale date;
3. The buyer's street address, including the city, state, and zip code;
4. The name of the new lienholder, if applicable;
5. The new lien date, if applicable;
6. The odometer certification statement, if required by A.R.S. § 28-2058, including odometer reading, and an acknowledgment with the buyer's name and signature;
7. A statement that the buyer is aware of the odometer certification made by the seller;
8. The seller's name;
9. The seller's notarized signature; and
10. The seller's address, including city, state, and zip code.

D. A completed repossession affidavit as prescribed in this Section is proof of ownership, right of possession, and right of transfer.

E. The Department has no responsibility relating to foreclosure on real property under A.R.S. Title 33, Chapter 7.

Historical Note
New Section recodified from R17-4-260 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 3399, effective October 2, 2004 (Supp. 04-3). Section amended by final rulemaking at 23 A.A.R. 1434, effective July 4, 2017 (Supp. 17-2).

R17-5-408. Resale of a New Motor Vehicle

A. A motor vehicle dealer that sells a new motor vehicle that was delivered to a previous purchaser, shall provide written notice to the new purchaser under subsection (B).

B. A motor vehicle dealer shall ensure that the notice under A.R.S. § 28-4422 contains the following information:
1. The name of the dealership;
2. A vehicle description, including year, make, and VIN;
3. A statement that the new motor vehicle was delivered to a previous purchaser;
4. The printed name of the new purchaser; and
5. The signature of the new purchaser (initials are not acceptable) indicating that the new purchaser has received the notice.

C. The motor vehicle dealer shall:
1. Provide a copy of the notice under subsection (B) to the new purchaser, and
2. Keep a copy of the signed notice under subsection (B) at the new motor vehicle dealer's established place of business for at least three years.

D. The motor vehicle dealer is not required to submit the notice to the Department under subsection (B) unless otherwise required by state or federal law.

E. A new motor vehicle dealer shall not add additional language to the notice that would conflict with, or alter the intent of the provisions specified in subsection (B).

Historical Note
New Section made by final rulemaking at 12 A.A.R. 225, effective March 11, 2006 (Supp. 06-1). Section amended by final rulemaking at 23 A.A.R. 1434, effective July 4, 2017 (Supp. 17-2).

ARTICLE 5. MOTOR CARRIER FINANCIAL RESPONSIBILITY

R17-5-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-4001, 28-4031, 28-5201, and 28-5431, the following terms apply to this Article, unless the context otherwise requires:

"Binder" means a contract for temporary insurance as described in A.R.S. § 20-1120.

"Initial motor vehicle registration" means the first time a motor carrier registers a specific motor vehicle or a vehicle combination in Arizona.

"Insurance company" means an entity that is in the business of issuing motor carrier liability insurance policies.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

R17-5-502. Repealed

Historical Note
New Section recodified from R17-4-226 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-503. Repealed

Historical Note
New Section recodified from R17-4-226.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability; Procedure; Exception

A. If a person or motor carrier subject to financial responsibility requirements under A.R.S. § 28-4032 does not insure its motor vehicle or vehicle combination through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and Article 8 of this Chapter, the person or motor car-

rier shall submit proof of financial responsibility as prescribed in this Section, and in the amount required under A.R.S. § 28-4033(A):
1. On initial motor vehicle registration, or
2. On written request by the Department.

B. An insurance company, its managing general agent, broker, or agent may submit proof of financial responsibility to the Department on behalf of a person or motor carrier.

C. As proof of financial responsibility, a person or motor carrier shall submit to the Department a photocopy of:
1. A valid liability insurance policy;
2. A binder dated within 90 days of filing with the Department;
3. A completed and signed Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the agency;
4. A completed and signed Certificate of Liability Insurance form, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the certificate holder; or
5. A certificate of self-insurance issued by the Department after a person or motor carrier meets the requirements of R17-5-810 and A.R.S. §§ 28-4007 and 28-4135.

D. Before a binder submitted as proof of financial responsibility expires, a motor carrier shall submit:
1. A binder from an insurance company other than the insurance company named in the first binder; or
2. Proof of financial responsibility listed in subsections (C)(1) or (C)(3) through (5).

E. A person or motor carrier that maintains a valid USDOT number and files proof of financial responsibility with the Federal Motor Carrier Safety Administration under 49 CFR 387 is not required to submit additional proof of financial responsibility under this Section, except on written request by the Department.

Historical Note
New Section recodified from R17-4-445 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

R17-5-505. Repealed

Historical Note
New Section recodified from R17-4-446 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

R17-5-506. Repealed

Historical Note
New Section recodified from R17-4-447 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Repealed by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

R17-5-507. Repealed

Historical Note
New Section recodified from R17-4-448 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK SERVICE PROVIDERS

R17-5-601. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101 and 41-1072, in this Article, unless the context otherwise requires, the following terms apply:

"Alcohol concentration" means the weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/210 liters.

"Alveolar breath sample" means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

"Anticircumvention feature" means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

"Authorization agreement" or "agreement" means an agreement authorized by the Director that an IISP enters into with the Department to provide ignition interlock services under A.R.S. § 28-1468.

"Breath alcohol test" means analysis of a sample of the person's expired alveolar breath to determine alcohol concentration.

"Bump starting" means a method of starting a motor vehicle with an internal combustion engine by engaging the manual transmission while the vehicle is in motion.

"Business day" means a day other than a Saturday, Sunday, or state holiday.

"Calibration" means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

"Cancellation" means the termination of a manufacturer's ignition interlock device certification for ignition interlock device installation.

"Certification" means a status granted by the Department under this Article, which permits a certified ignition interlock device manufacturer to offer an ignition interlock device for installation.

"Certified ignition interlock device," "CIID," or "device" means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the NHTSA specifications; that connects a breath analyzer to a motor vehicle's ignition system; that is constantly available to monitor the alcohol concentration in the breath of any person attempting to start the motor vehicle by using its ignition system; that deters starting the vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device; and determines whether the alcohol concentration in the person's breath is below a preset level.

"Circumvent" or "circumvention" means an attempted or successful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:

28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

28-4002. Director; duties

The director shall:

1. Administer and enforce this chapter.

2. Print for distribution to the public rules adopted to administer this chapter and furnish the rules to a person on application and payment of the cost as prescribed by the director.

28-4034. Maintenance, certification and verification of financial requirements

A. A person who operates a motor vehicle in this state and who is subject to the financial responsibility requirements of this article shall maintain at all times the amounts prescribed in section 28-4033 that obligates the person to pay compensation for injuries to persons and for loss or damage to property by reason of the ownership, maintenance or use of a motor vehicle or vehicle combination owned or operated by the person.

B. The department may require a person who is subject to the financial responsibility requirements of this article to certify the existence of financial responsibility in the form and at the times the department deems necessary. The department may forward the certification to the named insurer to determine if the certification is correct. Civil liability does not accrue to the insurer or any of its employees for reports made to the department if the reports are made in good faith based on the most recent information available to the insurer.

28-7045. Director; state highway and route use; rules

The director shall exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and adopt rules regarding the use as the director deems necessary to prevent the abuse and unauthorized use of these highways and routes.

E-10.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 5, Articles 6-7

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 20, 2025

SUBJECT: **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 5, Articles 6 and 7

Summary

This Five-Year Review Report (5YRR) from the Arizona Department of Transportation ("Department") covers twenty-three (23) rules in Title 17, Chapter 5, Articles 6 relating to Ignition Interlock Device Manufacturers and three (3) rules in Article 7 relating to Ignition Interlock Service Providers and Ignition Interlock Device Technicians.

These rules were initially made as a result of Laws 2017, Ch. 331 § 12, which provided an exemption to the Department to complete rulemaking. The rules have not previously undergone a 5YRR but the Council did approve a One-Year Review Report in August 2019. In the 2019 report, the Department proposed to make a fee permanent. The Department completed this proposed course of action in July 2020.

Proposed Action

The Department indicates that R17-5-615 is not meeting its objective and not enforced as written. The Department indicated that this rule deals with the rolling retest requirement and could be improved because of manufacturing issues that result in inaccurate violations. The Department has also indicated that 10 rules in Article 6 can be improved to make the rules more clear, concise, and understandable. The Department intends on seeking Governor's approval

upon the Council approving the report. The Department indicates that they expect to have a final rulemaking to the Council by December 2025.

1. Has the agency analyzed whether the rules are authorized by statute?

The Department cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states that these rules were last amended in 2020 and the economic impact remains unchanged as estimated in the economic impact statement prepared by the Department in relation to that rulemaking. Stakeholders include the Arizona Department of Transportation, ignition interlock users, manufacturers, and ignition interlock service providers, and the general public.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department states it is committed to facilitating effective Certified Ignition Interlock Device (CIID) programming and best practices, in compliance with state laws. The Department states that in rulemaking, it routinely adopts the least costly and burdensome options for any process or procedure required of the regulated public or industry. Therefore, the Department has determined that the benefits of all the rules in this chapter outweigh the costs.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are mostly clear, concise, and understandable. The Department does indicate the following 10 rules in Article 6 could be improved.

- R17-5-601: The Department indicates the rule could be improved by editing terms to ensure consistency and to remove 12 definitions that are already found in statute.
- R17-5-602: The Department indicates that this rule could be improved by clarifying when a manufacturer or service provider can correct a deficiency or noncompliance identified by the Department. The Department also indicates that the Department can better clarify the process to assess civil penalties for non-compliance.

- R17-5-603: The Department indicates that this rule could be improved by updating the term CIID requirement period and to incorporate language that better reflect current practices.
- R17-5-606: The Department indicates that this rule could be improved by rearranging the current subsections to follow a more logical order.
- R17-5-607: The Department indicates that this rule could be improved by removing outdated language and to clarify what constitutes a lockout condition.
- R17-5-608: The Department indicates that this rule could be improved by removing outdated language.
- R17-5-609: The Department indicates that this rule could be improved by clarifying what procedures a manufacturer needs to follow when submitting items to the Department.
- R17-5-610: The Department indicates that this rule could be improved by clarifying information on improper reporting.
- R17-5-611: The Department indicates that this rule could be improved by removing outdated language.
- R17-5-615: The Department indicates that this rule could be improved by adding a GPS component to verify that the vehicle is actually being operated during a rolling test.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are enforced as written with the exception of R17-5-615. The Department indicates that the rule does not currently require that a vehicle be in motion before requiring that a driver perform a rolling retest. This has resulted in the Department receiving violations that would later become void as a result of investigations. The Department has been enforcing the rule but amending the rule to clarify the in-motion component will result in fewer false violations and reduce the amount of investigations required.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department indicates there are no rules that directly correspond with ignition interlock devices beyond general requirements of any manufactured product by the U.S. Consumer Product Safety Commission. The Department does indicate that under 23 U.S.C. 405(d) that the state may be eligible for federal grants because of the State's highway safety program, which includes the interlock ignition rules.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department has indicated that the rules do not require a permit or a license.

11. Conclusion

This Five-Year Review Report (5YRR) from the Arizona Department of Transportation ("Department") covers twenty-three (23) rules in Title 17, Chapter 5, Articles 6 relating to Ignition Interlock Device Manufacturers and three (3) rules in Article 7 relating to Ignition Interlock Service Providers and Ignition Interlock Device Technicians. The Department completed the previous one year review report after these rules were added as result of an exempt rulemaking. The Department indicates the need to amend 10 rules to improve clarity, conciseness, and understandability. The Department also indicates the need to amend one rule that has resulted in unnecessary violations that have required Department investigations to clear, with the goal of the amendment being to ease the burden on those who require interlocks and the Department.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

ARIZONA DEPARTMENT OF TRANSPORTATION
206 S. 17th Ave.
Phoenix, AZ 85007
KATIE HOBBS
GOVERNOR
JENNIFER TOTH
DIRECTOR

January 29, 2025

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Department of Transportation, 17 A.A.C, Chapter 5, Articles 6 & 7 Five Year Review Report

Dear Chair Klein:

Please find enclosed the Five Year Review Report of the Arizona Department of Transportation (ADOT) for 17 A.A.C. Chapter 5, Articles 6 and 7 which is due on January 31, 2025.

ADOT hereby certifies it is in full compliance with A.R.S. 41-1091.

For questions about this report, please contact Kamaria McDonald, Rules & Policy Analyst, at 623-687-1703 or kmcdonald3@azdot.gov.

Sincerely,

Jennifer Toth
Director

Enclosure: ADOT Five Year Review Report

ARIZONA DEPARTMENT OF TRANSPORTATION

Government Relations & Rules
Office of the Director

A.A.C. Title 17 – Transportation
Chapter 5 - Department of Transportation
Commercial Programs

Article 6 - Ignition Interlock Device Manufacturers and Ignition Interlock Service Providers
Article 7 - Ignition Interlock Device Technicians

Five-Year Review Report

Submitted to the Governor's Regulatory Review Council
January 2025

Arizona Department of Transportation

Five-Year Review Report

17 A.A.C., Chapter 5, Articles 6 and 7

January 2025

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 28-366,

Specific Statutory Authority: A.R.S. § 28-1461; A.R.S. § 28-1462; A.R.S. § 28-1465; A.R.S. § 28-1468; Laws 2017, Chapter 331, § 12

2. **The objective of each rule:**

Rule	Objective
R17-5-601	To define terms necessary to ensure understanding the rules relating to ignition interlock device manufacturers, ignition interlock service providers, and ignition interlock technicians.
R17-5-602	To detail the certification requirements that a manufacturer must meet to certify an ignition interlock device and the Department's notification procedure regarding improper reporting.
R17-5-603	To detail the technical and operating requirements of an ignition interlock device.
R17-5-604	To establish the application and other requirements for a manufacturer to certify an ignition interlock device and provide the requirements for new ignition interlock installations.
R17-5-605	To establish the licensing time frames for manufacturer certification of an ignition interlock device.
R17-5-606	To detail the application process for a manufacturer to certify an ignition interlock device model and the circumstances in which the Department will deny device certification.
R17-5-607	To detail the circumstances and process by which the Director will cancel certification of an ignition interlock device.
R17-5-608	To detail the procedures and required notification process for a manufacturer to modify an ignition interlock device.
R17-5-609	To list the responsibilities of an ignition interlock service provider and a manufacturer regarding the Department's ignition interlock program.

R17-5-610	To list the ignition interlock activities and information that a manufacturer must electronically report to the Department.
R17-5-611	To detail the requirements for an ignition interlock service provider to provide assistance to persons with an ignition interlock device that fails to operate properly, the recordkeeping requirements for a manufacturer, and the notification process to ignition interlock users when ignition interlock services change.
R17-5-612	To delineate the recordkeeping requirements of an ignition interlock service provider and a manufacturer.
R17-5-613	To detail the requirements of how the Department is to investigate any complaint relating to an ignition interlock device or an ignition interlock service provider, and requires the Department to inspect service centers and the principal place of business of a manufacturer.
R17-5-614	To detail the requirements of how an ignition interlock service provider collects an ignition interlock device installation fee when an ignition interlock is installed in a motor vehicle to comply with A.R.S. § 28-1462(H).
R17-5-615	To detail the rolling retest requirements that an ignition interlock user must follow and the action that the Department will take when a user fails to take required rolling retests or when the ignition interlock device records breath alcohol concentration(s) equal to or greater than the legal limits.
R17-5-616	To detail the reasons for which the Director may prescribe civil penalties against an ignition interlock device manufacturer, the amount of civil penalties, and the steps in the overall process.
R17-5-617	To detail the circumstances in which the Director will issue a cease and desist order against a party to an ignition interlock service provider authorization agreement, the action required, and allows an ignition interlock service provider to request a hearing.
R17-5-618	To detail that an ignition interlock service provider must have at least one readily accessible service center in each county in the state that must provide installation, inspection, calibration, and removal of ignition interlock devices by trained technicians or employees.
R17-5-619	To specify the documents and the implementation plan that an ignition interlock service provider that applies for a service contract must submit to the Department.
R17-5-620	To specify the licensing time frames for each step of the authorization process.

R17-5-621	To detail the application process requirements for an ignition interlock service provider to submit a service center application and the time frames for processing an application.
R17-5-622	To detail the requirements for the technician application by an ignition interlock service provider and the time frames for processing an application.
R17-5-623	To detail the ineligibility provisions for an ignition interlock service provider whose agreement has been terminated and the process that the Department will use to notify ignition interlock users to obtain another service provider.
R17-5-701	To clarify the definitions that apply to Article 7.
R17-5-702	To outline the responsibilities of an ignition interlock service provider to ensure that a technician has specified qualifications and performs duties specified in the rules.
R17-5-706	To detail when an ignition interlock user must obtain calibration checks of an ignition interlock device, how calibration should be performed, and that a device that does not maintain calibration should be repaired to meet standards or be removed.

3. Are the rules effective in achieving their objectives? **Yes _X_** **No __**

The rules are generally effective in achieving their objectives, but the Department recommends the following change to increase the effectiveness of the rules related to the rolling retest requirement**:**

R17-5-615	The Department is suggesting additional terminology to clarify the specifications of the rolling retest requirements for vehicles being "in motion" and the validation of the violations by the manufacturer prior to reporting to the Department so as to avoid the additional inaccurate violations and increase effectiveness of the overall rules, as erroneous violations related to rolling retests are currently voided, however many go unnoticed and result in wasted resources.

4. Are the rules consistent with other rules and statutes? **Yes _X_** **No __**

5. Are the rules enforced as written? **Yes _X__** **No ___**

The rules are enforced as written, however, the Department notes the following issue with enforcement and compliance with the rolling retest requirement, but anticipates this will be addressed with some of the proposed changes included in this report.

Rule	Explanation
R17-5-615	This rule specifies when an ignition interlock user's CIID requires a person to take a rolling retest and when the Department will extend a user's ignition interlock period for failing to take rolling retests. Some users do not comply with the rolling retest requirement and incur a six- month extension of the rolling retest period. The Department provides written notification to the user and extends their ignition interlock period for six months for each failure to take a set of three consecutive rolling retests within 18 minutes, during a drive cycle. Continuous lack of compliance by a user with the rolling retest requirement over time can result in extension of their ignition interlock period for many years. The rules are consistent with the rolling retest statute requiring the Department to extend a user's ignition interlock period for six months for each set of three missed rolling retests. The Department is continuing to monitor and review the extent of this complex issue, which may require future rule, legislative, or other Departmental action.

6. **Are the rules clear, concise, and understandable?** **Yes _X__** **No ___**

Although these rules are generally, clear, concise, and understandable, the Department suggests the following minor technical corrections, updates, and other amendments to be made to provide additional regulatory relief for all Certified Ignition Interlock Device (CIID) manufacturers, Ignition Interlock Service Provider (IISP)'s, and users located throughout the state and address any other issues that may be identified by the Department's internal audit team to improve the operating efficiency of the Department's Certified Ignition Interlock Program, facilitate the providing of records to the Department in a timely manner, and reduce instances of improper reporting. The Department recommends the following:

Rule	Explanation
R17-5-601	Making minor adjustments to existing terms needed for consistency purposes.
R17-5-601	Removing definitions that only repeat statute; a. Alcohol Concentration b. Bump Starting

	c. Certified Ignition Interlock Device d. Circumvent e. Global Positioning System f. Ignition Interlock Service Provider g. Improper Reporting h. Retest Set Point i. Rolling Retest j. Tampering k. Technician
R17-5-602	Clarifying that a manufacturer or IISP who is out of compliance with the Department's program requirements, statutes, or rules may have an opportunity to correct a deficiency identified by the Department.
R17-5-602	Clarifying the process used by the Department to assess civil penalties against a manufacturer who remains out of compliance or refuses to correct a deficiency identified by the Department.
R17-5-603	Clarifying the use and meaning of the term "CIID requirement period" as used in these rules.
RI7-5-603	Updating the rules to incorporate the Department's current system requirements and statutes.
R17-5-606	Rearranging several Sections to provide a more logical order for the rules.
R17-5-607	Clarifying the temporary and permanent lockout processes to include when an action may trigger a lockout condition and that a test failure may trigger a violation or an extension of the user's CIID requirement period.
R17-5-607 & R-17-5-608	Removing outdated language.
R17-5-609	Clarifying the procedures a manufacturer shall use when submitting various items to the Department for consideration.
R17-5-609	Clarifying the procedures a manufacturer or IISP shall follow to ensure continuity of service to program participants if an IISP or service center goes out of business or otherwise discontinues services provided on behalf of a manufacturer.
R17-5-609	Clarifying further the responsibilities of the manufacturer and the IISP.
R17-5-610	Clarifying information related to Improper Reporting.
R17-5-611	Removing outdated language.
R17-5-615	Allowing the use of new GPS technology to determine that a vehicle equipped with a CIID is actually being operated before requesting a rolling retest and recording a violation.

7. <u>Has the agency received written criticisms of the rules within the last five years?</u> Yes ___ No _X__

8. **Economic, small business, and consumer impact comparison:**

These rules were last amended in 2020 and the economic impact remains unchanged as estimated in the economic impact statement prepared by the Department in relation to that rulemaking, due to similar operating costs and no change in the rules or fees. Since the Department's last rulemaking, the number of CIID manufacturers and devices installed have increased, however the only cost set by the Department, as outlined by statute, is the $20 installation fee that is used to cover administration costs of the CIID program. The IISP's set and retain additional CIID fees for the services they provide, therefore the Department anticipates no change to the economic impact with these recommended changes.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes_X__** **No ___**

The Department completed an internal audit of its CIID program, which focused primarily on the violation processes, however an analysis of overall best practices alongside those of the neighboring states of Colorado, Oregon, Washington, Texas, California, New Mexico and Wyoming, was also included. The findings determined that Arizona's CIID program fees are lower than those states, however additional best practices related to violations and quality controls can be improved in the processes of its CIID program. The Department anticipates that the recommended changes will address many of these improvements discussed in the audit.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Yes ___ No ___ N/A _X__

This is the Department's first five year review report related to these rules, however a one year review report was submitted in 2019. The Department's previously stated course of action related to these rules was accomplished in a rulemaking, effective July 5, 2020, as outlined in the 2019 one year review report. The Department completed rule amendments that provided further clarification on existing processes to ensure public safety, corrected outdated information and statutory references, and ensured that the rules were clear, concise, and understandable. The rulemaking also included A.A.C. R17-5-614, the ignition interlock device installation fee rule, established through exempt rulemaking: https://apps.azsos.gov/public_services/register/2020/22/contents.pdf#page=5

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department is committed to facilitating effective CIID programming and best practices, in compliance with state laws. In rulemaking, the Department routinely adopts the least costly and burdensome options for any process or procedure required of the regulated public or industry. Funding for the Department's CIID program consists of revenue from the Ignition Interlock Device Fund (IIDF), established by the legislature in FY 2019, under A.R.S. § 28-1469, which states, "monies in the fund must be used by the department for administering this article, including compliance measures, audits and investigating complaints that are related to ignition interlock devices and ignition

interlock service providers". R17-5-614, effective July 1, 2018 set a $20 fee per installation, to be used by the Department for administering the ignition interlock program and the Department personnel that work directly with CIID users. This fund is replenished on a continuous basis each time the CIID installation fee of $20 is collected by an IISP as required under A.R.S. § 28-1462 and the only fee that a user with a CIID pays that is transmitted to the Department, therefore the sole source of revenue for the IIDF. ADOT was appropriated $365,600 from the fund in FY 2025. This funding is allocated to MVD for the purposes outlined in statute. FY 2025 and FY 2026 revenue projections are based on a three-year average of actual revenue in FY 2022 through FY 2024. These revenue projections assume approximately 17,360 devices will be installed annually in FY 2025 and FY 2026 (17,360 devices multiplied by a $20 fee = $360,700).

Additionally, clarification of the improper reporting rules is expected to result in more accurate reporting of individual ignition interlock activity, which benefits ignition interlock users. The rules also benefit CIID users through the expansion of related services in IISP's located throughout all 15 counties, including rural areas, saving users time to obtain services. The recommended rule changes will allow compliance checks on the ignition interlock devices to be reported and performed electronically in real-time, thereby requiring fewer trips to service centers and lowering costs to IISP's as well as CIID persons. Therefore, the Department has determined that the benefits of all the rules in this chapter outweigh the costs.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No __X_

The rules are not more stringent than federal law and there is no corresponding federal law that directly regulates the ignition interlock device manufacturing and installation industries other than what would be required of any product manufacturer by the U.S. Consumer Product Safety Commission.

Arizona is an ignition interlock state for the purpose of application for, and receipt of, federal highway safety grant funding administered through the U.S. Department of Transportation's National Highway Traffic Safety Administration, and the Arizona Governor's Office Highway Safety. These rules are in direct support of Arizona's efforts to curb the number of driving under the influence (DUI) offenses by helping to reduce recidivism rates for those users who have qualified for reinstatement of their Arizona driver license privileges after serving a statutorily prescribed suspension or revocation period for a previous conviction under Arizona's strict DUI laws.

In accordance with 23 U.S.C. 405(d), Highway Safety Programs, Arizona may be eligible to apply for federal grants, from time to time, which are awarded to states that adopt and implement effective programs to reduce traffic safety problems resulting from individuals driving motor vehicles while under the influence of alcohol, drugs, or the combination of alcohol and drugs or that enact alcohol ignition interlock laws if the state's highway safety program meets the requirements of 23 U.S.C. Chapter 4, and all of the applicable federal and state laws as outlined in the State of Arizona Highway Safety Plan for FY 2024 - 2026.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A CIID manufacturer must first obtain Department certification of the manufacturer's ignition interlock device to allow device installation. A.R.S. § 28-1468 requires an IISP to apply for authorization of an ignition interlock provider contract. The manufacturers certification and IISP authorization can be considered general permits because authorization allows each IISP to conduct activities in a class that are substantially similar in nature and that are granted to a qualified applicant to conduct identified activities.

14. **Proposed course of action**

If the Department receives approval from the Governor's Office for an exemption from the rulemaking moratorium, A.R.S. § 41-1039, the Department anticipates filing ignition interlock rule changes with the Governor's Regulatory Review Council in a regular rulemaking by December 2025.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK SERVICE PROVIDERS

ARTICLE 7. IGNITION INTERLOCK DEVICE TECHNICIANS

R17-5-601 to R17-5-623, R17-5-701, R17-5-702, and R17-5-706

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

This rulemaking implements the provisions of Chapter 105, Laws 2018 and Chapter 331, Laws 2017 (SB 1401) relating to the Department of Transportation's ignition interlock program. Chapter 331 authorized the Department to approve an application to contract with Ignition Interlock Service Providers (IISP's) beginning July 1, 2018, to provide ignition interlock services to persons required by a court or the Department to have an ignition interlock device installed on their motor vehicle. Each IISP must develop an implementation plan and provide services through service centers with at least one service center in each county of the state. This legislation prescribes the responsibilities of an ignition interlock device manufacturer to electronically report ignition interlock activity to the Department daily in real-time; the services that an IISP and technicians must provide to ignition interlock users; and the required actions of an ignition interlock user.

The Department had a one-time rulemaking exemption from the Administrative Procedure Act to adopt rules to implement this legislation. The Department received approvals from Matt Clark at the Governor's Office for this rulemaking on June 17, 2017 and April 16, 2018. The Department filed exempt rules with the Secretary of State's Office on June 6, 2018 with an effective date of July 1, 2018.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Prior to this revision, the rules and legislation required a manufacturer to certify an ignition interlock device. Following device certification, the manufacturer's certified device is available for installation. A manufacturer applied to the Department to set up established places of business operated by certified installers and service representatives to provide ignition interlock services at service center locations chosen. No requirement existed to have fixed service centers in each county of the state. Availability of ignition interlock services was limited in rural areas and often only mobile services were available. These rules prescribe the requirements for an IISP to apply for authorization for an ignition interlock contract to provide services at service centers operated by technicians certified by the IISP in all counties of the state. With the program changes, the number of service centers has expanded substantially in all counties of the state, including rural areas. Currently ignition interlock users may

select one of nine Ignition Interlock Service Providers in the state. Collectively, there are 279 existing ignition interlock service centers operating in counties throughout the state.

The rules define improper reporting and prescribe the requirements for a manufacturer to report ignition interlock activity, violations, and rolling retest data on a daily basis in real-time to the Department within 24 hours. A.R.S. § 28-1465 authorizes the Department to establish civil penalties for improper reporting by a manufacturer. The rules establish tiered civil penalties which may be imposed against an ignition interlock device manufacturer for improper reporting of ignition interlock data.

Ignition interlock devices installed after July 1, 2018 are required to have a camera and operate wirelessly. The program was streamlined so that ignition interlock device compliance checks are performed electronically, requiring fewer visits by users to service centers.

To comply with statute, the rules modify and strengthen the rolling retest requirements for ignition interlock users. The Department was granted authority to set an ignition interlock device installation fee by rule. The rules establish a new one-time ignition interlock device installation fee of $20 that an ignition interlock user is required to pay beginning July 1, 2018, when an ignition interlock device is installed on a user's vehicle.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Due to the statutory requirement for an IISP to provide ignition interlock services through service centers, with at least one service center located in each county in the state, ignition interlock users throughout the state have greater choice to select an IISP and obtain more accessible services. Without the legislative changes, this ignition interlock service expansion in the state would not have occurred. Use of new ignition interlock devices also allows devices to have compliance checks and violations reported automatically, offering benefits to ignition interlock users. The 2014 rules provided that an ignition interlock user would have a rolling retest violation for refusing or failing to provide any set of four valid breath samples during the user's ignition interlock period. SB 1401 provided that an ignition interlock user who has a set of three consecutive missed rolling retests within 18 minutes during a drive cycle has a violation and receives an extension of 6 months of the user's ignition interlock period. In 2018 the Department modified the rules to implement these provisions, thereby strengthening the rolling retest requirement during a shorter period of time. The rules clarify the information that a manufacturer must report to the Department. Improper reporting of certain activity as a violation has, in some cases, resulted in the Department taking initial corrective action against a driver, that was determined to be in error, and was voided. The Department believes that clarification of reporting requirements and the overall program changes will result in a more effective program for ignition interlock users and the public.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

Expansion of ignition interlock services statewide provides greater choice and accessibility of service center locations in rural and urban areas of the state. Prior to these rule changes, a user's ignition interlock device needed to be calibrated every 30, 60, and 90 days after installation, and later at 60 to 90-day intervals to download user data. The new ignition interlock devices check compliance electronically and require fewer service center visits. With the clarification of reporting requirements and improper reporting, the Department anticipates that improper reporting of user ignition interlock activity will be reduced, which benefits ignition interlock users and the Department. The rules require an IISP to instruct an ignition interlock user and provide information about ignition interlock usage, alcohol violations, and how to avoid violations that extend a user's ignition interlock period. The Department anticipates that greater user compliance with, and understanding of the rules and individual user requirements, will benefit users and the driving public.

2. **Brief summary of the information included in the economic, small business and consumer impact statement:**

Impact on Ignition Interlock Service Providers

Legislation enacted in 2017 and 2018 modified the requirements and process for businesses to provide ignition interlock services. This entailed setting up a process to authorize Ignition Interlock Service Providers that meet set requirements and are approved by the Department to provide statewide ignition interlock services. Ignition interlock service providers who choose to provide statewide ignition interlock services to install, service, repair, and replace ignition interlock devices must meet requirements in the authorization agreement and statute, including fulfilling bond requirements and submitting an implementation plan. The Department has contracted with nine Ignition Interlock Service Providers that collectively operate a total of 279 service centers in 15 counties of the state. IISP's are also responsible for certifying, properly training, and hiring technicians to provide services at service centers to persons required to install an ignition interlock device on their vehicles.

The Department believes that, as a result of legislative changes, there has been a substantial economic impact on those Ignition Interlock Service Providers that have chosen to contract, locate, rent or purchase property, operate, equip, and staff service centers that provide ignition interlock services to residents in all counties of the state. Due to the expansion of service centers and ability to serve additional ignition interlock users in other areas of the state, the Department anticipates that revenue generated over the three-year contract period by the IISP's from various fees they establish and charge ignition interlock users will offset costs and increase substantially.

The rules include a number of new requirements for an IISP. The rules establish a multi-step application process, including submission of an implementation plan, service center and technician applications. Each IISP is required to collect an ignition interlock device installation fee from an ignition interlock user and must transmit this fee electronically to the Department monthly. Since the applications are electronic and fees are submitted electronically, it is anticipated that minimal costs are involved.

To comply with statutory requirements, the rules give the Department additional enforcement authority over an Ignition Interlock Service Provider that violates the contract, statute, or the rules through cease and desist authority. A cease and desist action against a service provider would prevent the provider from doing business, negatively impacting the operation and revenue of the provider.

Impact on Manufacturers

The Department has nine manufacturers that have certified an ignition interlock device. Most of the ignition interlock manufacturers are large businesses that design, construct, and produce ignition interlock devices in many states; several manufacturers operate internationally. For this reason, most manufacturers do not fall within the definition of a small business in A.R.S. § 41-1001.

The statutes require ignition interlock manufacturers to certify ignition interlock devices with cameras and global positioning systems that operate wirelessly, and have these devices available for installation beginning July 1, 2018. Those manufacturers that did not have a device with this capability incurred costs to manufacture a new device and for a laboratory test to ensure the device meets National Highway Traffic Safety Administration requirements. Ignition interlock users with a device installed before July 1, 2018 that was working properly were not required to install a new device. Manufacturers were required to have devices available for users with a new ignition interlock requirement beginning July 1, 2018. Manufacturers must also meet statutory requirements to have product liability insurance for their devices.

The ignition interlock statutes authorize the Department to impose civil penalties for improper reporting. The rules provide that if a manufacturer improperly reports ignition interlock data, the Department may impose a civil penalty that may range for the first occurrence from $100 to $1,000 (for a series of occurrences), for the second occurrence from $250 to $2,500 (for a series of occurrences), and for the third occurrence from $500 to $5,000 (for a series of occurrences).

Manufacturers are responsible for transmitting ignition interlock data and violations to the Department in real-time within 24 hours. The rules define improper reporting of ignition interlock data, violations, and the types of reports that manufacturers must transmit to the Department. The rules require a manufacturer to provide additional information and digital photos of user ignition interlock activity to the Department and require daily electronic reporting. These reporting requirements, changes in rolling retest and other device requirements have required additional programming and Internet transmission costs. A manufacturer provides certified devices for installation to a service provider, which performs installation, service, calibration, and repair services to users, with charges established by each service provider. It is expected that service providers will recover these additional costs through various fees that service providers charge their customers.

A manufacturer has certain recordkeeping requirements during and after the contract period, as well as maintaining individual records in a secure database. To maintain records, a manufacturer has employee, software, and technology costs.

Impact on Ignition Interlock Users

The impact of the rules is on the group of approximately 20,000 drivers, who as of December 2018 are required by the Department or a court to install an ignition interlock device following conviction for a DUI offense. The expansion of service centers throughout the state provides ignition interlock users more options to choose an IISP with a service center located closer to user homes and offices, saving customers time to reach a service center. The rules provide more convenience to ignition interlock users by reducing the number of times a user must drive to a service center to calibrate and download data from a device. The rules contain significant changes for an ignition interlock user by strengthening and increasing the rolling retest requirement. A user must take rolling retests approximately every 6 minutes while driving. For a user who fails to take a set of three consecutive rolling retests within an 18-minute time frame, the Department will extend the ignition interlock period for an additional six months. It should be noted that those users that have a longer ignition interlock period will be responsible for paying more fees and charges to the providers, however, these fees do not result from the rules. Ignition interlock users receive training and information about ignition interlock device operating requirements from service center staff at the time of installation. The rule changes require an ignition interlock user to go to a service center for a calibration check only every 90 days. Previously, a user needed to download data from a device at a service center at 30 and 60 days, but due to the fact that this data is reported in real-time and these compliance checks are performed electronically, users have greater convenience and may pay less in fees to the service provider.

As required by statute, the Department established an ignition interlock device installation fee. Persons who had a new ignition interlock device installed in their vehicle after July 1, 2018 following a DUI conviction are required to pay a one-time ignition interlock installation fee of $20. The Department established the fee at a modest cost to impose the least cost and burden on a user. The Department used an estimate of approximately 20,000 Arizona drivers that have an ignition interlock device on their vehicle at any given time. With a fee of $20 per device installation, the fee was estimated to raise annual revenue of $400,000, which fully covers the administrative costs of the ignition interlock program. This fee is transmitted monthly by a service provider to the Department and used to fund the Department's ignition interlock program. Ignition interlock users are required to pay other additional fees for ignition interlock services from Ignition Interlock Service Providers, however, those additional fees charged at a service center are set individually by that service provider, and not by rule.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: Jane McVay

Address: Rules and Policy Development
Arizona Department of Transportation
206 S. 17th Ave., MD 180A
Phoenix, AZ 85007

Telephone: (602) 712-4279

E-mail: jmcvay@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

Persons to bear costs	Persons directly benefiting
Ignition interlock users	Ignition interlock users and the public
Manufacturers	Ignition interlock users and the public
Ignition interlock service providers	Ignition interlock service providers, subcontractors, employees, ignition interlock users, and the public
Department of Transportation	Ignition interlock users and the public

3. Analysis of costs and benefits occurring in this state:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than $10,000

Moderate $10,000 to $99,999

Substantial $100,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The economic impact of the rulemaking on the Department includes minimal resources necessary for the rulemaking. The Department also incurs the cost of necessary systems programming changes, database enhancements, and user interface improvements estimated at $77,000 to implement the ignition interlock installation fee, placing the costs in the moderate range. The Department has implemented these rules without hiring any new employees. The rulemaking benefits the Department because reporting from manufacturers of ignition interlock activity has improved, reducing staff time to review ignition interlock data and ensuring that data is reported accurately. Other law enforcement agencies also benefit from more accurate reporting of ignition interlock violations and activity. The Department also benefits from collection of the ignition interlock device installation fee that is used to operate the ignition interlock program. The FY 2020 state budget appropriates $320,000 to the Department from the ignition interlock device fund for the ignition interlock program.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking:

The rules do not impose any costs on political subdivisions, however, the Department anticipates that law enforcement and courts in political subdivisions will benefit by having improved reporting of user

ignition interlock activity and violations. Ignition interlock users in cities and counties throughout the state will benefit from increased availability of ignition interlock services.

Prior to July 1, 2018, the Department used funds from the Driving Under the Influence Abatement Fund and the State Highway Fund to cover administrative costs of the ignition interlock program. Due to the implementation of the ignition interlock device installation fee, monies from the DUI Abatement Fund may be available to political subdivisions for DUI enforcement grants. Additionally, collection of the ignition interlock device installation fee frees up State Highway Fund monies for right-of-way construction and maintenance of state highways and interstates.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

Legislation enacted in 2017 and 2018 authorized the Department to contract with Ignition Interlock Service Providers to provide calibration, installation, service, and removal of ignition interlock devices to users beginning July 1, 2018 for a period of at least three years. A total of nine Ignition Interlock Service Providers contracted with the Department to provide these services through subcontractors or employees. With the statutory requirement for an Ignition Interlock Service Provider to sign a three-year contract with the Department to provide ignition interlock services and have service center locations in all counties, Ignition Interlock Service Providers are expected to have significant increases in facility, payroll, equipment, and other business costs, as well as significant increases in revenue due to an increase in users served.

4. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking:

The Department has not hired any new employees to implement this rulemaking. The expansion of ignition interlock services throughout the state may have had a minor positive impact on private sector employment with the hiring of additional employees or subcontractors. The Department does not anticipate any other employment impacts due to the rulemaking.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

a. Identification of the small businesses subject to the proposed rulemaking:

A.R.S. § 41-1001 defines a small business as a concern that is independently owned and operated, not dominant in its field, and which employs fewer than 100 full-time employees, or which had gross annual receipts of less than $4,000,000 last fiscal year. Most of the existing ignition interlock service providers offer ignition interlock services in numerous other states, and do not fall in the definition of a small business. One ignition interlock service provider offers ignition interlock and other services internationally in 140 countries with about 14,000 employees, generating revenue of $2.6 billion in Euros in 2018. At the present time, there are nine Ignition Interlock Service Providers contracted with the Department.

b. Administrative and other costs required for compliance with the proposed rulemaking:

The Department anticipates that the administrative requirements of the rules will have a minimal economic impact on qualified persons and businesses that provide ignition interlock services.

c. Description of the methods that ADOT may use to reduce the impact on small businesses:

The 2017 and 2018 ignition interlock legislation did not provide any options for Department to reduce the impact of the legislation or rules on small businesses. Small businesses that meet the qualifications to provide ignition interlock services in the state, fulfill the statutory and regulatory requirements, complete the necessary applications, and submit an implementation plan approved by the Department may provide ignition interlock services. The ignition interlock statutes do not contain an exemption for a small business owner who is required by a court or the Department to install an ignition interlock device on their vehicle.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

The Department believes that the expansion of ignition interlock services from service centers throughout all Arizona counties benefits ignition interlock users, especially in the rural areas where ignition interlock services were limited and previously available only as mobile services. The rules also provide efficiencies and savings to users through electronic submission of compliance checks without requiring service center visits. As authorized by statute, the rules established a one-time ignition interlock device installation fee of $20 beginning July 1, 2018 for ignition interlock users following a DUI conviction. In order to impose the least burden on ignition interlock consumers, the Department chose this modest fee, which funds the monitoring, oversight, and administration of the ignition interlock program and the Ignition Interlock Service Providers. This is the only fee that an ignition interlock consumer pays that the Department receives to cover the ignition interlock program costs. Overall, the Department believes the rules impose the least burden and costs to consumers who need these services.

6. Statement of the probable effect on state revenues:

This ignition interlock device installation fee paid by ignition interlock users beginning July 1, 2018 is transmitted to the Department for deposit in the ignition interlock device fund, which must be used to cover administrative functions of the Department's ignition interlock program. The funds are not deposited in the state general fund, and will not increase state revenue. The expansion of ignition interlock services to users through Ignition Interlock Service Providers and the hiring of additional employees or contractors may have a minor increase in corporate and individual income tax payment in the state.

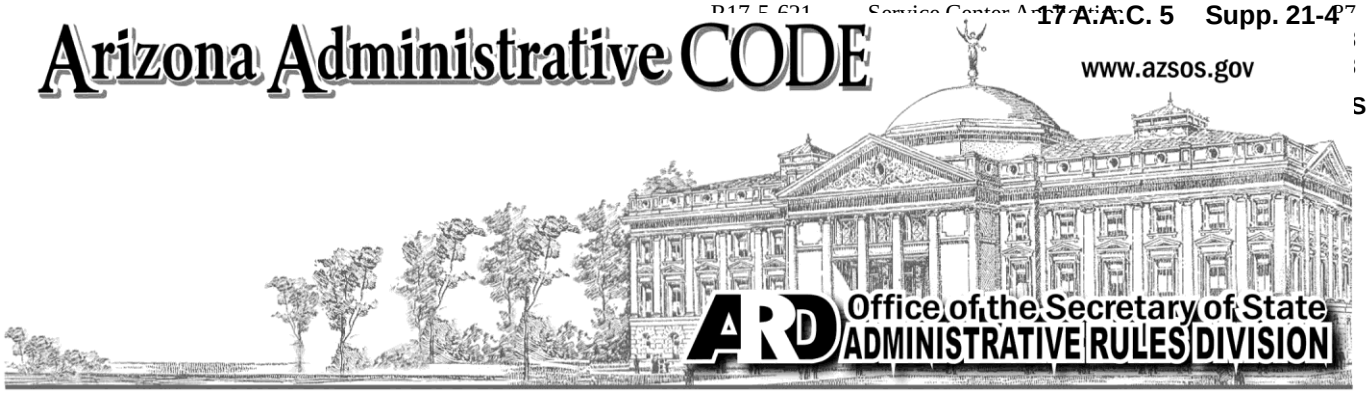
7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:

See 5(c)

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if

explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

None



TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK SERVICE PROVIDERS

Editor's Note: The heading to Article 6 was corrected in this Table of Contents in Supp. 19-4 as amended by final exempt rulemaking at 24 A.A.R. 1725 and released in Supp. 18-2.

ber 1, 2007 (Supp. 07-4). Article 7 introduction added for clarifica- tion per the Department's request (Supp. 09-2).

Article 7, consisting of Sections R17-5-701 through R17-5-706, repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2).

ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS AND IGNITION INTERLOCK SERVICE PROVIDERS

R17-5-601. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101 and 41-1072, in this Article, unless the context otherwise requires, the following terms apply:

"Alcohol concentration" means the weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/ 210 liters.

"Alveolar breath sample" means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

"Anticircumvention feature" means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

"Authorization agreement" or "agreement" means an agreement authorized by the Director that an IISP enters into with the Department to provide ignition interlock services under
A.R.S. § 28-1468.

"Breath alcohol test" means analysis of a sample of the person's expired alveolar breath to determine alcohol concentra- tion.

"Bump starting" means a method of starting a motor vehicle with an internal combustion engine by engaging the manual transmission while the vehicle is in motion.

"Business day" means a day other than a Saturday, Sunday, or state holiday.

"Calibration" means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

"Cancellation" means the termination of a manufacturer's ignition interlock device certification for ignition interlock device installation.

"Certification" means a status granted by the Department under this Article, which permits a certified ignition interlock device manufacturer to offer an ignition interlock device for installation.

"Certified ignition interlock device," "CIID," or "device" means a device that is based on alcohol specific electrochemi- cal fuel sensor technology that meets the NHTSA specifica- tions; that connects a breath analyzer to a motor vehicle's ignition system; that is constantly available to monitor the alcohol concentration in the breath of any person attempting to start the motor vehicle by using its ignition system; that deters starting the vehicle by use of its ignition system unless the per- son attempting to start the motor vehicle provides an appropri- ate breath sample for the device; and determines whether the alcohol concentration in the person's breath is below a preset level.

"Circumvent" or "circumvention" means an attempted or suc- cessful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:

The bump start of a motor vehicle with a certified ignition interlock device;

The introduction of a false sample other than a deep-lung breath sample from the person driving the motor vehicle;

The introduction of an intentionally contaminated or a filtered breath sample;

The intentional disruption or blocking of a digital image identification device;

The continued operation of the motor vehicle after the certified ignition interlock device detects breath alcohol exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) or, if the person is under 21 years of age, any attempt to operate the motor vehicle with any spirituous liquor in the person's body;

Operating a motor vehicle without a properly functioning certified ignition interlock device and;

When a person, who is required to maintain a functioning certified ignition interlock device is starting or operating the motor vehicle, permits another individual to breathe into the certified ignition interlock device for the purpose of providing a breath alcohol sample to start the motor vehicle or for the rolling retest.

"Corrective action" means an action specified in or reasonably implied from Title 28, Chapter 4, Arizona Revised Statutes, that the Department takes in relation to a person's driving privilege and the usage or discontinuation of usage of a CIID.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Department to each person conducting business with the Department. The customer number of a private individual is generally the person's driver license or non-operating identification license number.

"Data logger" means the electronic record of all ignition interlock device activity during the period when the device is installed.

"Data storage system" means a computerized recording of all events monitored by an ignition interlock device, which may be reproduced in the form of specific reports.

"Defective ignition interlock device" means an ignition interlock device that:

1. Does not meet the NHTSA specifications;
2. Does not pass calibration tests; or
3. Does not meet the accuracy and device standards prescribed in these rules.

"Drive cycle" means either the period of time from when a motor vehicle is initially turned on to the next time the ignition is turned off, or the period of time from when an initial breath alcohol test is performed and failed, to the time a breath alcohol test is successfully taken and the ignition is turned off.

"Early recall" means that a person's ignition interlock device recorded one tampering or circumvention event, any ignition interlock malfunction, or any four valid reportable violations within a continuous 90-day period, that requires a person to return to a service center within 72 hours.

"Emergency bypass" means an event that permits a vehicle equipped with an ignition interlock device to be started without requiring successful completion of a required breath alcohol test.

"Emergency situation" means a circumstance in which the person informs the IISP or IISP-certified technician that the person's vehicle needs to be moved to comply with the law, or the person has a valid and urgent need to operate the vehicle.

"Established place of business" means a business location that is:

Approved by the Department;

Located in Arizona;

Not used as a residence; and

Where an IISP or its agent or subcontractor provides authorized ignition interlock services.

"False sample" means any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the person.

"Filtered breath sample" means any mechanism by which there is an attempt to remove alcohol from the human breath sample.

"Free restart" means a function of a CIID that will allow a person to restart the vehicle, under the conditions provided in R17-5-615, without completing another breath alcohol test.

"FTP" means file transfer protocol, the exchange of files over any network that supports electronic data interchange reporting that is transmitted through the Internet and prescribed by the Department.

"Global positioning system" means the ability of a wireless certified ignition interlock device to identify and transmit its geographic location through the operation of the device.

"Ignition interlock device installation fee" means the fee required in A.R.S. § 28-1462, and established by the Department in R17-5-614, that is paid by a person to an IISP when a CIID is installed on, or transferred to a person's vehicle.

"Ignition interlock period" means the period in which a person is required to use a CIID that is installed on a vehicle.

"Ignition interlock service provider" or "IISP" means a person who is an authorized representative of a manufacturer and who is under contract with the Department to install or oversee the installation of ignition interlock devices by the provider's authorized agents or subcontractors and to provide services to the public related to ignition interlock devices.

"Improper reporting" means any of the following:

Failure of a manufacturer to report any violations to the Department within 24 hours as required in R17-5-610(D)(1), or failure to send a person's ignition interlock reporting records, including records relating to a violation, to the Department as required in R17-5-612(C);

Failure of a manufacturer to submit to the Department valid and substantiated proof or evidence of a reportable activity related to a violation, including a summary report and relevant data loggers as required in R17-5-610(D)(2), within 10 days after the Department's request;

Failure of a manufacturer to electronically send each Certified Ignition Interlock Summarized Reporting Record to the Department within 24 hours, after performing a calibration check, that results in the Department mailing a driver license suspension to a person;

Failure of a manufacturer to electronically send a Certified Ignition Interlock Device Summarized Reporting

Record to the Department within 24 hours after installing a CIID;

Electronic reporting by a manufacturer to the Department, of data that is an exact duplicate of a single violation that occurs on a particular day and time and is reported multiple times;

Knowingly reporting a violation that occurs when a participant's vehicle has high or low voltage;

Reporting an incident that occurs when a person has a free restart test to start the person's vehicle;

Reporting an incident that occurs in which a manufacturer downloads data from the device during a calibration check and tampers with the data or a CIID;

Failure of a manufacturer to validate any person's ignition interlock period extension within 10 days; or

Reporting an incident that occurs after the person's vehicle is turned off.

"Independent laboratory" means a testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device according to the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

"Manufacturer" means a person or an organization that is located in the United States, that is responsible for the design, construction, and production of an ignition interlock device and that is certified by the Department to offer ignition interlock devices for installation in motor vehicles in this state.

"Material modification" means a change to a CIID that affects the functionality of the device.

"Missed rolling retest" means the person refused or failed to provide a valid and substantiated breath sample while operating the motor vehicle, in response to a requested rolling retest within the time period prescribed in R17-5-615(E).

"Mobile services" means ignition interlock services provided by an IISP or its agents or subcontractors at a publicly accessible location other than the IISP's service center, that meet the requirements of R17-5-618.

"NHTSA" means the United States Department of Transportation's National Highway Traffic Safety Administration.

"NHTSA specifications" means the specifications for breath alcohol ignition interlock devices published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

"Permanent lock-out" means a feature of the CIID in which a motor vehicle will not start until the CIID is reset by an IISP or an IISP-certified technician.

"Person" means a person who is ordered by an Arizona court or the Department to equip each motor vehicle operated by the person with a functioning CIID, and who becomes a customer of an IISP for installation and servicing of the CIID.

"Positive result" means a test result indicating that the alcohol concentration meets or exceeds the set point value.

"Principal place of business" means the administrative headquarters of a manufacturer or an IISP that is located in Arizona, is zoned for commercial, and is not used as a residence.

"Purge" means any mechanism that cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

"Real-time" or "real-time reporting" means the instant transmission of unfiltered ignition interlock violations as defined in R17-5-601, and data as prescribed in R17-5-610, including digital images, to the manufacturer's website for viewing by the Department without delay, as electronic or digital service permits.

"Reference sample device" means a device containing a sample of known alcohol concentration.

"Reference value" means an alcohol reference solution prepared and tested in a laboratory with a reference value and used to perform an accuracy check of the calibration of a CIID.

"Retest set point" has the same meaning as set point.

"Rolling retest" means a breath alcohol test that is required of a person at random intervals after the motor vehicle is started and that is in addition to the initial test required to start the motor vehicle.

"Service center" means an established place of business approved by the Department from which an IISP or its agents or subcontractors provide ignition interlock services to persons from one or more counties.

"Set point" means an alcohol concentration of 0.020 g/210 liters of breath.

"Tampering" means an overt or conscious attempt to physically disable or otherwise disconnect the CIID from its power source that allows the operator to start the engine without taking and passing the requisite breath test.

"Technician" means a person who is certified and properly trained by an ignition interlock service provider to install, inspect, calibrate, service or remove certified ignition interlock devices.

"Temporary lock-out" means a feature of the CIID which will not allow a motor vehicle to start for five minutes after a breath alcohol test result indicating an alcohol concentration above the set point.

"Vehicle identification number" or "VIN" means the unique code, including serial number, used by an automobile manufacturer to identify a specific motor vehicle.

"Violation" (when referencing acts or omissions on the part of a person in the ignition interlock program) includes, but is not limited to any of the following reportable activities performed by a person which a manufacturer shall promptly report to the Department:

Circumventing the CIID as defined in R17-5-601;

Tampering with the CIID as defined in A.R.S. § 28-1301;

Failing to provide proof of compliance or inspection of the CIID under A.R.S. § 28-1461(E)(4);

Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;

Attempting to operate the vehicle with an alcohol concentration value in excess of the set point if the person is under 21 years of age;

Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18-minute time frame during a person's drive cycle;

Disconnecting or removing a CIID, except:

On repair of the vehicle, if the person provided to the IISP, technician, or service center advance notice of the repair and the anticipated completion date; or

On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.

"Violation reset" means the unplanned servicing and inspection of a CIID and the downloading of information from its data storage system by an IISP as a result of an early recall that requires the manufacturer to unlock the device.

Historical Note

New Section recodified from R17-4-709 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1047, effective July 5, 2020 (Supp. 20-2).

R17-5-602. Ignition Interlock Device Manufacturer Certification; Expiration; Cancellation of Certification; Notice

A. An ignition interlock device manufacturer shall obtain certification by the Department under this Article before offering a new ignition interlock device model and before making material modifications to an existing ignition interlock device model for implementation and installation under Arizona law.

B. Ignition interlock device certification by an ignition interlock device manufacturer shall occur prior to the IISP signing an authorization agreement with the Department.

C. After receiving Department certification for a new ignition interlock device model and meeting all the requirements under R17-5-604, the ignition interlock device manufacturer is effectively certified by the Department to offer the certified ignition interlock device model for installation under Arizona law.

D. An ignition interlock device manufacturer shall submit a new application to the Department under R17-5-604 for the certification of each new ignition interlock device model the manufacturer intends to offer for installation.

E. Manufacturer certification issued by the Department under this Article shall automatically expire if:

1. The manufacturer no longer provides at least one currently certified ignition interlock device model for installation under Arizona law; and
2. The manufacturer has no pending application on file with the Department for the certification of a device under R17-5-604.

F. Manufacturer certification of an ignition interlock device that was previously approved by the Department under this Article shall automatically expire within one year after the certification is granted if the manufacturer has not contracted with an IISP currently contracted with the Department to install the CIID.

G. After the one-year cancellation period in subsection (F) ends, a manufacturer may reapply to the Department for certification by completing a new application for the certification of a device and meeting all certification requirements under this Article.

H. If the Department determines that a manufacturer fails to properly report ignition interlock information and data to the Department in the manner prescribed in these rules, the Department may immediately provide written notice to the manufacturer with the following information:

1. The name of the person and the date of the improper reporting; and
2. The manufacturer shall send the required record or report to the Department within ten business days, if applicable.

I. If the manufacturer fails to remedy the issues identified in the notice within ten business days, the Department may cancel the manufacturer device certification.

J. If a manufacturer's certification expires as a result of subsections (E)(1) and (E)(2), the manufacturer may reapply for certification by submitting a new application to the Department for the certification of a device under R17-5-604.

K. A manufacturer shall only appoint one IISP that is contracted with the Department and serves as an authorized representative of the manufacturer to provide ignition interlock services to the public.

L. A manufacturer shall notify the Department within 24 hours if an IISP is no longer authorized by a manufacturer to install its CIID.

Historical Note

New Section recodified from R17-4-709.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-602 renumbered to R17-5-604; new R17-5-602 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration

A. The accuracy of the CIID shall be determined by analysis of an external standard generated by a reference sample device.

B. A device shall have a demonstrable feature designed to assure that a breath sample measured is essentially alveolar.

C. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to a positive result.

D. All devices shall meet the setpoint requirements of R17-5-601 and the following requirements:

1. Be calibrated to have an accuracy within plus or minus 0.005 g/210L of the reference value;
2. Be calibrated using a known reference value between .020 g/210L and .050 g/210L; and
3. Be accompanied by a Certificate of Analysis (COA).

E. A device shall be designed so that anticircumvention features will be difficult to bypass.

1. Anticircumvention provisions on the device shall include, but are not limited to, prevention or preservation of any evidence of circumvention by attempting to use a false or filtered breath sample or electronically bypassing the breath sampling requirements of a device.
2. A device shall use special seals or other methods that reveal attempts to bypass lawful device operation.

F. A CIID shall have global positioning system capability, and the manufacturer shall electronically and wirelessly download in real-time from the device and transmit daily to the Department, a person's ignition interlock activity in an FTP batch file.

G. A CIID shall be equipped with a camera, which shall not distract or impede the driver in any manner from safe and legal

operation of the vehicle, shall record all ignition interlock activity of the person, and shall provide any visual evidence of actual or attempted tampering, alteration, bypass, or circumvention, and report this information directly to the manufacturer.

H. The camera shall be able to record and store visual evidence of each person providing a breath alcohol test, and shall meet the following requirements:
1. At device installation, the camera shall take a reference picture of the person, which shall be kept on file;
2. A clear digital image shall be taken for each event, including initial vehicle start, all rolling retests, and whenever a violation is recorded;
3. Each digital image shall be a wide-angle view of the front cabin of the vehicle, including the passenger side, to ensure the camera can clearly capture the entire face of the person and any passengers; and
4. The camera shall produce a digital image of the person in all lighting conditions, including brightness, darkness, and low light conditions.

I. A device shall:
1. Automatically purge alcohol before allowing analysis.
2. Have a data storage system with the capacity to sufficiently record and maintain a record of the person's daily driving activities that occur between each regularly scheduled calibration check referenced under R17-5-610 and R17-5-706. An IISP shall download and transmit any digital images taken during a person's calibration check, during each rolling retest, and each time a person with the ignition interlock requirement or another individual starts the motor vehicle. A manufacturer shall make these digital images available to the Department on request.
3. Use the most current version of the manufacturer's software and firmware to ensure compliance with this Article and any other applicable rule or statute. The manufacturer's software and firmware shall:
   a. Require device settings and operational features to include, but not limited to, sample delivery requirements, the set point, free restart, rolling retest requirements, violation settings, and temporary and permanent lock-outs; and
   b. Prohibit modification of the device settings or operational features by a service center, or an IISP-certified technician unless the Department approves the modification under subsection (J).
4. Record all emergency bypasses in its data storage system.
5. Provide a visual reminder on the device that a calibration check must be performed on the person's CIID every 90 days, with prominent device notifications during each 77-day to 90-day interval within a person's ignition interlock period, of the following:
   a. The device needs service; and
   b. The time remaining until a permanent lock-out occurs.
6. Notify a person that failure to get the calibration check, including calibration and data download, by the end of each 90-day period will cause the vehicle to be in a permanent lock-out mode, and shall record the event in the data storage system.
7. On recording a violation of A.R.S. Title 28, Chapter 4, Article 5 for one instance of tampering or circumvention, any ignition interlock device malfunction, or any four valid reportable violations within a continuous 90-day period, emit a unique cue, either auditory, visual, or both, to warn a person that an early recall is initiated, requiring the person to return to the IISP in 72 hours for a violation reset.
8. Enter into a permanent lock-out if a person does not return to the IISP for a violation reset within 72 hours after an early recall occurs.
9. When a violation results in a permanent lock-out mode, the device shall:
   a. Immobilize the person's vehicle;
   b. Uniquely record the event in the data storage system; and
   c. Require a violation reset by the IISP.
10. Enter into a temporary lock-out mode for five minutes when the device detects during the initial breath alcohol test that a person's breath alcohol concentration is at or above the set point.
11. After the five-minute temporary lock-out, the device shall allow subsequent breath alcohol tests with no further lock-out as long as each subsequent test produces a valid and substantiated breath test.
12. Have security protections and the capability to provide visual evidence of any actual or attempted tampering, alteration or bypass of the device, or circumvention.

J. No modification shall be made to the design or operational concept of a device model after the Department has certified the device for installation under Arizona law, except that:
1. A software or firmware update required to maintain a device model is permissible if the update does not modify the design or operational concept of the device.
2. Replacement, substitution, or repair of a part required to maintain a device model is permissible if the part does not modify the design or operational concept of the device.
3. If a manufacturer determines that an existing Department-certified ignition interlock device model requires any modification, the manufacturer shall immediately notify the Department.

Historical Note

New Section recodified from R17-4-709.02 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-603 renumbered to R17-5-606; new R17-5-603 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1047, effective July 5, 2020 (Supp. 20-2).

R17-5-604. Ignition Interlock Device Certification; Application Requirements

A. A manufacturer shall offer for installation only an ignition interlock device that is certified by the Department under this Section.

B. To certify an ignition interlock device model, a manufacturer shall submit to the Department a properly completed application form that provides:
1. The manufacturer's name;
2. The address of the manufacturer's principal place of business in this state and telephone number;
3. The manufacturer's status as a sole proprietorship, partnership, limited liability company, or corporation;
4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;

5. The name and model number of the ignition interlock device and the name under which the ignition interlock device will be marketed; and
6. The manufacturer's electronic mail address.
7. The following statements, signed by the manufacturer:
   a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
   b. A statement that the manufacturer agrees to indemnify and hold harmless the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona from all liability for:
      i. Damage to property or injury to people arising, directly or indirectly, out of any act or omission by the manufacturer or the manufacturer's authorized IISP relating to the installation and operation of the ignition interlock device; and
      ii. All court costs, expenses of litigation, and reasonable attorneys' fees;
   c. A statement that the manufacturer agrees to comply with all requirements under this Article; and
   d. A statement that the manufacturer agrees to immediately notify the Department of any change to the information provided on the application form.

C. A manufacturer shall submit the following additional items with the application form:
1. A document that provides a detailed description of the ignition interlock device and a digital image, drawing, or other graphic depiction of the device;
2. A document that contains the complete technical specifications for the accuracy, reliability, security, data collection, recording, and tamper detection capabilities of the ignition interlock device;
3. An independent laboratory's report for each device model that:
   a. Presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015. The NHTSA specifications and technical corrections are incorporated by reference and are on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007, and the NHTSA Office of Research and Technology, 1200 New Jersey Avenue SE, Washington, D.C. 20590. This incorporation by reference contains no future editions or amendments;
   b. Provides the independent laboratory's name, address, and telephone number; and
   c. Provides the name and model number of the ignition interlock device tested.
4. A laboratory certification form, signed by an authorized representative of the independent laboratory that prepared the report required under subsection (C)(3), that states all of the following:
   a. The laboratory is not owned or operated by a manufacturer and no other conflict of interest exists.
   b. The laboratory tested the ignition interlock device in accordance with the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013 with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
   c. The laboratory confirms that the ignition interlock device meets or exceeds the test results required under the Model Specifications For Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.
   d. The laboratory used properly maintained equipment and trained personnel to test the ignition interlock device.
   e. The laboratory presented accurate test results to the Department.
5. A certificate of insurance, issued by an insurance company authorized to transact business in Arizona, specifying:
   a. A product liability policy with a current effective date;
   b. The name and model number of the ignition interlock device model covered by the policy;
   c. Policy coverage of $1,000,000 and $3,000,000 in the aggregate;
   d. The manufacturer as the insured and the state of Arizona as an additional insured;
   e. Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the ignition interlock device; and
   f. The insurance company shall notify the Department's Risk Management, Insurance and Indemnification Section in writing at least 30 days before canceling the product liability policy.
6. A statement that the ignition interlock device has a camera, includes a global positioning system, and provides real-time reporting.

D. For any installation of a certified ignition interlock device or any replacement of a device on a person's motor vehicle with another device, an IISP or an IISP-certified technician shall install only a certified ignition interlock device that meets the additional requirements in this Article, and meets or exceeds the test results required by the Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), NHTSA, published at 78 FR 26862 to 26866, May 8, 2013, with the NHTSA technical corrections published at 80 FR 16720 to 16723, March 30, 2015.

E. A person whose CIID was installed prior to July 1, 2018, that does not meet all the requirements of subsection (D) shall return to the person's IISP by October 1, 2020 to exchange the CIID for a CIID that meets all the requirements of subsection (D).

Historical Note

New Section recodified from R17-4-709.03 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-604 renumbered to R17-5-607; new R17-5-604 renumbered from R17-5-602 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1047, effective July 5, 2020 (Supp. 20-2).

R17-5-605. Application Processing; Time Frames; Exception

A. The Department shall process an application for ignition interlock device certification only if an applicant meets all applicable application requirements.

B. The Department shall, within 10 days of receiving an application for certification, provide notice to the applicant that the application is either complete or incomplete.
1. The date of receipt is the date the Department receives the application.
2. If an application is incomplete, the notice shall specifically identify what required information is missing.

C. An applicant with an incomplete application shall provide all missing information to the Department within 15 days of the date indicated on the notice provided by the Department under subsection (B).
1. After receiving all of the required information, the Department shall notify the applicant that the application is complete.
2. The Department may deny certification of an ignition interlock device if the applicant fails to provide the required information within 15 days of the date indicated on the notice.

D. Except as provided under subsection (F), the Department shall render a decision on an application for certification of an ignition interlock device within 30 days of the date indicated on the notice acknowledging receipt of a complete application provided to the applicant under subsections (B) or (C)(1).

E. For the purpose of A.R.S. § 41-1073, the Department establishes the following time frames for processing an application for certification of an ignition interlock device:
1. Administrative completeness review time frame: 10 days.
2. Substantive review time frame: 30 days.
3. Overall time frame: 40 days.

F. Established time frames may be suspended by the Department under A.R.S. § 41-1074 for certification of an ignition interlock device until the Department receives all external agency approvals required for certifying a new ignition interlock device model from the Department of Public Safety.

Historical Note

New Section recodified from R17-4-709.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-605 renumbered to R17-5-608; new R17-5-605 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing

A. An application for certification of an ignition interlock device model is complete when the Department receives:
1. From the manufacturer, a properly prepared application form;
2. From the manufacturer, all additional items required under R17-5-604(C);
3. From the Department of Public Safety, under A.R.S. § 28-1462, written confirmation or disapproval of the independent laboratory's report that the ignition interlock device meets or exceeds the NHTSA specifications in R17-5-604(C); and
4. From the manufacturer, a letter or notification that the device meets the following standards:
   a. The anticircumvention features in R17-5-603(E),
   b. The data storage capacity requirement in R17-5-603(I)(2), and
   c. The constant communication requirement in R17-5-610(O).

B. The Director shall deny an application for certification of an ignition interlock device model if all requirements of subsection (A) are not met, or on finding any of the following:
1. The design, material, or workmanship is defective, causing the ignition interlock device model to fail to function as intended;
2. The manufacturer's product liability insurance coverage is terminated or canceled;
3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
4. The manufacturer or the independent laboratory provided false or inaccurate information to the Department relating to the performance of the ignition interlock device model;
5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with the NHTSA specifications in R17-5-604(C), the requirements in this Article; or
6. The Department receives a report of device disapproval from an independent laboratory or other external reviewer.

C. The Department shall mail to the manufacturer, written notification of the certification or denial of certification of an ignition interlock device model. A notice denying certification of an ignition interlock device model shall specify the basis for the denial and indicate that the applicant may, within 15 days of the date on the notice, request a hearing on the Director's decision to deny certification by filing a written request with the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.

D. If a manufacturer timely requests a hearing on the Director's decision to deny certification of an ignition interlock device model, the Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

Historical Note

New Section recodified from R17-4-709.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-606 renumbered to R17-5-609; new R17-5-606 renumbered from R17-5-603 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1047, effective July 5, 2020 (Supp. 20-2).

R17-5-607. Cancellation of Device Certification; Hearing

A. The Director shall cancel an ignition interlock device model certification and remove the device from its list of CIID's on finding any of the following:
1. The design, material, or workmanship contains a defect that causes the ignition interlock device model to fail to function as intended;
2. The manufacturer's product liability insurance coverage is terminated or canceled;
3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
4. The manufacturer or independent laboratory provided false or inaccurate information to the Department relating to the performance of the ignition interlock device model;
5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with the NHTSA specifications in R17-5-604(C);

6. The manufacturer instructs the Department to cancel its certification of the ignition interlock device model;
7. The manufacturer, the IISP, or the device does not comply with this Article or any other applicable rule or statute; or
8. If the manufacturer has not contracted with an IISP authorized by the Department within one year after the device model certification.

B. The Department, on finding any of the conditions described under subsection (A), or on finding that the manufacturer failed to timely remedy the issues identified in the notice provided under R17-5-602(H), shall mail to the manufacturer a notice and order of cancellation of certification for the specific ignition interlock device model. The notice and order of cancellation shall:
1. Specify the basis for the action;
2. Specify the date when the one-year decertification begins and ends; and
3. State that the manufacturer may, within 15 days after receipt of a notice and order of manufacturer device model cancellation, file a written request for a hearing with the Department's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5, to show cause as to why the ignition interlock device certification should not be cancelled.

C. If a hearing to show cause is timely requested, the Department's Executive Hearing Office shall conduct the hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5. The request for a hearing stays the summary cancellation of manufacturer device model certification.

D. Within 10 days after a hearing, the hearing officer shall issue to the manufacturer a written decision, which shall:
1. Provide findings of fact and conclusions of law; and
2. Grant or cancel the certification.

E. If the hearing officer affirms the manufacturer device model cancellation, the manufacturer may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6, within 35 days of the date when a copy of the decision sought to be reviewed is served upon the party affected unless the court grants a stay while the appeal is pending.

F. Within 60 days after the effective date of an order of cancellation, the manufacturer shall, at the manufacturer's own expense, ensure the removal of all ignition interlock devices that are not certified and facilitate the replacement of each device with a CIID.

G. The manufacturer of a previously decertified ignition interlock device model may reapply to the Department for certification of another ignition interlock device model under R17-5-604 after the one-year device decertification period ends.

H. After cancellation, the Department shall notify the IISP and the IISP-certified technicians that each of them is prohibited from installing the ignition interlock device for which the device certification was cancelled.

I. Cancellation of a manufacturer's device model certification prohibits the manufacturer from performing its duties with respect to the device model that has been cancelled and making the device model available for installation in the state for a period of one year from the latest of the following dates when:
1. The Department cancels a manufacturer's device model certification, or
2. The Department's Executive Hearing Office cancels the manufacturer's device model certification.

Historical Note

New Section recodified from R17-4-709.06 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-607 renumbered to R17-5-610; new R17-5-607 renumbered from R17-5-604 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

Appendix A. Renumbered

Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix A renumbered to R17-5-610, Appendix A, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix B. Renumbered

Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix B renumbered to R17-5-610, Appendix B, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix C. Renumbered

Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix C renumbered to R17-5-610, Appendix C, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

R17-5-608. Modification of a Certified Ignition Interlock Device Model

A. A manufacturer shall notify the Department in writing at least 10 days before a material modification is made to a certified ignition interlock device model.

B. Before providing a previously certified but materially modified ignition interlock device model for installation in a motor vehicle under an order of an Arizona court or the Department, a manufacturer shall:
1. Submit to the Department a completed application form with the information required under R17-5-604(B) and all additional items required under R17-5-604(C), and
2. Obtain certification of the materially modified ignition interlock device from the Department.

C. The Department's certification of a materially modified ignition interlock device model does not affect the original certification of the unmodified model.

Historical Note

New Section recodified from R17-4-709.07 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-608 renumbered to R17-5-611; new R17-5-608 renumbered from R17-5-605 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-609. IISP and Manufacturer Responsibilities

A. An IISP shall refer a person only to the IISP's certified technician.

B. An IISP shall provide the Department and each person with a toll-free telephone number to call to obtain the names and phone numbers of the IISP's certified technicians, the IISP ser-

vice center locations, and hours of operation for the IISP service centers.

C. An IISP shall certify each technician by providing adequate training and oversight for the technician to perform one of the activities at a service center, which are installation, inspection, calibration, service, or removal of a CIID.

D. An IISP shall provide to every person operating a motor vehicle equipped with a CIID, and any other persons who will operate the motor vehicle, training on how to operate the motor vehicle. An IISP shall instruct the person on all of the following:
1. How to use the system;
2. How to obtain service for the CIID;
3. How to find answers to any additional questions;
4. How the alcohol retest feature works;
5. How drinking alcohol before a test may result in a reading of sensitive or fail;
6. How the CIID shall not be removed, except by an IISP or IISP-certified technician;
7. How noncompliance with a regularly scheduled calibration check for a person with a limited or restricted driving privilege shall result in suspension of the person's driving privilege under A.R.S. § 28-1463 until proof of compliance is submitted to the Department under A.R.S. § 28-1461, and the duration of the person's certified ignition interlock device requirement shall be extended under A.R.S. § 28-1461;
8. What the penalties are for circumvention of the CIID;
9. What the penalties are for tampering with, or misusing the CIID;
10. What will happen after failing a start-up breath alcohol test;
11. What will happen after a person has a set of three consecutive valid and substantiated missed rolling retests within an 18-minute time frame during a drive cycle; and that a person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition or by keeping the motor vehicle in operation while the vehicle is parked, and leaving the vehicle when a rolling retest is requested;
12. What events or actions will result in a temporary or permanent lock-out of the CIID; and
13. How to provide a properly delivered alveolar breath sample.

E. An IISP shall have each person sign a document stating that the IISP has instructed the person regarding each topic contained in subsections (D) and (L), and has received the manufacturer's written instructions for operation of the CIID.

F. An IISP shall inform a person that a compliance check on a CIID is required 30 days and 60 days after installation of the device, which shall be done electronically.

G. An IISP shall inform each person to bring the vehicle to a service center for a calibration check within every 77 to 90-day period until the person is eligible for device removal.

H. An IISP shall check each CIID for evidence of tampering at least once every 90 days or more frequently if needed. This anticircumvention check shall be conducted at each person's calibration check at a service center as required under R17-5-706.

I. An IISP shall ensure that the manufacturer reports to the Department electronically under R17-5-610 if any evidence of tampering is discovered, and the manufacturer shall submit valid and substantiated proof or evidence of a reportable activity. An IISP shall keep visual evidence of a person's tampering or circumvention for a minimum of three years after the termination of the person's required ignition interlock period.

J. An IISP shall submit to the Department a list of the IISP-certified technicians, subcontractors, or agents, and service centers at the beginning of the contract with the Department, within 5 business days of making a change to the list previously provided, and on a monthly basis as requested by the Department.

K. An IISP shall comply with the provisions of this Article and A.R.S. Title 28, Chapter 4, Article 5.

L. A manufacturer shall develop and an IISP shall provide each person a reference and problem solving guide at the time of installation that shall include information on the following:
1. Operating a motor vehicle equipped with the CIID;
2. Cleaning and caring for the CIID;
3. Identifying and addressing any vehicle malfunctions or repairs that may affect the CIID; and
4. How to properly take a valid and substantiated rolling retest.

M. A manufacturer shall notify the Department within 10 days of a change of address of its principal place of business in this state.

N. A manufacturer or an IISP shall provide a warning label, for each CIID installed, which shall have an orange background and shall include the following:
1. Be a minimum size of two inches by one inch;
2. Be printed in a minimum of nine-point font;
3. Be printed in Arial font, or a font of substantially similar size and legibility; and
4. Contain the words in black lettering: "Warning! Any person tampering with, circumventing, or otherwise misusing this Ignition Interlock Device, is guilty of a Class 1 misdemeanor."

O. A manufacturer shall ensure that the IISP or the IISP-certified technician affixes conspicuously and maintains on each installed CIID the warning label described under subsection (N), which may be affixed to the device or to the device's cord.

P. A manufacturer shall develop written instructions for the installation and removal of an ignition interlock device from a motor vehicle.

Q. While a person maintains a functioning CIID in a vehicle under A.R.S. Title 28, Chapter 4, Article 5, the ignition interlock manufacturer shall electronically provide to the Department and transmit daily to the Department the information and reports prescribed in R17-5-610 and R17-5-615.

R. The manufacturer is responsible for overseeing any agents or subcontractors, including vendors and distributors, as well as overseeing the manufacturer's IISP to ensure adherence to all performance standards.

Historical Note

New Section recodified from R17-4-709.08 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-609 renumbered to R17-5-612; new R17-5-609 renumbered from R17-5-606 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed; new Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1047, effective July 5, 2020 (Supp. 20-2).

R17-5-610. Reporting; Reportable Activity

A. A person shall have installed in a motor vehicle, only an ignition interlock device certified by the Department under R17-5-604.

B. A manufacturer shall develop and the IISP shall ensure that each IISP-certified technician complies with the IISP's written procedures for the installation of a CIID.

C. Certified ignition interlock device installation verification.
1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours of the device installation.
2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for installation verification shall contain all of the following information:
   a. Department-assigned service center number;
   b. Person's full name (first, middle, last and suffix);
   c. Date of birth;
   d. Driver license or customer number;
   e. Report date;
   f. Install date;
   g. Report type;
   h. Technician identification number;
   i. A unique identification number for the CIID;
   j. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
   k. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.

D. Certified ignition interlock device calibration check.
1. A manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours after performing a calibration check on an installed CIID.
2. A manufacturer shall submit to the Department the following valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), within 10 days by electronic means, which shall include:
   a. A summary report stating why the data logger or any other evidence confirms the occurrence of a violation, including any digital images of the person; and
   b. A data logger that shows at least 12 hours of data before and after the violation.
3. A manufacturer may submit to the Department the following additional valid and substantiated proof or evidence of a reportable activity related to a violation, as prescribed in subsection (F), if available, within 10 days by electronic means, which may include:
   a. Video recordings;
   b. Written statements; and
   c. Any other evidence relevant to a violation.
4. The electronic Certified Ignition Interlock Device Summarized Reporting Record for the calibration check shall contain all of the following information:
   a. Department-assigned service center number;
   b. Person's full name (first, middle, last and suffix);
   c. Date of birth;
   d. Driver license or customer number;
   e. Report date;
   f. Install date;
   g. Report type;
   h. Missed rolling retest count, dates, and times;
   i. Technician identification number;
   j. Alcohol concentration violation count, dates, time, and alcohol concentration;
   k. Tampering violation count, dates, and time;
   l. Circumvention count, dates, and time;
   m. Device download date;
   n. Device download time;
   o. Bypass code indication, date, and time;
   p. A unique identification number for the CIID;
   q. The last six digits of the vehicle identification number that matches the vehicle information on the data logger; and
   r. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID.

E. Certified ignition interlock device removal report.
1. When a certified ignition interlock device is removed, a manufacturer shall electronically transmit a Certified Ignition Interlock Device Summarized Reporting Record to the Department within 24 hours.
2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for removal of a device shall indicate the condition of noncompliance and contain all of the following information:
   a. Department-assigned service center number;
   b. Person's full name (first, middle, last and suffix);
   c. Date of birth;
   d. Driver license or customer number;
   e. Report date;
   f. Install date;
   g. Removal date;
   h. Report type;
   i. Technician identification number;
   j. A unique identification number for the CIID;
   k. The last six digits of the vehicle identification number that matches the vehicle information on the data logger;
   l. Whether the Department, a court, or an out-of-state entity requires a person to have a CIID;
   m. Missed rolling retest count, dates, and times;
   n. Device download date; and
   o. Device download time.

F. Reportable activity for a person's noncompliance with these rules and A.R.S. Title 28, Chapter 4, Article 5, shall be limited to valid and substantiated instances by a person of any of the following transmitted electronically and wirelessly by the manufacturer to the Department in real-time within 24 hours:
1. Tampering with a CIID as defined in A.R.S. § 28-1301;
2. Refusing or failing to provide any set of three consecutive valid and substantiated breath samples in response to a requested rolling retest within an 18-minute time frame during a person's drive cycle;
3. Failing to provide proof of compliance or inspection of the CIID as required under A.R.S. § 28-1461(E)(4);
4. Attempting to operate the vehicle with an alcohol concentration of 0.08 or more as prescribed in A.R.S. § 28-1461(E)(5) if the person is at least 21 years of age;
5. Attempting to operate the vehicle with an alcohol concentration in excess of the set point if the person is under 21 years of age;
6. Circumvention of a CIID as defined in R17-5-601; or
7. Disconnecting or removing a CIID, except:
   a. On repair of the vehicle, if the person provided to the IISP, technician, or service center advance notice of the repair and the anticipated completion date; or
   b. On moving the device from one motor vehicle to another motor vehicle if replacement of the device is accomplished within 72 hours of device removal.

G. A person shall not avoid compliance with the rolling retest requirement by turning off a motor vehicle's ignition or by keeping the motor vehicle operating while the vehicle is parked, and leaving the vehicle when a rolling retest is requested. A missed rolling retest is reportable activity for a person's noncompliance under subsection (F).

H. A manufacturer shall screen each person's data loggers to ensure that there is no improper reporting.

I. A manufacturer shall ensure that a CIID has the necessary programming to identify each person's ignition interlock period and each drive cycle to report and send data and violations to the Department as required by these rules.

J. A manufacturer shall review within 10 days all reports sent by the Department and returned to the manufacturer for verification of accurate reporting. If a manufacturer finds that the reported information does not indicate valid and substantiated evidence of a violation, the manufacturer shall immediately contact the Department to correct the person's record before corrective action is initiated against a person as a result of misreported ignition interlock data.

K. A manufacturer shall immediately contact the Department if the manufacturer finds that the reported information indicates:
1. An obvious mechanical failure of a CIID;
2. Obvious errors in the recorded CIID data that cannot be attributed to a person's actions;
3. Obvious errors in the transmission of CIID data to the Department, including misreported instances of tampering; or
4. Submission of an extension of a person's ignition interlock period or a violation to the Department when a person was not in the vehicle to take the rolling retests.

L. A manufacturer shall ensure that a CIID electronically and wirelessly uploads data in real-time to the manufacturer's website, that is maintained by the manufacturer, and the manufacturer shall submit all required information and reports in a daily FTP file to the Department.

M. In cases where no electronic or digital service exists, the manufacturer shall store the data and send the data as soon as electronic or digital service is available.

N. A manufacturer shall include the date of the last upload on the person's account on the manufacturer's website.

O. A CIID shall have constant communication between the manufacturer's server and relay unit while the device is in use.

P. All data, including digital images, shall be available to the Department for viewing on the manufacturer's website within five minutes after the data is recorded on the device, or as soon as electronic or digital reception permits.

Historical Note
New Section recodified from R17-4-709.09 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-610 renumbered to R17-5-703; new R17-5-610 renumbered from R17-5-607 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1047, effective July 5, 2020 (Supp. 20-2).

Exhibit A. Renumbered

Historical Note
New Exhibit recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Exhibit A renumbered to R17-5-703, Exhibit A, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Exhibit B. Renumbered

Historical Note
New Exhibit recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Exhibit B renumbered to R17-5-703, Exhibit B, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix A. Repealed

Historical Note
Appendix A renumbered from R17-5-607, Appendix A, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix B. Repealed

Historical Note
Appendix B renumbered from R17-5-607, Appendix B, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Appendix C. Repealed

Historical Note
Appendix C renumbered from R17-5-607, Appendix C, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

R17-5-611. Emergency Assistance; Continuity of Service to Persons

A. For events occurring outside of normal business hours, an IISP shall provide to each person a 24-hour emergency toll-free phone number answered by a live person at all times, to provide assistance in the event a CIID fails to operate properly or a vehicle experiences a problem relating to the installation, operation, or failure of a CIID.
1. During normal business hours, if the IISP or technician receives a call for emergency assistance, and determines that a vehicle is experiencing a problem relating to the installation, operation, or failure of a CIID, an IISP or a technician shall respond to the call within 24 hours of the initial contact and shall be available either to:
   a. Provide telephonically, the technical information required for the person to resolve the issue; or
   b. Provide or arrange for appropriate towing or roadside assistance services if unable to resolve the issue telephonically.
2. After receiving a person's call for emergency or other assistance, the IISP, technician, or manufacturer, as appropriate, shall either:
   a. Make the CIID functional, if possible, within 24 hours, or
   b. Replace or repair the CIID within 48 hours of the initial contact.

B. An IISP shall ensure uninterrupted service to a person for the duration of the person's ignition interlock period, which shall include facilitating the replacement of a technician, subcontractor, or an employee or agent who goes out of business, is removed, or a technician whose certification is cancelled by the IISP.
1. If a manufacturer terminates the IISP's authorization, the manufacturer shall obtain each person's records from the IISP and retain the records according to R17-5-612.
2. At the end or termination of an ignition interlock service authorization agreement, the manufacturer shall provide the Department with electronic access to each person's ignition interlock records for three years.
3. If a manufacturer authorizes a new IISP, the manufacturer shall notify each person affected by the authorization of the new IISP at least 30 days before the authorization becomes effective.
4. If a manufacturer does not authorize a new IISP, the manufacturer at no cost to the person, shall:

a. Provide written notification to all persons who are affected by the loss of an IISP or lack of service in an area, at least 30 days before the IISP discontinues service. The written notification shall inform the person of the manufacturer's responsibility to facilitate removal and replacement of the CIID and shall provide the instructions necessary for the person to successfully exchange the device;
b. Remove the device from the vehicle of each affected person; and
c. Facilitate the replacement of each device through a manufacturer with an IISP that can provide service.

5. A manufacturer shall notify the Department within 24 hours of replacing its IISP.
6. An IISP shall submit to the Department an updated list of the IISP's certified technicians within 5 business days after making a change to the list provided to the Department under R17-5-609(J).

C. Except in an emergency situation, a manufacturer, an IISP, or an IISP's-certified technician shall not remove another manufacturer's CIID without the express permission of that manufacturer.
1. If in an emergency situation a manufacturer, an IISP, or the IISP's-certified technician removes another manufacturer's CIID, that manufacturer, IISP, or the IISP's-certified technician shall return the device to the original manufacturer within 72 hours of the emergency removal; and
2. The original manufacturer, on receipt of the device, shall provide to the Department an electronic report of the device removal under R17-5-610, which shall include the transmission of all data stored in its data storage system.

D. In accordance with the IISP's implementation plan, an IISP shall facilitate the replacement of the IISP's service center if the service center goes out of business or the service center is closed, and the IISP does not have a service center in the county. An IISP shall notify the Department within 72 hours of replacing a service center location in a county.
1. If a service center closes and is replaced, the manufacturer shall make all reasonable efforts to obtain from the service center being replaced, all the individual ignition interlock records and data required to be retained under R17-5-612. The records shall be provided to, and maintained by the IISP.
2. If an out-of-business or closed service center is not replaced, the manufacturer shall retain the records and data as required under R17-5-612, and shall provide the Department with electronic access to the records and data.
   a. The manufacturer shall facilitate removal of all installed CIID's no longer serviced by the out-of-business or closed service center, and shall bear the cost of replacing each device with a serviceable CIID chosen by the person, even if the replacement device must be provided through an alternate manufacturer.
   b. The manufacturer shall, within 30 days, make a reasonable effort to notify its customers of the change of service center or replacement of a device.
3. If the manufacturer cannot comply with subsection (D)(1) or subsection (D)(2), the IISP shall:
   a. Notify its customers and the Department that service will be terminated; and
   b. Remove each device at no cost to the customer.

Historical Note
Section R17-5-611 renumbered from R17-5-608 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-612. Records Retention; Submission of Copies and Quarterly Reports

A. During the duration of the ignition interlock service authorization agreement, an IISP shall retain each person's ignition interlock activity records in an electronic format, including a secure database, or a paper format. The retained records shall consist of every document relating to installation, operation, and removal of the CIID. The IISP shall maintain all daily ignition interlock activity records of each person in the device's data storage system, or in a secure database at a commercial business location in this state, that the Department may access during posted business hours. An IISP shall inform the Department where all individual ignition interlock activity records are located.

B. Prior to the end or termination of an ignition interlock service authorization agreement, the manufacturer shall obtain all person's ignition interlock records and provide the Department with electronic access to the records for three years.

C. A manufacturer shall provide copies of each person's ignition interlock records to the Department within 10 days after Department personnel request copies of records, including records relating to installation and operation of the CIID.

D. A manufacturer shall electronically send to the Department, by the 10th day of January, April, July, and October, a quarterly report containing the following information for the previous three months:
1. The number of CIID's the IISP currently has in service;
2. The number of CIID's installed since the previous quarterly report;
3. The number of CIID's removed by the IISP since the previous quarterly report; and
4. Other information required by the Department.

E. An IISP shall maintain and make available to the Department the ignition interlock records of all persons served by the IISP, records relating to the authorization agreement, and employee background check information at a commercial business location in this state of the manufacturer or the IISP during normal business hours.

Historical Note
Section R17-5-612 renumbered from R17-5-609 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1047, effective July 5, 2020 (Supp. 20-2).

R17-5-613. Inspections and Complaints

A. The Department shall investigate any complaint that is related to a CIID or an IISP.

B. An IISP and a manufacturer shall permit and fully cooperate with periodic on-site inspections of the IISP's service centers and principal places of business of the manufacturer at any time during normal business hours by an authorized representative of the Department, where records relating to the authorization agreement and individual ignition interlock device records are maintained.

C. The Department shall conduct on-site inspections of a manufacturer, or a service center under the provisions of A.R.S. § 41-1009. The inspection shall include an examination of igni-

tion interlock activity, records and verification of an adequate supply of the warning labels that meet the requirements of A.R.S. § 28-1462 and R17-5-609.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-614. Ignition Interlock Device Installation Fee; Financial Records

A. An IISP shall collect an ignition interlock device installation fee of twenty dollars from each participant for each CIID that is installed in, or transferred to a motor vehicle by an IISP.

B. An IISP shall electronically remit the collected ignition interlock device installation fees paid by all persons to the Department on a monthly basis through a payment account created by the IISP, as determined by the Department, by transferring the collected fees paid during the previous month to the Department by the tenth day of the following month.

C. An IISP shall not charge a person an installation fee to replace a defective ignition interlock device.

D. An IISP shall post the amount of the ignition interlock device installation fee and the statutory authority for the ignition interlock device installation fee required by A.R.S. § 28-1462 on the IISP's website, that is available to all persons with an ignition interlock device requirement, and in a visible location at each of the IISP's service centers.

E. An IISP must clearly post the amount of all other fees charged to a person for ignition interlock device services.

F. An IISP shall maintain the financial records of the ignition interlock device installation fee collection and transfer to the Department, at an IISP's established place of business, or in a secure database, for three years from the date of the fee transfer. The Department may review the financial records of an IISP during normal business hours, to ensure compliance with the collection and transfer of the ignition interlock device installation fee to the Department.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2). Section repealed; new Section made by final rulemaking at 26 A.A.R. 1047, effective July 5, 2020 (Supp. 20-2).

R17-5-615. Rolling Retest; Missed Rolling Retest; Extension of Ignition Interlock Period

A. A manufacturer shall report to the Department any valid and substantiated missed rolling retests, as defined in R17-5-601, that occur during the time period prescribed in subsection (E).

B. A CIID shall have the capability to require a rolling retest and meet the requirements of a rolling retest. A person shall be prompted for the first rolling retest within five to 15 minutes after the initial test required to start an engine, and the device shall prompt for additional rolling retests at random intervals of up to 30 minutes after each previously requested and passed rolling retest.

C. A certified ignition interlock device shall:

1. Emit a warning light, tone, or both, to alert a person that a rolling retest is required;
2. Allow a period of six minutes after the warning light, tone, or both, to allow a person to take a rolling retest;
3. Require a person to perform a new test to restart an engine if it is switched off during or after a rolling retest warning;
4. Allow a free restart of a motor vehicle's ignition, within three minutes after the ignition is switched off, without requiring another breath alcohol test, except when a rolling retest is in progress;
5. Use the set point value for startups and retests;
6. Record, in its data storage system, the result of each rolling retest performed by a person during the person's drive cycle, and any valid and substantiated missed rolling retests; and
7. Immediately require another rolling retest each time a person refuses to perform a requested rolling retest.

D. Until a person successfully performs a rolling retest, or the engine is switched off, a device shall record in its data storage system, each subsequent refusal or failure of the person to perform the requested rolling retest.

E. The Department shall count one missed rolling retest for a person who refuses or fails to provide a valid and substantiated breath sample in response to a requested rolling retest if not followed by the person providing a valid and substantiated breath sample within six minutes.

F. Failure to take a rolling retest when a person's breath alcohol concentration is equal to or exceeds the set point shall not sound the vehicle horn, nor any type of siren, bell, whistle or any device emitting a similar sound, or any unreasonable loud or harsh sound that is audible outside of the vehicle, and shall not cause the engine of the vehicle to shut off.

G. The Department shall extend a person's ignition interlock period for six months, as provided in A.R.S. § 28-1461(E) for any set of three consecutive missed rolling retests that occur within an 18-minute time frame during a drive cycle.

H. If during one drive cycle, a person who is at least 21 years of age, has two or more breath alcohol concentrations of 0.08 or more, the Department shall count this as one violation, and shall extend a person's ignition interlock period for six months.

I. If during one drive cycle, a person who is under 21 years of age, has any breath alcohol concentration one or more times, the Department shall count this as one violation, and shall extend a person's ignition interlock period for six months.

J. Except as provided in subsections (H) and (I), if during one drive cycle, a person has more than one violation as defined in R17-5-601, the Department shall extend a person's ignition interlock period for six months for each violation.

Historical Note

New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-616. Civil Penalties; Hearing

A. After notice and an opportunity for a hearing, the Director may impose a civil penalty pursuant to A.R.S. § 28-1465, against a manufacturer of a certified ignition interlock device for improper reporting to the Department of ignition interlock data, as defined in R17-5-601. The Director may impose and collect a civil penalty against a manufacturer of a certified ignition interlock device, who is responsible for an occurrence of improper reporting, as follows:

1. $100 for the first occurrence, but not to exceed $1,000 per series of occurrences of improper reporting on a specific date;
2. $250 for the second occurrence, but not to exceed $2,500 per series of occurrences of improper reporting on a specific date; and
3. $500 for the third or subsequent occurrence, but not to exceed $5,000 per series of occurrences of improper reporting on a specific date.

B. The Director, on finding that a manufacturer engaged in improper reporting, shall mail a notice to the manufacturer stating that civil penalties may be imposed for improper reporting. The notice shall:
1. Specify the basis for the action; and
2. State that the manufacturer may, within 15 days after receipt of the notice, file a written request for a hearing with the Department's Executive Hearing Office as prescribed in 17 A.A.C. 1, Article 5.

C. A manufacturer who is aggrieved by an assessment, decision, or order of the Department under A.R.S. § 28-1465 and this Section may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6.

D. The manufacturer shall pay the civil penalty imposed under this Section to the Department no later than 30 days after the order is final.

E. If the manufacturer fails to pay the civil penalty within 30 days after the order is final, the director may file an action in the superior court in the county in which the hearing is held to collect the civil penalty.

Historical Note
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1047, effective July 5, 2020 (Supp. 20-2).

R17-5-617. Cease and Desist

A. If the Director has reasonable cause to believe that a party to an IISP authorization agreement is violating any provision of state statute, administrative rule, or the authorization agreement, the Director will immediately issue and serve a cease and desist order by mail to the IISP's last known address.

B. On receipt of the cease and desist order, the IISP shall immediately cease and desist from further engaging in any activity that is not authorized in state statute, administrative rule, or the agreement, and that is specified in the cease and desist order.

C. On failure of the IISP to comply with the cease and desist order, the IISP may request a hearing with the Department's Executive Hearing Office under 17 A.A.C. 1, Article 5 within 15 days. On failure of the IISP to comply with the cease and desist order, the Director will immediately cancel the agreement with the IISP.

Historical Note
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-618. Service Centers; Mobile Services

A. An IISP shall have at least one readily accessible service center in each county in this state that performs all ignition interlock services, including service, calibration, installation, inspection, and removal of a CIID by a technician who is trained and certified by the IISP for the specific service area.

B. An IISP, subcontractor, agent, or an employee who operates a service center, or provides mobile services as an extended service provided by a service center on a temporary or emergency basis, shall meet the requirements in these rules before conducting CIID-related business in this state.

C. A service center shall maintain sufficient staffing to provide an acceptable level of ignition interlock device services during all posted business hours.

D. A technician that provides mobile services shall be stationed and employed at the IISP's service center and be certified in the ignition interlock service area the technician will provide.

E. When a service center technician provides mobile services, an IISP shall ensure that the service center has another technician or employee available at the service center to provide ignition interlock device services.

F. An IISP's service center shall:
1. Be located in a permanent, fixed-site facility that accommodates installing, inspecting, downloading, calibrating, monitoring, maintaining, servicing, and removing a CIID;
2. Provide a designated waiting area for a person that is separate from the installation area;
3. Ensure that a person does not witness installation of the CIID;
4. Through the IISP, the IISP-certified technician or employee, provide the necessary training required by R17-5-609(D) for a person to operate a CIID;
5. Ensure that a technician meets the necessary requirements in order to receive and maintain certification before a technician or an IISP conducts ignition interlock device business in this state; and
6. Have the necessary equipment and tools to provide all ignition interlock services in a professional manner.

G. A service center that provides mobile services shall:
1. Have the capability to provide all the ignition interlock services in subsection (F)(1);
2. Meet the requirements in subsection (F)(3) through (F)(6);
3. Have permission from the motor vehicle owner to provide mobile services; and
4. Ensure that a technician provides business identification to a person requesting service prior to performing services, along with the service center certificate and the technician's training certificate.

H. A service center that provides mobile services shall not operate from a tow truck.

I. An IISP that operates a service center, shall ensure that an IISP-certified technician utilizes all of the following:
1. The analysis of a reference sample such as headspace gas from a mixture of water and alcohol, the results of which shall agree with the reference sample predicted value, or other methodologies approved by the Department. The preparatory documentation on the reference sample solution, such as a certificate of analysis, shall be made available to the Department on request.
2. The set point value established under R17-5-601. All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L).
3. The most current versions of manufacturer software and firmware to ensure continuous compliance under this Article and A.R.S. Title 28, Chapter 4, Article 5.

J. An IISP shall ensure that a motor vehicle used to provide mobile services from a service center has current vehicle registration in this state and maintains the required mandatory insurance and financial responsibility coverage in A.R.S. § 28-4009.

K. A technician shall ensure that a person who receives mobile services receives the same level of training and service as a person who receives services at a service center.

L. The manufacturer shall ensure that a CIID electronically transmits the Summarized Reporting Record for a calibration check to the Department as provided in R17-5-610(D)(4).

Historical Note
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-619. Application; IISP Implementation Plan

A. An IISP that applies for authorization of an ignition interlock service provider contract under A.R.S. § 28-1468 shall submit

all documents and meet all the requirements in the ignition interlock service provider authorization agreement; in Title 28, Chapter 5, Article 4, Arizona Revised Statutes; and these rules.

B. In addition to this information, an IISP shall submit to the Department, with the application, a detailed implementation plan that outlines the steps and time frames necessary for the IISP to be fully operational. The implementation plan must include:
1. The IISP's plan for establishing a service center in every county in this state;
2. The IISP's procedures for imposing progressive discipline on its employees, agents, or subcontractors who fail to comply with the requirements of Arizona statute; Department administrative rules; or the terms of the authorization agreement;
3. A plan for transitioning ignition interlock services to another IISP that ensures continuous monitoring will occur if a participant decides to transition services to another IISP or if the IISP ceases conducting business or leaves this state;
4. A means by which the IISP will provide all participant records and information or electronic access to the records and information to the ignition interlock device manufacturer in the event the IISP ceases conducting business or leaves this state. At the end or termination of an ignition interlock service authorization agreement, the manufacturer shall provide the Department with electronic access to all person's ignition interlock records for three years; and
5. Documentation that the IISP is an authorized agent of the manufacturer and a point of contact for the manufacturer, including the IISP's telephone number and e-mail address.

C. An IISP shall be approved by the Director through the application for authorization agreement process before offering ignition interlock services in the state.

D. An IISP shall use this process to reapply to the Director for reauthorization of an ignition interlock service provider contract.

Historical Note
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-620. Authorization Time Frame; Ignition Interlock Service Provider

A. The Director shall, within 10 days of the date of receipt of an application for authorization of an ignition interlock service provider contract, provide notice to the IISP that the application is either complete or incomplete.
1. The date of receipt is the date the Director receives the application.
2. If an application is incomplete, the dated notice shall specifically identify the required information that is missing.

B. An applicant with an incomplete application shall provide all missing information to the Director within 15 days of the Director's notice.
1. After receiving all of the required information, the Director shall notify the IISP that the application is complete.
2. The Director may deny an IISP's application if the IISP fails to provide the required information within 15 days of the Director's notice.

C. The Director shall render a decision on an application for authorization within 30 days of the date on the notice acknowledging receipt of a complete application, provided to the applicant under subsections (A) or (B).

D. If the Director denies an application for authorization, the Director shall notify the IISP in writing within 20 days after the denial, and of the grounds for the denial in accordance with A.R.S. § 28-1468 (E).

E. For the purposes of A.R.S. § 41-1073, the Department establishes the following time frames for the purpose of reviewing an application for authorization:
1. Administrative completeness review time frame: 10 days.
2. Substantive review time frame: 30 days.
3. Overall time frame: 40 days.

F. The Director shall use this process for reapplication for authorization of an ignition interlock service provider contract.

Historical Note
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-621. Service Center Application

A. On approval by the Director of an IISP's signed application for authorization to provide ignition interlock services, an IISP shall submit to the Department for approval a properly completed service center application for approval of the IISP's service centers.

B. An IISP shall provide the following information to the Department:
1. The service center name, which shall match the name on the service center;
2. The business address of the established place of business of each service center or business location;
3. The telephone number of each established place of business of each service center or business location;
4. The service center's legal status as a sole proprietorship, partnership, limited liability company, or a corporation;
5. The name of the sole proprietor, each partner, officer, director, manager, member, agent, or 20% or more stockholder;
6. The name and model number of each CIID the IISP plans to install;
7. An indication of any service centers that will provide mobile services;
8. Any applicable business licenses and the governmental entity; and
9. The following statements signed by the IISP:
   a. A statement that all information provided on the application, including all information provided on any attachment to the application is complete, true, and correct;
   b. A statement that the IISP agrees to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
   c. A statement that the IISP agrees to comply with all requirements in these rules; and
   d. A statement that the IISP agrees to immediately notify the Department of any change to the information provided on the application form.

C. The Department shall process an IISP's service center application only if the IISP meets all applicable application requirements.

D. The Department shall, within 10 days of receiving a service center application, provide notice to the IISP that the application is either complete or incomplete.
1. The date of receipt is the date the Department receives the application.
2. If an application is incomplete, the notice shall specifically identify the required information that is missing.

E. An IISP with an incomplete application shall provide all missing information to the Department within 15 days of the date on the Department's notice.
1. After receiving all of the required information, the Department shall notify the IISP that the application is complete.
2. The Department may deny approval of a service center if the IISP fails to provide the required information within 15 days of the date on the notice.

F. The Department shall render a decision on a service center application within 30 days of the date indicated on the notice acknowledging receipt of a complete application provided to the IISP under subsections (D) or (E).

G. For the purpose of A.R.S. § 41-1073, the Department establishes the following time frames for processing an application for approval of a service center:
1. Administrative completeness review time frame: 10 days.
2. Substantive review time frame: 30 days.
3. Overall time frame: 40 days.

H. If a service center is no longer authorized by a manufacturer to install its CIID, the IISP shall notify the Department within 24 hours.

I. An IISP shall be the authorized representative of a specific manufacturer while the authorization agreement is in effect, for a service center to install the manufacturer's CIID.

J. If an IISP, subcontractor, or agent opens or relocates a service center, or the service center is operated by another entity, an IISP, subcontractor, or agent shall submit a new service center application for approval.

K. An IISP shall use this process to reapply to the Department for a service center application.

Historical Note
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 1047, effective July 5, 2020 (Supp. 20-2).

R17-5-622. Technician Application

A. On approval by the Department of an IISP's service center application, an IISP shall submit to the Department for approval, a properly completed technician application with the following information:
1. Name of the technician;
2. The technician's date of birth;
3. The technician's residence address;
4. The technician's driver license number;
5. Name of the service center where the technician is employed;
6. Location of the service center where the technician is employed; and
7. The following statements signed by the technician and the IISP:
   a. A statement that all information provided on the application form, including all information provided on any attachment to the application form is complete, true, and correct;
   b. A statement that the technician and the IISP agree to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
   c. A statement that the technician agrees to comply with all requirements in these rules; and
   d. A statement that the IISP agrees to immediately notify the Department of any change to the information provided on the application form.

B. The Department shall process a technician's application only if a technician meets all applicable application requirements.

C. The Department shall, within 10 days of receiving a technician application, provide notice to the applicant that the application is either complete or incomplete.
1. The date of receipt is the date the Department receives the application.
2. If an application is incomplete, the notice shall specifically identify the required information that is missing.

D. An applicant with an incomplete application shall provide all missing information to the Department within 15 days of the date on the Department's notice.
1. After receiving all of the required information, the Department shall notify the applicant that the application is complete.
2. The Department may deny approval of a technician application if the applicant fails to provide the required information within 15 days of the date on the notice.

E. The Department shall render a decision on a technician application within 30 days of the date indicated on the notice acknowledging receipt of a complete application provided to the IISP under subsections (C) or (D).

F. For the purpose of A.R.S. § 41-1073, the Department establishes the following time frames for processing an application for approval of a technician:
1. Administrative completeness review time frame: 10 days.
2. Substantive review time frame: 30 days.
3. Overall time frame: 40 days.

G. If an IISP and the IISP's technician are no longer authorized by a manufacturer to install its CIID, the IISP shall notify the Department within 24 hours.

H. An IISP shall be the authorized representative of a specific manufacturer that has an authorization agreement in effect for a technician to service the manufacturer's CIID.

I. An IISP shall submit a separate technician application when an IISP hires a new technician.

J. After the Department approves a technician, the Department will assign to each technician, a unique technician identification number to identify each technician who installs, calibrates, inspects, or removes a CIID.

K. An IISP shall use this process to reapply to the Department for a technician application.

Historical Note
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-623. Termination of Authorization; Notification

A. If the Director terminates an IISP's authorization agreement, the Director shall notify each person with the manufacturer's CIID that the person has 30 days to obtain another IISP.

B. Any IISP owner or principal whose agreement has been terminated as a result of the IISP's authorization being cancelled is not eligible to re-apply for authorization from the Department until 36 months after the date of termination.

Historical Note
New Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

ARTICLE 7. IGNITION INTERLOCK DEVICE TECHNICIANS

R17-5-701. Definitions

The definitions provided under A.R.S. §§ 28-101 and R17-5-601 apply to this Article unless the context otherwise requires.

Historical Note
New Section recodified from R17-4-801 at 7 A.A.R.

3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-702. Records Check; Technician Qualifications; IISP Self-Certification of Technician

A. If the Director enters into an IISP's ignition interlock authorization agreement under A.R.S. § 28-1468, an IISP shall conduct an annual criminal records check and a certified driver's license record check on all employees, agents, or subcontractors listed on the IISP's application within 30 days prior to each individual's start date.

B. An IISP shall self-certify and train a technician in the service area that the technician will provide.

C. The qualifications for a technician are:

1. A technician shall be at least 18 years of age.
2. A technician who is required to drive a motor vehicle on a highway in this state in the technician's capacity shall have a valid Arizona driver license as required by A.R.S. § 28-3151, unless exempted under A.R.S. § 28-3152.
3. A technician shall have the necessary mechanical ability, training, and certification from the IISP required to perform installation, inspection, service, calibration, or removal of a CIID from a motor vehicle.

D. A technician shall:

1. Maintain the confidentiality of any personal information, driver license information, or ignition interlock data or reports relating to a person;
2. Ensure that a person does not observe the technician's actions relating to installation and removal of a CIID;
3. Comply with the ignition interlock rules in 17 A.A.C. 5, Articles 6 and 7, and Arizona Revised Statutes Title 28, Chapter 4, Article 5; and
4. Conduct installation, service, calibration, inspection, or removal of an ignition interlock device from a motor vehicle in accordance with industry standards.

E. A technician is prohibited from using the global positioning system capabilities of a CIID to track the location of a person and shall not release location information gathered by the CIID.

Historical Note

New Section recodified from R17-4-805 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed; new Section made by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-703. Repealed

Historical Note

New Section recodified from R17-4-806 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). Section R17-5-703 renumbered from R17-5-610 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

Exhibit A. Repealed

Historical Note

Exhibit A renumbered from R17-5-610, Exhibit A, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

Exhibit B. Repealed

Historical Note

Exhibit B renumbered from R17-5-610, Exhibit B, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

R17-5-704. Repealed

Historical Note

New Section recodified from R17-4-807 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-705. Repealed

Historical Note

New Section recodified from R17-4-808 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-706. Calibration Check; Requirements

A. An IISP-certified technician shall inspect, maintain, and check each CIID for calibration accuracy and operational performance before the device is placed into, or returned to service.

B. A person with a CIID installed on a motor vehicle is responsible for obtaining a calibration check of the CIID by the IISP's technician at the IISP's service center within every 77 to 90-day period after device installation, and every 77 to 90 days thereafter, during the person's ignition interlock period.

C. An IISP-certified technician shall perform a calibration check at the IISP's service center at least once every 90 days after device installation, and at least every 90 days thereafter.

D. The calibration check performed under R17-5-610 shall include an inspection of the device to verify that it is properly functioning in accordance with all of the following criteria:

1. Accuracy standards as prescribed under R17-5-603;
   a. The device shall be calibrated before placed into, or returned to service.
   b. The calibration test shall consist of introducing to the device a known alcohol concentration from a reference sample device, the analysis of which indicates the device's agreement with the known concentration. The manufacturer's software shall be capable of performing, documenting, and reporting the result of this calibration test. The calibration test result shall verify the accuracy of the ignition inter-

lock device according to the standards prescribed under R17-5-603; and

2. Anticircumvention standards and operational features as prescribed under R17-5-603.

E. The calibration test referenced under subsection (D) shall be performed when the information uploaded from a device indicates that the device has experienced an interruption in service or was completely disconnected. Additionally, the complete device, including the camera and its connection to the vehicle, shall be examined for evidence of tampering while it is still attached to the vehicle. An IISP shall document or photograph any evidence of tampering or circumvention and submit the documentation to the Department as required by these rules and A.R.S. Title 28, Chapter 4, Article 5.

F. If calibration confirmation test results reveal that the device is not properly calibrated, the device shall be recalibrated to restore the accuracy standards prescribed under R17-5-603 before the device is returned to service.

G. At least once every 90 days, a technician shall perform a physical inspection of the ignition interlock device, including an anticircumvention check, while it is still attached to the vehicle.

H. A technician shall perform a physical inspection of the ignition interlock device any time an early recall occurs.

I. If at any time an individual device model fails to meet the provisions of this Section, the manufacturer, IISP, or IISP-certified technician, as appropriate, shall either:

1. Repair, recalibrate, and retest the device model to ensure that it does meet all applicable standards; or
2. Remove the device model from service.

Historical Note

New Section recodified from R17-4-501 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Amended by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-707. Repealed

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

R17-5-708. Repealed

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 3132, effective April 1, 2015 (Supp. 14-4). Section repealed by final exempt rulemaking at 24 A.A.R. 1725, effective July 1, 2018 (Supp. 18-2).

28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

28-1461. Use of certified ignition interlock devices; reporting

A. If a person's driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402:

1. The person shall:

(a) Pay the costs for installation and maintenance of the certified ignition interlock device.

(b) Provide proof to the department of installation of a functioning certified ignition interlock device in each motor vehicle operated by the person.

(c) Provide proof of compliance to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

(d) Provide proof of calibration of the certified ignition interlock device to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

2. The department shall not reinstate the person's driving privilege or issue a special ignition interlock restricted driver license until the person has installed a functioning certified ignition interlock device in each motor vehicle operated by the person and has provided proof of installation to the department.

B. While a person maintains a functioning certified ignition interlock device in a vehicle pursuant to this chapter, the ignition interlock manufacturer shall electronically provide the following information to the department in the manner and format prescribed by the department in rule, and the department shall reject any information that does not meet these requirements:

1. Any tampering or circumvention.

2. Any failure to provide proof of compliance or inspection of the certified ignition interlock device as prescribed in this section.

3. Any attempt to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3 or, if the person is under twenty-one years of age, any attempt to operate the vehicle with any spirituous liquor in the person's body.

4. Each time that a person fails to properly perform any set of three consecutive rolling retests that occur during a drive cycle.

C. If the person is under eighteen years of age, the ignition interlock service provider, if requested by the person's parent or legal guardian, shall provide to the person's parent or legal guardian the information prescribed in subsection B of this section.

D. On request, the ignition interlock manufacturer shall provide the information prescribed in subsection B of this section to:

1. The department of health services authorized provider.

2. The probation department that is providing alcohol or other drug screening, education or treatment to the person.

3. The physician, psychologist, physician assistant, registered nurse practitioner or addiction counselor who is evaluating the person's ability to safely operate a motor vehicle following a revocation of the person's driving privilege as prescribed in section 28-3315, subsection D.

4. The court.

E. The department shall extend an ignition interlock restricted or limited driver license and the certified ignition interlock device period for six months if the department has reasonable grounds to believe that any of the following applies:

1. The person tampered with or circumvented the certified ignition interlock device.

2. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3, two or more times during the period of license restriction or limitation.

3. If the person is under twenty-one years of age, the person attempted to operate the vehicle with any spirituous liquor in the person's body during the period of license restriction or limitation.

4. The person failed to provide proof of compliance or inspection as prescribed in this section.

5. The person attempts to operate the vehicle with an alcohol concentration of 0.08 or more during a six month extension pursuant to this subsection.

6. The person fails to properly perform any set of three consecutive rolling retests that occur during a drive cycle.

F. If the special ignition interlock restricted license is extended pursuant to subsection E of this section, the limitations prescribed in sections 28-1381, 28-1382, 28-1383 and 28-3319 do not begin until the restrictive period of the license ends.

G. The department shall make a notation on the driving record of a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383, 28-1385 or 28-3319 or restricted pursuant to section 28-1402 that states that the person shall not operate a motor vehicle unless it is equipped with a certified ignition interlock device. Unless the person is convicted of a second or subsequent violation of section 28-1381, 28-1382 or 28-1383, the notation may not include any mark, color change or other notation or indication on the person's physical driver license.

H. Proof of compliance does not include a skipped or missed random sample if the motor vehicle's ignition is off at the time of the skipped or missed sample.

28-1462. Ignition interlock device certification and decertification; service provider bonds

A. After consulting with the director of the department of public safety, the assistant director for the motor vehicle division of the department of transportation shall:

1. Certify ignition interlock devices.

2. Publish a list of certified ignition interlock devices that includes information about the manufacturers of the devices and where the devices may be ordered.

3. Make the list available to the courts and probation departments without charge.

4. Establish standards and qualifications for technicians.

B. The assistant director shall adopt rules prescribing the requirements for certification and decertification of an ignition interlock device. These rules shall include:

1. The procedure for certification of ignition interlock devices.

2. Provisions to ensure the reliability of the ignition interlock device over the range of motor vehicle environments.

3. Provisions to ensure that the ignition interlock device works accurately in an unsupervised environment.

4. The procedure for decertification of an ignition interlock device for cause.

C. The assistant director shall not certify an ignition interlock device unless all of the following are satisfied:

1. The device requires a deep-lung breath sample or another accurate measure of the concentration by weight of alcohol in the breath.

2. The device is made by a manufacturer that is covered by product liability insurance in the amount of one million dollars per event and three million dollars in the aggregate.

3. The manufacturer of the device indemnifies this state against any liability that may result from the use of the device.

4. The device meets or exceeds the 2013 national highway traffic safety administration standards, including the ability to wirelessly transmit and receive information, take a digital image and include the global positioning system location of the device at the time of a requested test.

5. The device is repaired or modified only by the manufacturer of the device.

6. All of the device reporting that is required by sections 28-1461 and 28-1468 originates from the device manufacturer.

D. The assistant director may adopt, in whole or in part, the guidelines, rules, regulations, studies or independent laboratory tests performed and relied on by other states or agencies or commissions of other states in the certification or approval of ignition interlock devices.

E. Each ignition interlock service provider who installs a certified ignition interlock device shall submit to the department a bond in a form to be approved by the assistant director and in an amount of at least two hundred thousand dollars. The bond inures to the benefit of any person who is ordered or required to equip a motor vehicle with an ignition interlock device pursuant to article 3 of this chapter or section 28-3319 and who suffers a loss because of either of the following:

1. Insolvency or discontinuance of business of the ignition interlock service provider who installed the device.

2. Failure of the ignition interlock service provider or agent or subcontractor of the ignition interlock service provider to comply with any provision of a contract that is required pursuant to section 28-1468 or any rule adopted pursuant to this section.

F. The assistant director shall adopt a warning label design to be affixed to each certified ignition interlock device on installation. The label shall contain a warning that a person tampering with, circumventing or otherwise misusing the ignition interlock device is guilty of a class 1 misdemeanor.

G. After consultation with the director of the department of public safety, the assistant director may include information the assistant director deems necessary in the notice prescribed in section 28-3318 regarding certified ignition interlock devices.

H. An ignition interlock service provider shall collect a fee for each certified ignition interlock device that is installed by the provider in an amount that is determined by the director. The ignition interlock service provider shall remit the collected fees to the department on a monthly basis and in a manner established by the department. The department shall deposit the fees in the ignition interlock device fund established by section 28-1469.

28-1465. Rulemaking; ignition interlock service providers and manufacturers; civil penalty

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for the administration and enforcement of this article, including a rule that permits the director to impose a civil penalty against a manufacturer of a certified ignition interlock device or an ignition interlock service provider who fails to properly report ignition interlock data to the director in the manner prescribed by the director. Any monies collected from civil penalties imposed for a failure to report ignition interlock data shall be deposited in the driving under the influence abatement fund established by section 28-1304.

28-1468. Ignition interlock service provider application; denial; appeal; contract requirements; manufacturer reporting requirements; cease and desist order

A. An application for authorization of an ignition interlock service provider contract must be submitted to the director by the manufacturer in writing on a form prescribed and furnished by the director. The person shall include with the application all documents and fees prescribed by the director.

B. The application shall be verified and must contain:

1. The name and residence address of the applicant, the name and residence address of each partner if the applicant is a partnership or the name and residence address of each principal officer if the applicant is a corporation.

2. The applicant's principal place of business.

3. The location or planned location for each place of business at or from which the business is to be conducted.

4. Any other information the director requires.

C. The director may approve an application for authorization of a contract if the director determines that the requirements of this article are met.

D. The director may deny an application for authorization of a contract if any person included in the application has:

1. Made a misrepresentation or misstatement in the application to conceal a matter that would cause the application to be denied.

2. Been convicted of a class 1, 2, 3 or 4 felony or a crime of moral turpitude, breach of trust, fraud, theft or dishonesty in any jurisdiction or any foreign country within ten years before the date of the application.

3. Been convicted of any criminal act, other than a crime described in paragraph 2 of this subsection, in any jurisdiction or a foreign country within five years before the date of the application.

4. Been involved in any activity that the director determines to be inappropriate in relation to the authority granted.

E. The director may deny an application for authorization of an ignition interlock service provider contract under this article and, if denied, shall notify the applicant in writing of the denial within twenty days after the denial and of the grounds for the denial if the director determines that any of the following applies:

1. The applicant is not eligible for an ignition interlock service provider contract under this article.

2. The application is not made in good faith.

3. The application contains a material misrepresentation or misstatement.

4. The applicant has not met the requirements of this chapter.

F. An applicant whose application is denied may make a written request to the department for a hearing on the denial of the application within fifteen days after the notice of denial. If the applicant does not request a hearing within thirty days, the denial is final.

G. If the applicant requests a hearing, the director shall provide written or electronic notice to the applicant to appear at a hearing to show cause why the denial of the applicant's application should not be upheld. After consideration of the evidence presented at the hearing, the director shall issue a written decision and order.

H. If the application is denied, the applicant may appeal the decision pursuant to title 12, chapter 7, article 6.

I. If the director authorizes an ignition interlock service provider's application for a contract, the ignition interlock service provider's contract with the department must meet or exceed the requirements in this section, be for a term of at least three years and include all of the following provisions and requirements:

1. Require the ignition interlock service provider to maintain at least one service center in each county in this state.

2. Ignition interlock devices must be effectively and efficiently installed, calibrated and removed.

3. Ignition interlock devices must be serviced, inspected and monitored.

4. The ignition interlock manufacturer must electronically transmit reports to the department in a format that is determined by the department and that includes any of the following:

(a) Driver activity.

(b) Bypass approval.

(c) Compliance.

(d) Client violations.

(e) Unique identifying numbers for each device.

(f) Unique employee numbers identifying the person who installed or removed an ignition interlock device.

5. A detailed implementation plan that outlines the steps and the time frames necessary for the ignition interlock service provider to be fully operational.

6. The ignition interlock service provider must collect and remit all applicable fees and taxes to the appropriate government entity.

7. If the ignition interlock service provider is out of compliance, corrective actions that will be taken, including penalty provisions and liquidated damages.

8. The ignition interlock device must have security protections, including each device having the capability to record each event and provide visual evidence of any actual or attempted tampering, alteration, bypass or circumvention.

9. The ignition interlock service provider will process the transition and ensure that continuous monitoring occurs if an ignition interlock device client requires transition of services.

10. The ignition interlock service provider will self-certify, complete background checks and train technicians in compliance with the rules adopted by the department.

11. The ignition interlock service provider must ensure that each service center is adequately staffed and equipped to provide all ignition interlock device support services. Mobile service operations based at a service center are permitted, except that a tow truck may not be used for mobile service. A service center may not provide services for more than one ignition interlock service provider.

12. The ignition interlock service provider must train clients on how to use the ignition interlock device.

13. A transition plan that will ensure continuous monitoring is achieved if the ignition interlock service provider leaves this state.

14. Require the ignition interlock service provider to have and maintain insurance that is approved by the department.

15. A procedure for progressive discipline of an employee, agent or subcontractor of an ignition interlock service provider who fails to comply with the requirements of this chapter or of the ignition interlock service provider contract.

16. Require client information and financial records to be maintained at a commercial business location in this state that is not a residence and that has posted business hours where the department may access the records. On termination or expiration of the contract, the ignition interlock service provider must submit all client information to the department.

17. The ignition interlock service provider may not charge a client to replace a defective ignition interlock device.

18. The ignition interlock device must take a digital image identifying the client who is providing the breath sample and the digital image must include the date and time that the breath sample was provided.

19. The ignition interlock service provider must comply with all county and municipal zoning regulations for commercial businesses and provide a corresponding business license to the department.

20. The ignition interlock service provider must clearly post all client fees for the installation, removal and inspection of the certified ignition interlock device.

J. If the director has reasonable cause to believe that a person who is a party to an ignition interlock service provider contract pursuant to this article is violating any provision of this chapter, the director shall immediately issue and mail a cease and desist order to the person's last known address.

K. On receipt of the cease and desist order, the person shall immediately cease and desist, or cease and desist as provided in the contract between the department and the ignition interlock service provider, from further engaging in any activity that is not authorized pursuant to this chapter and that is specified in the cease and desist order.

L. On failure of the person to comply with the cease and desist order, the director may conduct a hearing pursuant to this section.

E-11.

DEPARTMENT OF ADMINISTRATION
Title 2, Chapter 1, Article 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 3, 2025

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 20, 2025

SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION**
Title 2, Chapter 1, Article 8

Summary

This Five-Year Review Report (5YRR) from the Arizona Department of Administration ("Department") covers five (5) rules in Title 2, Chapter 1, Article 8 related to the Travel Reduction Program. As a result of the State of Arizona being considered a major employer, the State is required to implement a travel reduction program with the goal of having 60% or fewer of employees commute to their work site driving alone. This requirement is found at A.R.S. § 49-588(E)(2).

The Department did not propose any amendments to the rules in Article 8 in the report approved by the Council in August 2020. In the last report, the Department indicated that they would explore the possibility of reimbursing telecommuting employees for internet service. The Department declined to implement a program as a result of high costs.

Proposed Action

The Department indicates that the rules are clear, concise, understandable, and enforced as written. As a result, the Department does not intend on amending any rules at this time.

1. Has the agency analyzed whether the rules are authorized by statute?

The Department cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states the most recent economic, small business, and consumer impact statement (EIS) was prepared in 2018 when the program staff completed a rulemaking process to consolidate the rules. The Department states that the 2018 EIS determined there would be no significant economic impact to the persons covered (employees participating in the program), businesses (transportation providers), and the Department (the only noted cost incurred was the time spent conducting the rulemaking). The Department states that since the time that the 2018 EIS was prepared, there have been significant changes to the program within the current framework established by the rules. The Department also states there have been significant changes in the program's outcomes-these are all positive changes.

The Department indicates that the statutory intent of the Travel Reduction Program (TRP) is to improve air quality and benefit the health of all who live in Areas A (covering parts of Maricopa County, Pinal County and Yavapai County) and Area B (covering parts of Pima County). Further, the Department states that according to the 2024 travel reduction program survey, the programs in Maricopa County resulted in more than 71 million miles not driven and 60 tons of air pollution avoided, Based on data from the Pima County survey, state employees there saved 731,744 vehicle miles and averted 9,146 pounds of pollution in 2024 by using alternative modes of transportation (including telework).

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department determined the benefits of the rules outweigh the costs and impose the least burden and costs on those regulated by the rules. The Department indicates that the regulated entities are the state as an employer and employees who voluntarily choose to participate in the programs. The Department states that participation of employees and transportation providers in the TRP helps to achieve the underlying regulatory objective of reducing air pollution from fossil fuels.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are enforced as written

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department has indicated that while the Clean Air Act does outline how States are to reduce air pollution, there is no federal law that is directly applicable to these rules.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department has indicated that the rules do not require a permit or a license.

11. Conclusion

This Five-Year Review Report (5YRR) from the Arizona Department of Administration ("Department") covers five (5) rules in Title 2, Chapter 1, Article 8 related to the Travel Reduction Program. As with the previous report, the Department indicates that the rules are clear, concise, understandable, and enforced as written. As a result, the Department does not intend on amending any rules at this time.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval of this report.

Katie Hobbs
Governor

Elizabeth Alvarado-Thorson
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

HUMAN RESOURCES DIVISION
100 NORTH FIFTEENTH AVENUE • SUITE 301
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February 18, 2025

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Arizona Department of Administration
A.A.C. Title 2, Chapter 1, Article 8
Travel Reduction Programs
Five Year Review Report

Dear Chair Klein:

Please find enclosed the Five Year Review Report of the Arizona Department of Administration for A.A.C. Title 2, Chapter 1, Article 8, which is due on February 28, 2025.

The Arizona Department of Administration hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mary Marshall at 602-542-7433 or Mary.Marshall@azdoa.gov.

Thank you,

Nicole Sornsin
State Human Resources Director
Special Employment Counsel
Arizona Department of Administration

Arizona Department of Administration
Five Year Review Report
A.A.C. Title 2. Administration
Chapter 1. Department of Administration
February 18, 2025

INTRODUCTION

The Arizona Department of Administration's (Department's) Office of Travel Reduction Program (TRP) implements the provisions of A.R.S. § 49-588 requiring all major employers in Maricopa County and designated areas within Pima County to implement a plan to reduce the number of employees who drive alone to a work site. The statutory goal is to have no more than 60 percent of employees driving alone to a work site. TRP staff implements strategies such as subsidies, trip-planning tools, incentives (such as preferential carpool parking), and a robust remote work program guided by policy to encourage state employees to use available travel reduction program measures rather than driving alone to and from work.

Title 2, Chapter 1, Article 8 – Travel Reduction Programs is the set of rules that implement the requirements of A.R.S. § 49-588 for the State as a major employer. This article includes definitions of terms used in the rules, eligibility requirements for reimbursement and the maximum amount of reimbursement subsidies. The article also provides for procedures necessary for reimbursement subsidies and the requirements for participation in as well as procedures for employees seeking to pay reduced transportation costs. These rules were first adopted in 1991; the agency undertook a rulemaking in 2018 that streamlined and consolidated the language but did not substantively change the rules.

1. Authorization of the rule by specific statute:

R2-1-801. A.R.S. § 41-710.01

R2-1-802. A.R.S. § 41-710.01

R2-1-803. A.R.S. § 41-710.01

R2-1-804. A.R.S. § 41-710.01

R2-1-805. A.R.S. § 41-796.01

2. The objective of each rule:

RULE	OBJECTIVE
R2-1-801	Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.
R2-1-802	Eligibility for Commuter Reimbursement Subsidy: The objective of the rule is to specify the responsibilities of an eligible employee who wishes to receive a transportation reimbursement subsidy.
R2-1-803	Commuter Transportation Reimbursement Subsidy Amount: The objective of the rule is to specify the factors considered when establishing the reimbursement subsidy.
R2-1-804	Commuter Transportation Reimbursement Subsidy Procedure: The objective of the rule is to establish the procedure for ensuring a transportation provider is paid for transportation provided to an eligible employee.
R2-1-805	Adjusted Work Hours: The objective of the rule is to establish the state's goal regarding adjusted work hours, including telework.

3. Are the rules effective in achieving their objectives? **Yes**

The statutory goal is to have no more than 60 percent of employees commuting to and from work in a single occupancy vehicle. The 2024 annual travel reduction survey of state employees working in Maricopa County showed that almost 46 percent of employees commute in a single occupancy vehicle. The 2024 annual travel reduction survey of state employees working in Pima County indicated that 59 percent of employees commute in a single occupancy vehicle. As such, the program rules have been effective in meeting the statutory goal of having no more than 60 percent of employees drive to and from work alone. Since the last 5YRR report in 2020, the single occupancy vehicle rate in Maricopa County has never exceeded 60 percent. In Pima County, it only exceeded 60 percent one year–the single occupancy vehicle rate was 62 percent in 2021.

4. Are the rules consistent with other rules and statutes? **Yes**

Applicable statutes include:

- The Clean Air Act (42 U.S.C. § 7401 et seq) outlines how states are to control air pollution;
- 5 U.S.C.§ 6501, defines "telework";

- A.R.S. § 41-101.03 requires the governor to designate a state agency to establish, administer, and operate a travel reduction program;
- A.R.S. § 41-710.01 provides rulemaking authority addressing reimbursement of transportation and telecommuting costs;
- A.R.S. § 41-796.01 authorizes adjusted work hours
- A.R.S. § 38-612 addresses state employee payroll salary deductions;
- A.R.S. § 49-541 provides definitions regarding applicable areas in Maricopa and Pima Counties;
- A.R.S. § 49-581 provides definitions regarding travel reduction program;
- A.R.S. § 49-588 requires major employers to establish and administer a travel reduction program;
- A.R.S. § 49-551(D) provides funding for the travel reduction program.

5. Are the rules enforced as written? **Yes**

The Office of Travel Reduction Programs enforces these rules via an employee-signed agreement outlining the terms and conditions for participation in the relevant programs (such as receiving a subsidized transit card, participating in the vanpool program, and receiving a carpool parking permit).

6. Are the rules clear, concise, and understandable? **Yes**

The Department considers the language of the rules to be clear, concise, and understandable.

7. Has the agency received written criticisms of the rules within the last five years? **No**

The agency has not received written criticism of the rules in the last five years.

8. Economic, small business, and consumer impact comparison:

The most recent economic, small business, and consumer impact statement (EIS) was prepared in 2018 when the program staff completed a rulemaking process to consolidate the rules. The 2018 EIS determined there would be no significant economic impact to the persons covered (employees participating in the program), businesses (transportation providers), and the Department (the only noted cost incurred was the time spent conducting the rulemaking).

Since the time that the 2018 EIS was prepared, there have been significant changes to the program within the current framework established by the rules. In 2018, the transportation subsidy rate was set at 50 percent, with the most significant portion of the subsidy spent on public transit subsidies for bus and light rail (subsidies totaled $406,600 in FY 2017) and the remainder covered vanpool subsidies set at $30 per eligible state employee. The Department launched a pilot program in FY 2020 that increased the subsidy to 100 percent (rollout of this pilot program was impacted by the pandemic). In FY 2024, the Department reimbursed $470,269 in commuter transportation costs at a 100 percent subsidy rate.

The total program costs increased from the costs reported in the 2018 EIS (the total cost of the travel reduction programs, including the subsidy, was $712,400 in FY 2017). In FY 2024, the total cost of the TRP, including the subsidy, was $910,956. State funds for the TRP are appropriated from the Air Quality Fund established under A.R.S. § 49-551.

Other program-related cost savings are being realized from the state's telework program. A.R.S. § 41-796.01 requires adjusted work hours, including telework, to be an option for eligible employees. Employees who telework are required to use a specific payroll code for days they telework. Telework reports utilizing these payroll codes indicate more than 60 percent of state employees in Maricopa County and 30 percent in Pima County are teleworking at least one day per pay period. Prior to 2020, telework participation was roughly 12 percent in Maricopa County. Established in 1992, the state's telework program was primarily designed for employees to work from home one or two days per pay period as an option to fulfill the requirements of A.R.S. § 41-796.01 and A.R.S. § 49-588. When the governor issued work from home orders for state employees in March 2020, the Department, under the direction of the governor's office, undertook to permanently transform the State of Arizona telework program. In 2020, the Department revised the telework policy to guide a virtual office option and updated the training and telework agreement. As the Department was updating policies and training, its General Services Division (GSD) undertook an aggressive real estate compression plan. By the end of fiscal year 2023, the state had reduced its real estate footprint by roughly 800,000 square feet, realizing an annual real estate leasing cost savings of more than $10 million. To support the thousands of employees who no longer have assigned workspaces in state buildings, GSD renovated the first floor of the building at 1400 West Washington Street in Phoenix to include a state-of-the-art coworking space where employees who needed to work in the Capitol Mall area could reserve a work station. The workspace is staffed full time with a facilities manager who is able to assist employees with reservations and room setup (this FTE is funded with TRP funds, as is the reservation software license).

Currently, there are more than 23,000 eligible employees in Maricopa County and nearly 5,000 in Pima County; these totals are comparable to the number of eligible employees reported in the 2020 5YRR. According to transit usage records for FY 2024, approximately 2.5 percent of employees in Maricopa County used commuter transportation. Transit riders averaged 18 subsidized rides per month. Transit usage is far below the pre-pandemic levels, as more than half of employees in Maricopa County telework. Very few eligible employees in Pima County participate in the TRP transit card subsidy program; this has not been tracked since April 2020 because the City of Tucson has kept transit free of charge (until December 2026).

There have also been significant changes in the program's intended outcomes–these are all positive changes (noted in item 3 of this report). The statutory intent of the TRP is to improve air quality and benefit the health of all who live in Areas A and B. According to the 2024 travel reduction program survey, the programs in Maricopa County resulted in more than 71 million miles not driven and 60 tons of air pollution avoided. Based on the data from the Pima County survey, state employees there saved 731,744 vehicle miles and averted 9,146 pounds of pollution in 2024 by using alternative modes of transportation (including telework).

9. Has the agency received any business competitiveness analyses of the rules? **No**

No analysis was submitted to the agency regarding the impact of the rules on business competitiveness.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report? **Yes**

In the 5YRR approved by the Council in August 2020, the Department indicated it had no definitive plan to amend the rules in Article 8. However, the Department indicated it was considering, as allowed under A.R.S. § 41-710.01, making a rule to address reimbursement of internet connectivity for teleworking employees. The Department noted that whether this would be done was dependent upon the percentage of employees who continued to telework, the potential cost of the change, and how to determine eligibility. As the number of employees who telework has remained above 16,000 per month statewide (and above 14,000 in Maricopa County), a cost analysis readily showed that the current appropriated funding levels would not allow for such reimbursements through program funds. TRP staff included this analysis in a legislatively required report to the Joint Legislative Budget Committee (JLBC) in September 2020. Some individual agencies have instituted such stipends using internal funding but the Department does not track individual agency efforts for TRP reporting purposes.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Department determined the benefits of the rules outweigh the costs and impose the least burden and costs on those regulated by the rules. The regulated entities are the state as an employer and employees who voluntarily choose to participate in the programs. For the state, the cost is offset through appropriations from the Air Quality Fund, so there is no impact to the general fund for these programs. The TRP staff markets the program offerings as an employee benefit, so this regulatory compliance measure actually contributes to the State's efforts to recruit and retain employees (this has proven particularly effective at the Arizona Department of Corrections, Rehabilitation and Reentry, which has a robust vanpool program that primarily serves corrections officers traveling long distances).

To participate in the TRP, an employee is required to complete an application authorizing a deduction of the reduced cost for commuter transportation from the employee's pay (if applicable) and agreeing to use the transit card only for work-related commuter transportation. This small burden is outweighed by the savings from having subsidized commuter transportation (employees view this as a benefit).
Transportation providers are required to track which eligible employees use commuter transportation and submit an invoice to the Department so reimbursement can be made. This small burden is outweighed by the benefit of potentially having additional users as a result of the TRP and this is a standard business practice for all transportation service providers.
Participation of employees and transportation providers in the TRP helps to achieve the underlying regulatory objective of reducing air pollution from fossil fuels.

12. Are the rules more stringent than corresponding federal laws? **No**

Although the goal of the TRP is reducing air pollution, as required under the Clean Air Act, no federal law is directly applicable to these rules.

13. For a rule made after July 29, 2010, that requires issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037 or explain why the agency believes an exception applies:

None of the rules requires issuance of a permit, license, or agency authorization.

14. Proposed course of action:

The Department does not propose taking action or making any amendments to the rules at this time.

TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

Supplement 18-1

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, through March 31, 2018.

Questions about these rules? Contact:

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TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

(Authority: A.R.S. § 38-613 et seq. and A.R.S. § 41-703(3))

ARTICLE 8. TRAVEL REDUCTION PROGRAMS

Article 8, consisting of Sections R2-1-801 through R2-1-805 adopted effective December 30, 1994 (Supp. 94-4).

Article 8, consisting of Sections R2-1-801 through R2-1-804 repealed effective December 30, 1994 (Supp. 94-4).

Section

ARTICLE 8. TRAVEL REDUCTION PROGRAMS

R2-1-801. Definitions

In this Article, unless otherwise specified:

1. "Agency head" means the head of each department, agency, board, and commission of this state.
2. "Area A and Area B" have the same meaning in A.R.S. § 49-541.
3. "Commuter transportation" means a mode of transportation used by an eligible employee to travel to or from the eligible employee's place of employment and made available to the eligible employee by a transportation provider under contract with the state of Arizona.
4. "Director" means the Director of the Department of Administration or the director's designee.
5. "Eligible employee" means an employee, in pay status, and lives or works in Area A or Area B, except a university employee.
6. "Employee" means an individual elected or appointed to a state position, or employed on a part-time or full-time basis by a department, agency, board, or commission of this state.
7. "Pay status" has the meaning in R2-5A-101.
8. "Period" means October 1 through the following April 1.
9. "Reduced cost" means the portion of the total cost of commuter transportation that is paid by an eligible employee.
10. "Reimbursement subsidy" means the portion of the total cost of commuter transportation that is paid on behalf of an eligible employee to a transportation provider through a contract with the state of Arizona.
11. "Telework" has the same meaning as at 5 U.S.C. 6501.
12. "Transportation provider" means:

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

a. An incorporated city or town,
b. A regional public transportation authority established under A.R.S. § 48-5102,
c. A regional transportation authority established under A.R.S. § 48-5302,
d. A commercial enterprise, or
e. An Arizona state agency.

Historical Note

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 4579, effective February 5, 2008 (Supp. 07-4). Corrected rule reference to R2-5A-101 in subsection (5) due to Personnel Reform rules made in 2012; statutory citations updated in subsections (7), (9) and (11) according to Laws 2012, Ch. 321, correction letter M15-192 filed by agency (Supp. 14-2). Amended by final rulemaking at 24 A.A.R. 625, effective May 5, 2018 (Supp. 18-1).

R2-1-802. Eligibility for Commuter Transportation Reimbursement Subsidy

A. The Director shall pay a reimbursement subsidy on behalf of an eligible employee who:
1. Completes an application, using a form available from the Department of Administration, for authorization to pay the reduced cost for commuter transportation; and
2. Uses commuter transportation to travel to or from the eligible employee's place of employment.

B. An eligible employee who uses public or private bus or light rail as a means of commuter transportation shall:
1. Authorize payroll deduction under A.R.S. § 38-612(B)(9) of the reduced cost; and
2. As a condition of being authorized to pay the reduced cost for commuter transportation and being issued a transportation card, agree:
   a. Not to allow anyone else to use the transportation card;
   b. To use the transportation card only for commuter transportation unless the eligible employee incurs the transportation provider's maximum monthly charge;
   c. To maintain payroll deduction authorization;
   d. To notify the Department of Administration if the transportation card is lost or stolen;
   e. To pay $5 on a payroll deduction to replace a lost, damaged, or stolen transportation card;
   f. To surrender the transportation card upon termination of employment with the state; and
   g. That use of the transportation card after receiving notice of a change to the terms of using the transportation card constitutes agreement to the change.

Historical Note

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 24 A.A.R. 625, effective May 5, 2018 (Supp. 18-1).

R2-1-803. Commuter Transportation Reimbursement Subsidy Amount

A. The Director shall determine the amount of reimbursement subsidy, up to 100% of the actual cost of commuter transportation, based upon:
1. The number of eligible employees authorized under R2-1-802 to pay reduced cost for commuter transportation;
2. The cost of the commuter transportation; and
3. The amount of state funds appropriated by the Legislature for reimbursement subsidy purposes.

B. The Director shall notify an eligible employee of:
1. The initial percentage of reimbursement subsidy before the employee applies under R2-1-802(A)(1); and
2. Any change in the amount of reimbursement subsidy at least 30 days before the effective date of the change.

Historical Note

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 24 A.A.R. 625, effective May 5, 2018 (Supp. 18-1).

R2-1-804. Commuter Transportation Reimbursement Subsidy Procedure

A. A transportation provider shall submit a monthly invoice to the Director that itemizes the total commuter transportation costs incurred by each eligible employee.

B. The Director shall pay the transportation provider the reimbursement subsidy amount for each eligible employee.

C. The eligible employee shall pay the reduced cost to the transportation provider either directly or, if required under R2-1-802(B), through payroll deduction.

Historical Note

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 24 A.A.R. 625, effective May 5, 2018 (Supp. 18-1).

R2-1-805. Adjusted Work Hours

A. During the period, each agency head shall provide work schedule options so a minimum of 85 percent of employees whose offices are located in Area A or Area B are on adjusted work hours. Adjusted work hours are schedules that:

1. Begin the workday on or before 7:30 a.m., or on or after 8:30 a.m., and conclude the workday on or before 4:30 p.m., or on or after 5:30 p.m.;
2. Adjust work hours into a four-day, 40-hour work week. Employees shall avoid a workday that begins between 7:30 a.m. and 8:30 a.m. or concludes between 4:30 p.m. and 5:30 p.m., whenever possible; or
3. Allow the employee to telework.

B. Notwithstanding the requirements of subsection (A), each agency shall comply with A.R.S. § 38-401 requiring state offices to be open from 8:00 a.m. until 5:00 p.m.

Historical Note

Adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 4579, effective February 5, 2008 (Supp. 07-4). Section R2-1-805 repealed; new Section R2-1-805 renumbered from R2-1-602 and amended by final rulemaking at 24 A.A.R. 625, effective May 5, 2018 (Supp. 18-1).

February 18, 2025

Applicable Statutes

A.A.C. Title 2, Chapter 1, Article 8

38-612. Administration of payroll salary deductions

A. There shall be no payroll salary deductions from the compensation of state officers or employees except as specifically authorized by federal law or regulation or by a statute of this state. An administrative agency of this state may not authorize any other deduction.

B. Notwithstanding subsection A of this section, reductions to retroactive payroll compensation are authorized pursuant to section 38-1106, subsection K, paragraph 5.

C. In addition to those payroll salary deductions required by federal law or regulation or by statute, state officers or employees may authorize deductions to be made from their salaries or wages for the payment of:

1. Premiums on any health benefits, disability plans or group life plans provided for by statute and any existing insurance programs already provided by payroll deduction.

2. Shares or obligations to any state or federally chartered credit union established primarily for the purpose of serving state officers and employees and their families.

3. Dues in a recognized association composed principally of employees and former employees of agencies of this state, subject to the following criteria:

(a) When composed of at least one thousand state employees other than employees of the state universities, the department of public safety and academic personnel of the Arizona state schools for the deaf and the blind.

(b) When composed of at least twenty-five percent of the academic personnel or of the nonacademic employees of any state university.

(c) When composed of at least twenty-five percent of the academic personnel of the Arizona state schools for the deaf and the blind.

(d) When composed of at least four hundred state employees who are certified as peace officers by the Arizona peace officer standards and training board established by section 41-1821.

(e) When composed of a combined total of at least eight hundred state employees described in subdivision (d) of this paragraph, state employees of the state department of corrections and state employees who are law enforcement officers.

4. Deferred compensation or tax sheltered annuity salary reductions when made under approved plans.

5. Federal savings bond plans.

6. Recurrent fees, charges or other payments payable to a state agency under a collection plan approved by the director of the department of administration.

7. Except as provided in subsection G of this section, contributions made to a charitable organization:

(a) Organized and operated exclusively for charitable purposes and selected by the presidents of the state universities. Employees of the state universities shall be advised by form of the charitable organizations to which the employees may contribute through payroll salary deductions. The advisory provided under this subdivision shall be substantially similar to the following and prominently printed:

"You may contribute to any charitable organization registered under internal revenue code section 501(c)(3), tax exempt status.

_____

Charitable organization name"

This subdivision applies only to academic personnel and nonacademic employees of the state universities.

(b) Organized and operated exclusively for charitable purposes, provided a fund drive by such an organization shall be applicable to all state agencies except the state universities covered under subdivision (a) of this paragraph and no state officer or employee of state agencies subject to this subdivision may authorize more than one deduction for charitable purposes to be in effect at the same time. This subdivision applies to all state agencies except the universities covered under subdivision (a) of this paragraph.

8. Contributions made for the purpose of contributing to a fundraising campaign for a university or a club for faculty or staff, or both, which is recognized by the university president and authorized by the Arizona board of regents. This paragraph applies only to academic personnel and nonacademic employees of the state universities.

9. Charges payable for transportation expenses pursuant to section 41-710.01.

10. Payments ordered by courts of competent jurisdiction within this state.

11. Automobile or homeowner's insurance premiums.

12. Premiums for the following state-sponsored group benefits that are established primarily for the purpose of serving state officers and employees and their families:

(a) Long-term care insurance.

(b) Critical care insurance.

(c) Prepaid legal services.

(d) Identity theft protection services.

13. A computer system as defined in section 13-2301 for personal use.

D. In order for the department of administration to establish and maintain a dues deduction pursuant to subsection C, paragraph 3 of this section, the department of administration may establish and maintain the

deduction without the appropriation of any additional monies or technological improvements. The department of administration shall track all personnel hours dedicated to dues deduction. The department of administration may charge a fee to a recognized association that qualifies under subsection C, paragraph 3 of this section for establishing the automatic dues deduction and anytime changes are needed in the automatic dues deduction system as a result of an increase or decrease in association dues. If the membership criteria of a recognized association fall below the criteria set forth in subsection C, paragraph 3 of this section, the recognized association shall be on probation for one year. If the membership of a recognized association falls below the criteria set forth in subsection C, paragraph 3 of this section for more than one year, or if the members of the association engage in a work slowdown or work stoppage, the dues deduction authorized by this section shall immediately be discontinued.

E. For those state officers and employees under payroll systems that are under the direction of the director of the department of administration, the director shall provide for the administration of payroll deductions for the purposes set forth in this section. For all other state officers and employees and for persons receiving allowances or benefits under other state payroll and retirement systems, the appropriate state officer shall provide for such administration of payroll deductions. Such administration shall operate without cost or contribution from the state other than the incidental expense of making the deductions and remittances to the payees. If any payee requests additional services, the director of the department of administration or any other appropriate state officer may require payment for the additional cost of providing such services.

F. As a means of readily identifying the employee from whom payroll deductions are to be made, the state officer administering payroll deductions may request an employee to enter such employee's social security identification number on the payroll deduction authorization. Such number shall not be used for any other purpose.

G. There shall be no payroll salary deductions from the compensation of state officers or employees for contributions made to a charitable organization that performs a nonfederally qualified abortion or maintains or operates a facility where a nonfederally qualified abortion is performed for the provision of family planning services. For the purposes of this subsection, "nonfederally qualified abortion" means an abortion that does not meet the requirements for federal reimbursement under title XIX of the social security act.

H. The state, the director of the department of administration or any other appropriate state officer shall be relieved of any liability to employees authorizing deductions or organizations receiving deductions that may result from authorizations pursuant to this section.

41-101.03. State employee travel reduction program; designated state agency; fund

A. The governor shall designate an appropriate state agency to establish, administer and operate a travel reduction program for the transportation of state employees between their residences and their place of work. The designated agency shall establish the travel reduction program for the voluntary participation by state employees in any area of this state where a sufficiently large number of state employees reside and where the costs of administering a travel reduction program would not be excessive.

B. There is established the state employee travel reduction fund which consists of monies appropriated by the legislature, unrestricted private grants, gifts, contributions and devises, federal funds, and fees. The state agency designated by the governor pursuant to this section shall administer the fund and may disburse monies from the fund only in direct support of the travel reduction program established by this section. Monies in the fund appropriated by the legislature are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.

2. Provide assistance to the governor and legislature as requested.

3. Adopt rules the director deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.

6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.

8. Accept and disburse grants, gifts, donations, matching monies and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

9. Establish and maintain separate financial accounts as required by federal law or regulations.

10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

41-710.01. Reimbursement of transportation and telecommuting costs; definition

A. The director shall adopt rules to provide for the reimbursement of up to one hundred per cent of the cost to state employees of either:

1. Public transportation, vanpool or private bus service to and from their place of employment.

2. Telecommuting connectivity.

B. For the purposes of this section, "public transportation" means local transportation of passengers by means of a public conveyance operated or licensed by an incorporated city or town or a regional public transportation authority.

41-796.01. Adjusted work hours

The director by rule shall require adjusted work hours for at least eighty-five per cent of state employees with offices located in area A or area B as defined in section 49-541 each year beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east

Township 7 north, range 2 west through range 5 east

Township 6 north, range 5 west through range 6 east

Township 5 north, range 5 west through range 7 east

Township 4 north, range 5 west through range 8 east

Township 3 north, range 5 west through range 8 east

Township 2 north, range 5 west through range 8 east

Township 1 north, range 5 west through range 7 east

Township 1 south, range 5 west through range 7 east

Township 2 south, range 5 west through range 7 east

Township 3 south, range 5 west through range 1 east

Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east

Township 1 south, range 8 east and range 9 east

Township 2 south, range 8 east and range 9 east

Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west

Township 6 north, range 1 east and range 1 west

2. "Area B" means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of section 49-546 and has passed inspection.

4. "Certificate of waiver" means a uniquely numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.

5. "Conditioning mode" means either a fast idle test or a loaded test.

6. "Curb idle test" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.

7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.

8. "Fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.

9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.

11. "Gross weight" has the same meaning prescribed in section 28-5431.

12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to section 49-545.

13. "Loaded test" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.

14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.

15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.

16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.

17. "Vehicle emissions control area" means area A or area B.

49-551. Air quality fee; air quality fund; purpose

A. Every person who is required to register a motor vehicle in this state pursuant to section 28-2153 shall pay, in addition to the registration fee, an annual air quality fee at the time of vehicle registration of $1.50. Unless and until the United States environmental protection agency grants a waiver for diesel fuel pursuant to section 211(c)(4) of the clean air act, every person who is required to register a diesel powered motor vehicle in this state with a declared gross weight as defined in section 28-5431 of more than eight thousand five hundred pounds and every person who is subject to an apportioned fee for diesel powered motor vehicles collected pursuant to title 28, chapter 7, articles 7 and 8 shall pay an additional apportioned diesel fee of $10.

B. The registering officer shall collect the fees and immediately deposit, pursuant to sections 35-146 and 35-147, the air quality fees in the air quality fund established pursuant to subsection C of this section and shall deposit the diesel fees in the voluntary vehicle repair and retrofit program fund established pursuant to section 49-558.02.

C. An air quality fund is established consisting of monies received pursuant to this section, gifts, grants and donations, and monies appropriated by the legislature. The department of environmental quality shall administer the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. Interest earned on monies in the fund shall be credited to the fund. Monies in the air quality fund shall be used, subject to legislative appropriation, for:

1. Air quality research, experiments and programs conducted by or for the department for the purpose of bringing area A or area B into or maintaining area A or area B in attainment status, improving air quality in areas of this state outside area A or area B and reducing emissions of particulate matter, carbon monoxide, oxides of nitrogen, volatile organic compounds and hazardous air pollutants throughout the state.

2. Monitoring visible air pollution and developing and implementing programs to reduce emissions of pollutants that contribute to visible air pollution in counties with a population of four hundred thousand persons or more.

3. Developing and adopting rules in compliance with sections 49-426.03, 49-426.04, 49-426.05 and 49-426.06.

D. The department shall transfer $400,000 from the air quality fund to the department of administration for the purposes prescribed by section 49-588 in eight installments in each of the first eight months of a fiscal year.

E. This section does not apply to an electrically powered golf cart or an electrically powered vehicle.

49-581. Definitions

In this article, unless the context otherwise requires:

1. "Alternate mode" means any mode of commute transportation other than the single occupancy motor vehicle.

2. "Approvable travel reduction plan" means a plan that is submitted by a major employer and that meets the requirements set forth in section 49-588.

3. "Area A" has the same meaning prescribed in section 49-541.

4. "Board" means the board of supervisors of a county with a population of more than one million two hundred thousand persons according to the most recent United States decennial census.

5. "Carpool" or "vanpool" means two or more persons traveling in an automobile, truck or van to or from work.

6. "Commute trip" means a trip taken by an employee to or from a work site located within the county.

7. "Commuter matching service" means a system, whether it uses computer or manual methods, which assists in matching employees for the purpose of sharing rides to reduce the drive alone travel.

8. "Employer" means any sole proprietor, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, either public or private, that employs workers.

9. "Full-time employee" means an employee who works at or reports to a single work site during any twenty-four hour period for at least three days per week during at least six months of the year.

10. "Full-time student" means a driving-aged high school, community college or university student commuting to school three or more days of the week during any regular school term.

11. "Major employer" means an employer with one hundred or more employees working at or reporting to a single work site during any twenty-four hour period for at least three days per week during at least six months of the year, except that in area A the threshold is fifty employees.

12. "Mode" means the type of conveyance used in transportation, including single occupancy motor vehicle, rideshare vehicles, transit, bicycle and walking.

13. "Motor vehicle" means any self-propelled vehicle including a car, van, bus or motorcycle and all other motorized vehicles.

14. "Political subdivision" means a city, town or county of this state.

15. "Public interest group" means any nonprofit group whose purpose is to further the welfare of the community.

16. "Reduced emission vehicle" means a motor vehicle that is certified by the task force as being substantially lower emitting in actual use than vehicles generally purchased in the area and that shall be counted as less than a single motor vehicle for travel reduction plan purposes.

17. "Reduced emission vehicle factor" means a factor that is applied to the single occupancy vehicle count and the motor vehicle miles traveled count pursuant to section 49-588 to allow a reduced emission vehicle to receive less than the full count of a regular motor vehicle or a mile traveled by a regular motor vehicle.

18. "Regional" means an area which encompasses or overlaps territory within the jurisdiction of two or more political subdivisions of this state.

19. "Regional program" means the combination of all implemented plans within area A which program shall begin in January, 1989.

20. "Ridesharing" means transportation of more than one person for commute purposes in a motor vehicle, with or without the assistance of a commuter matching service.

21. "Staff" means the county staff assigned to the task force.

22. "Task force" means the travel reduction program regional task force in area A which is designated by the board as the responsible agency to implement and enforce this article.

23. "Transit" means a bus or other public conveyance system.

24. "Transportation coordinator" means a person designated by an employer, property manager or transportation management association as the lead person in developing and implementing a travel reduction plan.

25. "Transportation management association" means a group of employers or associations formally organized to seek solutions for transportation problems experienced by the group.

26. "Travel reduction plan" means a written report outlining travel reduction measures.

27. "Travel reduction program" means a program that implements a travel reduction plan by an employer and is designed to achieve a predetermined level of travel reduction through various incentives and disincentives.

28. "Vehicle miles traveled" means the number of miles traveled by a motor vehicle for commute trips. A mile traveled by a reduced emission vehicle shall be counted as less than a full vehicle mile traveled for travel reduction plan purposes.

29. "Vehicle occupancy" means the number of occupants in a motor vehicle including the driver.

30. "Voluntary participant" means an employer that is not included in the definition of major employer and chooses to participate in a travel reduction program.

31. "Work site" means a building and any grouping of buildings which are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way and which are owned or operated by the same employer.

49-588. Requirements for major employers

A. In each year of the regional program each major employer shall:

1. Provide each regular employee with information on alternate mode options and travel reduction measures. This information shall also be provided to new employees at the time of hiring.

2. Participate in a survey and reporting effort as directed by the task force and as scheduled by the staff. The results of this survey shall form a baseline against which attainment of the targets in subsection D of this section shall be measured as follows:

(a) The baseline for participation in alternative modes of transportation shall be based on the proportion of employees commuting by single occupancy vehicles.

(b) The baseline for vehicle miles traveled shall be the average vehicle miles traveled from place of residence to work per employee for employees not residing on the work site.

3. Prepare and submit a travel reduction plan for submittal to the staff and presentation to the task force. The staff shall assist in preparing the plan. Major employers shall submit plans within nine weeks after they receive survey data results. The plan shall contain the following elements:

(a) The name of the designated transportation coordinator.

(b) A description of employee information programs and other travel reduction measures which have been completed in the previous year.

(c) A description of additional travel reduction measures to be undertaken by the major employer in the coming year. The following measures may be included:

(i) A commuter matching service to facilitate employee ridesharing for work trips.

(ii) Provision of vans for vanpooling.

(iii) Subsidized carpooling or vanpooling which may include payment for fuel, insurance or parking.

(iv) Use of company vehicles for carpooling.

(v) Provision for preferential parking for carpool or vanpool users which may include close-in parking or covered parking facilities.

(vi) Cooperation with other transportation providers to provide additional regular or express service buses to the work site.

(vii) Subsidized bus fares.

(viii) Construction of special loading and unloading facilities for transit and carpool and vanpool users.

(ix) Cooperation with political subdivisions to construct walkways or bicycle routes to the work site.

(x) Provision of bicycle racks, lockers and showers for employees who walk or bicycle to and from work.

(xi) Provision of a special information center where information on alternate modes and other travel reduction measures is available.

(xii) Establishment of a full-time or part-time work at home program for employees.

(xiii) Establishment of a program of adjusted work hours which may include telecommuting, compressed workweeks or staggered work hours. Work hour adjustments should not interfere with or discourage the use of ridesharing and transit.

(xiv) Establishment of a program of parking incentives such as a rebate for employees who do not use the parking facility.

(xv) Incentives to encourage employees to live closer to work.

(xvi) Implementation of other measures designed to reduce commute trips such as the provision of day care facilities or emergency taxi services.

(xvii) Incentives for use of reduced emission vehicles and alternative fuel vehicle refueling facilities.

B. All employers in area A with one hundred or more employees at a single work site shall notify their employees of the employees' duty to comply with the requirements of section 49-542. The travel reduction program regional task force shall prepare and make available a standard information form for use by all employees of those employers.

C. Except as provided in subsection F of this section, an approvable travel reduction plan shall meet all of the following criteria:

1. The plan shall designate a transportation coordinator.

2. The plan shall describe a mechanism for regular distribution of alternate mode transportation information to employees.

3. For employers that in any year meet or exceed annual regional targets for travel reduction, the plan shall accurately and completely describe current and planned travel reduction measures.

4. For employers that, in any year, fall below the regional targets for travel reduction, the plan shall include commitments to implement:

(a) At least two specific travel reduction measures in the first year of the regional program.

(b) At least three specific travel reduction measures in the second year of the regional program.

D. After the second year, the task force shall review the travel reduction programs for employers not meeting regional targets and may recommend additional measures.

E. Employers shall implement all travel reduction measures they consider necessary to attain the following reduction in the proportion of employees commuting by single occupancy vehicles or commuter trip vehicle miles travel reductions per regulated work site:

1. Five per cent reduction in the proportion of employees commuting by single occupancy vehicles as determined in the annual survey in the first year, except that in area A the reduction shall be ten per cent.

2. In the second, third, fourth and fifth years, an additional five per cent reduction in the proportion of employees commuting by single occupancy vehicles as determined in the annual survey, except that in area A the reduction shall be ten per cent. If the percentage of employees commuting in single occupancy vehicles is sixty per cent or less, additional reductions are not required.

F. Notwithstanding any other requirements, a major employer may be in compliance with the requirements of subsections A, C and E of this section by submitting a plan that demonstrates achievement of emissions reductions equivalent to those that would have been obtained through compliance with the requirements of subsection E of this section. Emissions reductions achieved for the purpose of compliance with this subsection shall be in addition to any other emissions reductions that are otherwise required by law, rule, ordinance or permit. The plan may contain any of the following measures to achieve emissions reductions:

1. Voluntary polluting vehicle trade-outs only if both of the following conditions are met:

(a) Vehicles are not crushed.

(b) The program applies only to vehicles owned by the major employer or its employees.

2. Use of clean on-road vehicles.

3. Use of clean off-road mobile equipment.

4. Remote sensing.

5. Other mobile source emissions reductions.

6. Emissions reductions from stationary sources.

7. Peak commute trip reductions.

8. Other work-related trip reductions.

9. Vehicle miles traveled reduction programs.

10. Fuel additives which have been shown to reduce hydrocarbon, carbon monoxide or particulate matter emissions of significant polluting on-road vehicles, off-road mobile sources or area sources by twenty per cent or more.

F.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON APPEAL/PETITION OF CORPORATION COMMISSION SUBSTANTIVE POLICY STATEMENT 3 OF DECISION 79140 PURSUANT TO A.R.S. § 41-1033(E) & (G)

F.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON APPEAL/PETITION OF CORPORATION COMMISSION SUBSTANTIVE POLICY STATEMENT 3 OF DECISION 79140 PURSUANT TO A.R.S. § 41-1033(E) & (G)

The Following is a table of contents of the documents received with a brief description of the documents. The bookmarks in the PDF will reflect the numbers in this table.

1. Attorney Memorandum for June 3, 2025 Hearing, File Name: 1. A.R.S. 41-1033 Petition Staff Memo - Arizona Corporation Commission
2. GRRC Staff 41-1033 Memo from March 2025 Cycle, File Name: March 2025 A.R.S. 41-1033 Petition Staff Memo - Arizona Corporation Commission
3. Petition to GRRC, Sent 11/8/24 File Name: 20241108 GRRC Appeal on Policy Statement
4. ACC Formal 41-1033(H) Response, Sent 4/28/25, File Name: GRRC Response 4-28-25
5. ACC Exhibit A, 2022 ACC Docket creating rulemaking and review procedure, Sent 4/28/25, File Name: Ex A -Decision No. 78544 (April 28, 2022)
6. ACC Exhibit B, 1/6/25 Maricopa Superior Court Dismissal of Petitioner Complaint, Sent 4/28/25, File Name: Ex B - Underground AZ v ACC case dismissed
7. Petitioner Request for Agency Review, Sent to ACC on 9/3/24 File Name: 20240903 ARS 41-1033 Petition to ACC SIGNED
8. ACC Response to Petitioner Request to Review, Sent 10/31/24 File Name: 20241031 ACC Response to Petition
9. ACC Informal Response to GRRC, Sent 3/3/25, File Name: GRRC Letter re 79140 (1)
10. Petitioner Response to ACC Informal Response to GRRC, Sent 3/4/25 File Name: 20250304 Underground Arizona Rebuttal to ACC Letter
11. Petitioner Email to GRRC concerning enforcement of ruling, Sent 2/25/25 and 3/4/25 File Name: Petitioner Email March Cycle
12. Petitioner Rebuttal to Formal ACC Response, Sent 4/30/25 File Name: 20250430 Rebuttal to ACC ARS 41-1033(H)(3)(c) Statement
13. Additional Petitioner Email concerning APA exemption, Sent 5/1/25, File Name State of Arizona Mail - Additional ARS 41-1033 Appeal Note
14. Staff added ACC Decision 79140 to materials during the March Agenda for Council Reference, this ACC docket is referred to by Petitioner in their documents, specifically the portion on pg 82 of the combined PDF concerning jurisdiction. This is also the decision that adopts Policy Statement 3. File Name: Docket No.ALS-00000A-22-0320.pdf
15. Staff added ACC decision 79950 to materials during the March Agenda for Council Reference, ACC decision 79950 is referred to by both Parties in their documents File Name: Decision 79950
16. Staff added these statutes to materials during the March Agenda for Council Reference, these statutes are referenced by the ACC for the existing law that ACC argues supports Policy Statement 3. File Name: Corp Comm Statutes
17. Staff added the following court case (Arizona Pub. Serv. Co. v. Paradise Valley, 125 Ariz. 447) to materials during March Agenda for Council Reference, this court case is referred to by both parties in their documents. File Name: Arizona Pub. Serv. Co. v. Paradise Valley, 125 Ariz. 447

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - PETITION

MEETING DATE: June 3, 2025

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 20, 2025

SUBJECT: A.R.S. 41-1033(E) and (G) Petition Related to Arizona Corporation Commission Agency Practice and Substantive Policy Statement

Background

As described in Council staff's memorandum dated February 18, 2025, on November 8, 2024, Council staff received a petition ("Petition") from Underground Arizona Director Daniel Dempsey ("Petitioner") challenging the Arizona Corporation Commission ("Commission") substantive policy statement 3 of Decision 79140. The Petitioner is asking the Council to consider the petition under both A.R.S. § 41-1033(E) and A.R.S. § 41-1033(G).

For A.R.S. § 41-1033(E) the petitioner is alleging that Policy Statement 3, which concerns undergrounding transmission lines, is actually a rule.

For A.R.S. § 41-1033(G), the petitioner is alleging that Policy Statement 3 exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.

On September 18, 2023, one of the commissioners filed the following amendment to the Commission's Proposed Order from September 1, 2023.

> 3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines

> underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."

On October 4, 2023 the Proposed Order with the above mentioned amendment was adopted by the Commission in a 4 to 1 vote. This amendment is Policy Statement 3 that has prompted the Petitioner to request Council review.

In May 2024, Tucson Electric filed a Certificate of Environmental Compatibility with the Line Sitting Committee. In this Certificate, Tucson Electric cited to Policy Statement 3 stating " Consistent with the Commission's Policy Statement…. requiring undergrounding would render the Project unreasonably restrictive and not feasible."

The Commission approved Tucson Electric's application for the Certificate in September 2024, and included the following finding of fact "However, given the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023), the Committee finds pursuant to A.R.S. 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground 'is unreasonably restrictive and compliance therewith is not feasible in view of technology available."

A.R.S. § 40-360.06(D) says in part "Any certificate granted by the committee shall be conditioned on compliance by the applicant with all applicable ordinances, master plans and regulations of the state, a county or an incorporated city or town, except that the committee may grant a certificate notwithstanding any such ordinance, master plan or regulation, exclusive of franchises, if the committee finds as a fact that compliance with such ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available…."

On September 3, 2024 Petitioner filed a petition for Commission review under A.R.S. § 41-1033(A). The Commission informed the public of the right to Petition in Decision No. 79140. The Petitioner stated that the Policy Statement identified above should be treated as a rule, along with not being specifically authorized by statute, exceeding statutory authority, and is unduly burdensome.

On October 31, 2024 the Commission provided a written rejection to the Petitioner with the Commission alerting the Petitioner of their ability to appeal to the Council pursuant to A.R.S. § 41-1033(E).

Petitioner's Arguments

As indicated above, the Petitioner argues that Policy Statement 3 adopted by the Commission on October 4, 2024 exceeded the Commission's authority because the policy statement was being treated as a rule in practice. The Petitioner argues that the Commission provided the policy statement to the Line Siting Committee to guide the Line Siting Committee on ratepayer recovery and undergrounding of powerlines, the petitioner argues both of which exceed the jurisdiction of the Line Siting Committee. The Petitioner specifically states that the Line Siting Committee is strictly focused on identifying routes for transmission lines and the sole authority for how a utility recovers cost from ratepayers is with the Commission itself. The Line Siting Committee cannot "preemptively determine the cost recovery outcomes of the ratemaking process." The Petition states that the Line Siting Committee is governed by A.R.S. § 40-360 et seq and is limited to overhead transmission lines under A.R.S. § 40-360(10).

The Petitioner states that the Commission knew this policy statement exceeded the Commission's authority because in June 2023 the Commission's legal counsel warned of jurisdictional issues and recommended formal rulemaking. This statement can be found in Docket No.ALS-00000A-22-0320. The Petitioner alleges that a Commissioner acknowledged these jurisdiction issues during a September 2023 hearing as well.

The Petitioner further contends that when Tucson Electric Company "TEP" applied for a "Certificate of Environment Compatibility "CEC", the Line Siting Committee relied on Policy Statement 3 to "preemptively determine that any incremental undergrounding cost would be unrecoverable from ratepayers and therefore was not feasible." The Petitioner argues that this reliance shows Policy Statement 3 being treated as a rule and that the Line Siting Committee used Policy Statement 3 to exercise authority they did not have by making a ratemaking decision.

The Petitioner also states that the Commission's argument that Policy Statement 3 only repeated what the Arizona Supreme Court held was misguided because a utility can be held responsible for costs related to undergrounding without those costs being passed on to the ratepayer. The Petitioner offered the following as support of his position that the Policy Statement was not merely a recognition of state law; "The fact that property owners may petition for the creation of an underground conversion district and be bound to pay for the undergrounding instead of the utility, does not prevent the Town from mandating the undergrounding at utility expense." *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447, 451 (1980).

Commission's Response

Council staff received the Commission's response to the Petition pursuant to A.R.S. § 41-1033(H)(3) on April 28, 2025. Therein, the Commission argues five separate points.

A. GRRC Lacks Authority to Review Commission Rules or Policies

The Commission argues that because the Commission is exempt from GRRC's Title 41, Article 5 authority to oversee rulemaking under A.R.S. §41-1057(A)(2) that they are exempt from all GRRC oversight. The Commission also cites having their own procedures in place for rulemaking as further support for GRRC having no authority to review any Commission rules or policies.

B. **The Commission Has Exclusive Rulemaking Authority**

The Commission states that "Article XV, Section 6 of the Arizona Constitution grants the ACC sole authority to promulgate rules and regulations." The Commission states that this authority also means they are exempt from the Arizona Administrative Procedure Act (APA).

C. The Advisory Policy Statement Reflects Existing Law

The Commission argues that Policy Statement 3 is only a restatement of A.R.S. § 40-341(13) because the state defines underground conversion cost as ""the costs to be paid by each owner to each public service corporation or public agency by the property owners within an underground conversion service area," with the Commission stating that this ensures costs are only passed on to beneficiaries and not ratepayers. The Commission also argues that A.R.S. § 48-620 allows for municipalities to fund underground utilities through tax assessments, and that A.A.C. R14-2-206(B)(2)(c) requires a customer who requests undergrounding to pay the difference between overhead and underground connections. The Commission argues these two statutes and one rule show that utilities should avoid undergrounding unless required for reliability, safety, or operational needs, and that Policy Statement 3 is just a clarification of those laws.

D. The Petition is Potentially Barred by Res Judicata and Defensive Collateral Estoppel

The Commission states that the Petitioner has already filed a complaint in Maricopa County Superior Court, that alleged the Commission lacked statutory authority for Policy Statement 3. The Commission, in Exhibit B, provided a copy of the dismissal of this complaint. The Commission states that because the issue has already been litigated it would be overly burdensome to needlessly litigate again.

*Council staff notes that A.R.S. § 41-1033(M) states that "A decision by the council pursuant to this section is not subject to judicial review, except that, **in addition to** the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034." The emphasized language suggests that an individual may pursue remedies in both Superior Court and with the Council and that pursuing

one or the other first would not interfere with later filing with the other entity. Additionally, the dismissal was based on a late filing and not a decision on the merits.

E. The Advisory Policy Statement is Not a Rule

The Commission argues that Policy Statement 3 is a permissible policy statement because the statutory language in A.R.S. § 41-1001(24) defines substantive policy statement as "a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of ... state statute, [or] administrative rule." The Commission indicates Policy Statement 3 interprets multiple statutes that allocate costs for undergrounding to beneficiaries, and not ratepayers as a whole. The Commission argues that the policy statement only shows how the Commission enforces existing law and is not a new requirement on the general public.

Supplemental Information

In addition to the A.R.S. § 41-1033 Petition and the Commission's response pursuant to A.R.S. § 41-1033(H)(3), the Petitioner has submitted supplemental information in the form of a reply to the Commission's Response, two (2) emails stating why the Petitioner believes the Council has jurisdiction over the Commission, a rebuttal to the Commission's informal March 3, 2025 response, the initial request for review submitted to the Commission on September 3, 2024, and the Commission's response to that request for review dated October 31, 2024. The Commission supplied two exhibits with their formal response, Exhibit A is a Commission Decision docketed April 28, 2022 that sets forth the Commission adopting a similar rule review and rulemaking process to GRRC, Exhibit B is the Dismissal of Underground Arizona's complaint against the Commission dated January 6, 2025, and the Commission's initial informal response to the Council dated March 3, 2025. Copies of the Petition, the Commission's response pursuant to A.R.S. § 41-1033(H)(3), the above-referenced supplemental information, and all relevant exhibits are included in the final materials for the Council's consideration.

Procedure

A.R.S. § 41-1033(E) allows a person "to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule." The agency must have rejected the petitioner's request for review in order for the Council to have a hearing to consider whether the agency practice or substantive policy statement constitutes a rule. If rejected, the Petitioner has 30 days to submit a five page double spaced appeal to the Council. The Commission rejected the Petitioner's request on October 31, 2024 and the Petitioner asked the Council for review on November 8, 2024. Per A.R.S. § 41-1033(H) if the council receives information that alleges an agency practice or substantive policy statement constitutes a rule, and at least three council members request that the matter be heard in a public hearing, then 90 days after the third council member's request, the Council shall determine if the agency practice or substantive policy statement constitutes a rule. *See* A.R.S. 41-1033(H)(1)(a). The third request came on April 1, 2025 and the Council must make a decision by Monday, June 30. Any decision by the Council must be made by a majority of the council members who are present and voting on the issue. *See* A.R.S. § 41-1033(L).

A.R.S. § 41-1033(G) allows a person to "petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section." If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least three council members request that the matter be heard in a public hearing, then 90 days after the third council member's request, the Council shall determine whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute, or meets the guidelines prescribed in A.R.S. § 41-1033(G). *See* A.R.S. 41-1033(H)(1)(c). As such, the Council has until June 30, 2025 to make a decision. Any decision by the Council must be made by a majority of the council members who are present and voting on the issue. *See* A.R.S. § 41-1033(L).

After considering the Petition under both § 41-1033(E) and (G), the Commission's response, and all relevant supplemental information, the Council must make its determination. Pursuant to A.R.S. § 41-1033(K), if the Council determines that the agency practice, substantive policy statement or regulatory licensing requirement exceeds the agency's statutory authority, or is not authorized by statute or constitutes a rule, the practice, policy statement, rule or regulatory licensing requirement shall be void. For the A.R.S. § 41-1033(G) petition only, if the Council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the Council shall modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. *Id.*

Conclusion

The Petition is properly before the Council and both parties have submitted materials consistent with the requirements in the statute as indicated above. Council staff advises the Council to consider the materials both parties submitted and to question both parties on whether the Commission's Policy Statement 3 constitutes a rule and whether Policy Statement 3 is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: March 4, 2025

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: February 18, 2025

SUBJECT: **A.R.S. 41-1033(G) Petition Related to Arizona Corporation Commision Agency Practice and Substantive Policy Statement**

Summary

On November 8, 2024, Council staff received a petition ("Petition") from Underground Arizona Director Daniel Dempsey ("Petitioner") challenging the Arizona Corporation Commission ("Commission") substantive policy statement 3 of Decision 79140. The Petitioner is asking the Council to consider their petition under both A.R.S. § 41-1033(E) and A.R.S. § 41-1033(G).

For A.R.S. § 41-1033(E) the petitioner is alleging that a Commission Policy Statement concerning underground transmission lines is actually a rule.

For A.R.S. § 41-1033(G), the petitioner is alleging that the same Commission Policy Statement exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.

While the Council does not have authority to review Commission rulemaking per A.R.S. § 41-1057, which states that the corporation commission is exempt from Title 41, Chapter 6, Article 5. Article 5 only deals with rulemakings and agency reports, not with the Council's authority to hear a petition under A.R.S. §41-1033. This is further supported by the Commission advising the Petitioner of the ability to appeal to the Council.

Background

On February 20, 2023 Tucson Electric Power and other utilities requested that the Commision issue a police statement concerning transmission lines because the Commision has previously stated that the costs of undergrounding transmission lines should not be passed on to the ratepayer.

On September 18, 2023, one of the commissioners filed the following amendment to the Commission's Proposed Order from September 1, 2023.

> 3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."

On October 4, 2023 the Proposed Order with the above mentioned amendment was adopted by the Commision in a 4 to 1 vote. This amendment is the Policy Statement that has prompted the Petitioner to request Council review.

In May 2024, Tucson Electric filed a Certificate of Environmental Compatibility with the Line Sitting Committee. In this Certificate, Tucson Electric cited to the policy statement stating " Consistent with the Commission's Policy Statement…. requiring undergrounding would render the Project unreasonably restrictive and not feasible."

The Commision approved Tucson Electric's application for the Certificate in September 2024, and included the following finding of fact "However, given the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023), the Committee finds pursuant to A.R.S. 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground 'is unreasonably restrictive and compliance therewith is not feasible in view of technology available."

A.R.S. § 40-360.06(D) says in part "Any certificate granted by the committee shall be conditioned on compliance by the applicant with all applicable ordinances, master plans and regulations of the state, a county or an incorporated city or town, except that the committee may grant a certificate notwithstanding any such ordinance, master plan or regulation, exclusive of franchises, if the committee finds as a fact that compliance with such ordinance, master plan or

regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available…."

On September 3, 2024 Petitioner filed a petition for Commission review under A.R.S. § 41-1033(A). The Petitioner stated that the Policy Statement identified above should be treated as a rule, along with not being specifically authorized by statute, exceeding statutory authority, and is unduly burdensome.

On October 31, 2024 the Commission provided a written rejection to the Petitioner with the Commission alerting the Petitioner of their ability to appeal to the council pursuant to A.R.S. § 41-1033(E).

Petitioner's Arguments

As indicated above, the Petitioner alleges that the policy statements adopted by the Commision on October 4, 2024 exceeded their authority because the policy statement was being treated as a rule in practice. The Petitioner argues that the Commission provided the policy statement to the Line Siting Committee to guide the Line Siting Committee on ratepayer recovery and undergrounding of powerlines, both of which exceed the jurisdiction of the Line Siting Committee according to the Petitioner. The Petitioner specifically states that the Line Siting Committee is strictly focused on identifying routes for transmission lines and the sole authority for how a utility recovers cost from ratepayers is with the Commission itself. The Line Siting Committee cannot "preemptively determine the cost recovery outcomes of the ratemaking process."

The Petitioner states that the Commision knew this policy statement exceeded their authority because in June 2023 the Commission's legal counsel warned of jurisdictional issues and recommended formal rulemaking. This statement can be found in Docket No.ALS-00000A-22-0320. The Petitioner also states that a Commissioner acknowledged these jurisdiction hearings during a September 2023 hearing as well.

The Petitioner further contends that when Tucson Electric Company "TEP" applied for a "Certificate of Environment Compatibility "CEC", the Line Siting Committee relied on the policy statement to "preemptively determine that any incremental undergrounding cost would be unrecoverable from ratepayers and therefore was not feasible." The Petitioner also states that the Commission's argument that the policy statement only repeated what the Arizona Supreme Court held was misguided because a utility can be held responsible for costs related to undergrounding without that costs being passed on to the ratepayer. The Petitioner offered the following as support of his position that the Policy Statement was not merely a recognition of state law; "The fact that property owners may petition for the creation of an underground conversion district and be bound to pay for the undergrounding instead of the utility, does not prevent the Town from mandating the undergrounding at utility expense." *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447, 451 (1980).

Summary of Commission Review

As a result of the Petitioner initially filing a request of review of the substantive policy from the Commission in accordance with A.R.S. § 41-1033, the commission was required to either provide a detailed rejection of the petition, or if the substantive policy was actually a rule to engage in rulemaking. The Commision rejected the request by written response to the Petitioner on October 31, 2025. The Commission's full response can be found in the attached materials, a brief overview will be provided below.

The Commision does not consider the Policy Statement to be a rule because the policy statement was based on existing statutes and rules. The Commission specifically cited A.A.C R14-2-206(b)(2)(c) and A.R.S. §§40-341, et. and A.R.S. § 48-620.

For the argument that the Policy Statement constitutes a rule, the commision states that the Policy Statement is not a rule because the Policy Statement is merely restating state law. The Commision cites A.R.S. § A.R.S. § 40-364(F) and R14-2-206(b)(2)(c) as to where this authority lies.

For A.R.S. § 40-364(F), the Commission emphasizes that the statute "grants the Commission the authority to issue an order "establishing the underground conversion service" and the Commission "'shall set forth the underground conversion costs to be charged to each lot or parcel.'"" Commision 10/31/24 Response pg 12. The Commision states that the cost for undergrounding can only be passed on to those who directly benefit from the undergrounding and not to a generalized population.

The Commission believes that the existing rule and statutes specify that no unnecessary cost should be passed on to ratepayers, any costs should be absorbed by those who benefit. (*Id.* at. 3).

For the *Paradise Valley* case cited by the Petitioner, the Commision states the following "These decisions do not support Mr. Dempsey's position. Commission advisory does not preclude or limit a municipality's right to require undergrounding. The Commission advisory merely parrots state law and policy on the allocation of the costs of Undergrounding." (*Id.* at 13).

Relevant Statutes and Regulations

A.R.S. § 41-1033(E) allows a person to "to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule." The agency must have rejected the petitioner's request for the Council to hear. If rejected, the Petitioner has 30 days to submit a five page double spaced appeal to the Council.

A.R.S. § 41-1033(G) allows "A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern."

If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least three Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the third council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the third council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement not more than five double-spaced pages to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

   See A.R.S. § 41-1033(H).

A.R.S. §41-1001(17) states: "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

A.R.S. § 41-1001(24) states ""Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter."

A.R.S. § 40-360.06(A) states that "The committee may approve or deny an application and may impose reasonable conditions on the issuance of a certificate of environmental

compatibility and in so doing shall consider the following factors as a basis for its action with respect to the suitability of either plant or transmission line siting plans:...

(A)(8) . "The estimated cost of the facilities and site as proposed by the applicant and the estimated cost of the facilities and site as recommended by the committee, recognizing that any significant increase in costs represents a potential increase in the cost of electric energy to the customers or the applicant."

(A)(9). Any additional factors that require consideration under applicable federal and state laws pertaining to any such site.

R14-2-206(b)(2)(c) states ""[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution."

Analysis and Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

The following is Council staff's opinion as to whether the policy statement constitutes a rule or if it exceeds the Commission's statutory authority.

The Policy Statement can be broken into two parts. Part 1 states, "As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates." Council Staff believes that the Commission is correct when the Commission states that this is just a restatement of the existing law and authority. Absent any other law and requirements, the Commission has an obligation to ratepayers to ensure the lowest possible costs.

Absent any other law or authority on undergrounding, a stakeholder who benefits would be responsible for paying for these benefits, and not the ratepayers as a whole. This is supported by R14-2-206(b)(2)(c), A.R.S. §§ 40-347 and 48-620.

Part 2 of the Policy Statement states, "Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."

The language in Part 2 is ultimately where the dispute arises. The plain text of the Policy Statement states that those who wish to fund an underground transmission line may do so, ***among other ways,*** by forming an improvement district. The plain text does not prohibit a utility to be responsible for undergrounding or for a municipality to require underground through zoning or an ordinance. The Policy Statement only states that one way to do this is through an improvement district as provided in A.R.S. § 48-620 *et. seq.* The Policy Statement is not saying that this is the only way, it is just among the ways. Council staff agrees with the Commission that the Policy Statement as written only restates what exists in law and does not add any additional requirements.

However, based on the Petitioner's allegations, a question emerges regarding whether the Commission is using this Policy Statement as an Agency Practice to exceed their statutory authority when it comes to interfering with a municipalities authority to require undergrounding and whether the beneficiary must always pay for the undergrounding. The Petitioner does seem to touch on this subject in their jurisdictional argument. Council staff recommends that the Council inquire further regarding this issue based on the analysis in the *Paradise Valley* case provided by the Petitioner and outlined in more detail below. A copy of the full case text has also been provided in the materials for the Council's consideration.

In *Paradise Valley,* the question was raised whether cities and towns had the authority to direct the undergrounding of public utility poles. *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447, 448 (1980). In this case, the court said that while property owners may petition for the creation of an underground conversion district, ***this does not prevent the town from mandating at utility expense.*** *Id.* at 451. The court further determined that, because A.R.S. § 40-360.06(D) mentions ordinance, master plan or regulation, this language supports the notion that cities and towns have the power to require undergrounding. *Id.* The court ultimately held "We believe that, in the absence of a clear statewide preemptive policy not shown here, local governments can prescribe undergrounding within their boundaries." *Id.*

The Commission does not dispute that local governments have the ability to mandate undergrounding. *Commission 10/31/24 Response* Pg. 12. The Commission believes that mandating undergrounding is separate from allocation of costs of undergrounding. *Id.* It appears that the Commission believes that costs for undergrounding can only be passed on to property owners who benefit because the sole authority to allocate costs on undergrounding lies with the Commission. *Id.* at 12-13. The Commission states that *Paradise Valley* does not support the Petitioner's position "these decisions do not support Mr. Dempsey's position. The Commission advisory does not preclude or limit a municipality's right to require undergrounding." *Id.* In relation to *Paradise Valley,* the Commission also states " Thus, if a Municipality requests or mandates undergrounding, it must pay for it, not the ratepayers. This is consistent with the holding in A*rizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447 (Ariz. 1980), wherein the right of a municipality to require undergrounding was affirmed. However,that does not address who should pay."

However the Petitioner is quoting *Paradise Valley* because it states that a town can mandate undergrounding at the utilities expense. *Petition*, Pg. 4. The Commission does not address the possibility of a local government requiring a utility to cover these expenses. The

Paradise Valley court rejected the notion that the legislature created underground conversion districts for the purpose of only property holders being responsible for the costs of undergrounding. *Paradise Valley,* at 451.

These improvement districts and service areas were in place at the time of the *Paradise Valley* decision and were cited by the court directly as being unpersuasive that the legislature intended to prevent local governments from mandating undergrounding at a utilities expense. In the CEC approval as referenced in Decision 79550 pg 15, the Committee relied on the Policy Statement and said that funding must come from someone other than TEP's utility rates or from TEP, absent an agreement between the parties.

In Docket No.ALS-00000A-22-0320 pg3, the Commission states "The facts of each case are unique. and there may be instances where a utility demonstrates that ratepayer recovery of undergrounding transmission lines is warranted." This sentiment does not appear in the Commission's response to Petitioner. This Docket is also where the Commission mentions that the line siting committee does not have jurisdiction over ratepayer recovery. *Id.*

Based upon the Commission's TEP undergrounding decision and what has been provided by Petitioner, staff believes that the Petitioner may have brought an agency practice that is not expressly authorized under the Commission's statutory authority.

If it is indeed the Commission's position that undergrounding costs can only be shared among those who are beneficiaries or those that have opted into a district, then staff believes that this raises the question; whether absent an improvement district, conversion service area, or commitment that the requesting customer would pay, then would the Commission always rule that an ordinance, master plan, or regulation to be considered as "unreasonably restrictive and compliance therewith is not feasible." It also raises the question if this is considered determining ratepayer responsibility and whether that is within the jurisdiction of the line siting committee, as found in A.R.S. § 40-360.06.

Essentially, while a town may pass a zoning ordinance requiring that all transmission lines be undergrounded, this ordinance would not be followed unless there is an improvement district, conversion service area, or commitment that the requesting customer pays for the cost. This would remove the possibility that the utility will pay for these costs, which according to *Paradise Valley* is a possibility. Council staff does not believe there is clear statutory authority for the Commission to declare that a utility should not be held financially responsible for undergrounding based upon the *Paradise Valley* decision.

In conclusion, the Commission stated in Decision 79550, that the Policy Statement provided guidance to find that TEP did not need to pay for the undergrounding. The Policy Statement is silent on whether a utility can be financially responsible for undergrounding. This silence does not mean the Policy Statement advises that a utility cannot be financially responsible for undergrounding because in *Paradise Valley*, the court mentioned that while a town can pay for these costs either through agreement or an improvement district, they are under

no obligation to do so. However, in practice the Commision appears to be treating the absence of language as justification for not allowing the utility to pay.

As stated above there are requirements or standards to guide the Council in determining whether this petition should be given a hearing. If the Council believes that the only issue at hand is whether the Policy Statement is a rule or not and whether the Policy Statement is within the Commission's statutory authority. In this scenario, Council staff believes that the Policy Statement is not a rule because it merely restates the law (the policy statement does not have to mention every payment possibility), which is that costs associated with undergrounding cannot be passed on to the ratepayers.

Should the Council believe that the Petitioner may have brought an agency practice that exceeds the Commission's authority then Council Staff does recommend the Council ask the following of the Commission and Petitioner:

- Does the Commission allow for a utility to be financially responsible for the costs associated with undergrounding?
- For the Petitioner's line siting Committee jurisdictional argument over ratemaker recovery, can the Commission clarify as it relates to the TEP matter, if the Commission was consistent with pg. 3 of Docket No. ALS-00000A-22-0320?
- For the Commission, what is the extent, if any, for the Committee to ask about potential impacts on ratepayers, either under A.R.S. § 40-360.06, or other Committee statute.
- For the Petitioner, Council staff recommends the Council ask the Petitioner of the applicability of A.R.S. § 40.360.06(A)(8)? This relates to the jurisdictional question, under this statute why did the Committee overstep its jurisdiction in considering the potential costs that could be passed to customers?
    - This statute allows the committee to approve or deny an application and the Committee may consider the cost of the facilities and sites, and recognize that these costs may increase the costs to customers or the applicant.

Underground Arizona, Inc.
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(520) 360-0590

November 8, 2024

Governor's Regulatory Review Council
100 N Fifteenth Ave • Suite 302
Phoenix, AZ 85007
grrc@azdoa.gov

RE: Arizona Corporation Commission Decision 79140, Policy Statement 3

Dear Members of the Governor's Regulatory Review Council,

Underground Arizona hereby appeals to the Governor's Regulatory Review Council (the "Council"), pursuant to A.R.S. § 41-1033(E), for a determination that the Arizona Corporation Commission's (the "Commission") October 4, 2023 Policy Statement, as outlined herein, is a rule or is otherwise "not specifically authorized by statute, exceeds the agency's statutory authority, [and] is unduly burdensome."[1]

Underground Arizona submitted an A.R.S. § 41-1033 petition to the Commission on September 3, 2024.[2] The petition was rejected by written letter on October 31, 2024.[3] In the rejection letter, the Commission wrote: "The Petitioner is advised that he has 30 days to file an appeal if he so chooses.[3]" Footnote 3 cited A.R.S. § 41-1033(E), which is the Council's review process.

BACKGROUND

1. **On February 20, 2023**, Tucson Electric Power ("TEP") requested that the Commission issue a policy statement on undergrounding transmission lines (pg. 4):[4]

   "The Commission has often acknowledged that ratepayers should not pay the extra cost of undergrounding a transmission line. Including language to that effect in a policy would be

[1] See e.g. A.R.S. 41-1033(G).
[2] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000038251.pdf
[3] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000039777.pdf
[4] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000024350.pdf

helpful to applicants who need to explain the issue to stakeholders in a CEC proceeding."

2. **On June 30, 2023**, the Commission's Legal Division issued a memo stating the following regarding TEP's request (pg. 3):[5]

> *"If the Commission decides to move forward with this proposal, a rulemaking would be required because the Commission would be prescribing law or policy. It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statute. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines."*

3. **On September 1, 2023**, the Commission's Legal Division filed a Proposed Order that did not include a policy statement on rate recovery or undergrounding.[6]
4. **On September 18, 2023**, Commissioner Myers filed Proposed Amendment No. 1, which proposed inserting the following policy statement on undergrounding into the Legal Division's Proposed Order:[7]

> "*3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."*

5. **On September 21, 2023**, at the Commission's Open Meeting, in regard to Commissioner Myers' Proposed Amendment No. 1, the following statement was made:[8]

> ***Commissioner Myers:*** *"I think it is beneficial to clarify the Commission's stance on [rates and undergrounding] but at the same time make sure that it's clear that we don't have jurisdiction over [rates and undergrounding] when it comes to line siting stuff."*

[5] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000027753.pdf
[6] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000030426.pdf
[7] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/E000030810.pdf
[8] Item 33. https://azcc.granicus.com/player/clip/5766?view_id=3&redirect=true

6. **On October 4, 2023**, The Commission formally issued Decision No. 79140 by a vote of 4 to 1, with Commissioner Tovar dissenting, which adopted three policy statements, including Commissioner Myers Proposed Amendment No. 1 on undergrounding (the policy statement).[9] In Finding of Fact 1, the Commission wrote that the purpose of policy statements was to "guide" the Line Siting Committee (pg. 1).
7. **On May 24, 2024**, TEP filed a Certificate of Environmental Compatibility ("CEC") application with the Line Siting Committee ("the Committee"). In it, and based on the policy statement, TEP made the following request (pg. 30):[10]

   > *"Consistent with the Commission's Policy Statement, given the excessive cost of undergrounding, and the resulting impact on rates, requiring undergrounding would render the Project unreasonably restrictive and not feasible."*

8. **On September 13, 2024**, In Decision No. 79550, the Committee and Commission approved TEP's application for a CEC, which included the following findings of fact (pg. 15):

   > *"10. However, **given the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023),** the Committee finds pursuant to A.R.S. 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground 'is unreasonably restrictive and compliance therewith is not feasible in view of technology available.'"* [Emphasis Added]

ANALYSIS

The *ex-ante* line siting process is administered by the Line Siting Committee and focused on identifying routes for transmission lines.[11] It is governed by A.R.S. § 40-360 et seq. The *ex-post* ratemaking process is administered by the Commission and is focused on how a utility recovers costs from ratepayers. It is governed by A.R.S. § 40-361 et seq. Each process has independent jurisdiction and operates according to its own rules and procedures. To put it another way, the line siting process is not an early stage of ratemaking; while costs may be considered in route selection, the process cannot preemptively determine the cost recovery outcomes of the ratemaking process—or vice versa.[12]

On February 20, 2023, Tucson Electric Power ("TEP") requested that the Commission issue a policy statement to guide the Line Siting Committee on ratepayer recovery and undergrounding (Background 1). On June 30, 2023, the Commission's legal counsel warned that such a policy statement would be outside the scope of the line siting statute and a formal rulemaking would be required

[9] Docket L-00000C-24-0118-00232: https://docket.images.azcc.gov/0000209995.pdf
[10] https://docs.tep.com/doc/projects/mrp/MRP-CEC-Application.pdf
[11] In this context, ex-ante means before a project is built and ex-post mean after a project is built.
[12] As evidence, SRP's rates are not regulated by the Commission but its transmission lines require approval by the Line Siting Committee.

(Background 2). On September 21, 2023, at a Commission hearing, Commissioner Myers further acknowledged these jurisdictional problems (Background 5). Despite this, on October 4, 2023, in Decision 79140, the Commission issued a line siting policy statement on ratepayer recovery and undergrounding without undergoing a formal rulemaking (Background 6).

On May 24, 2024, TEP applied for a Certificate of Environmental Compatibility ("CEC") from the Commission (Background 7). On September 13, 2024, in Decision 79550, the Commission granted the CEC. In the CEC, the Line Siting Committee relied on the Policy Statement to preemptively determine that any incremental undergrounding cost would be unrecoverable from ratepayers and therefore was not feasible (Background 8). Thus, the Policy Statement has been treated as a binding rule in practice.

By providing guidance to the Line Siting Committee through a Policy Statement on subjects for which the Line Siting Committee explicitly lacks jurisdiction, the Commission has deliberately confused process and acted in a manner that is "not specifically authorized by statute, exceeds the agency's statutory authority, [and] is unduly burdensome."[13,14] The bottom line is: why does the Line Siting Committee need to be guided by the Commission on items for which the Line Siting Committee lacks jurisdiction? If the point is not to exert extra jurisdictional authority, then what is it? Why doesn't the Commission simply make a non-line siting policy statement on undergrounding costs?

In its response to Underground Arizona's petition, the Commission said (pg. 5), "The jurisdiction of the Line Siting Committee is not at issue here." We disagree. It is the *only* thing at issue here. The Commission's arguments about its ratemaking or other jurisdiction are strawmen and not in dispute.

The Commission went on to say (pg. 5): "The Committee was appropriately recognizing state law limitations on cost recovery for undergrounding." Here, the Commission also errs. According to the Arizona Supreme Court, in APS v. Town of Paradise Valley (1980), state law does not limit cost recovery to non-utility parties (p 451):

> *"The fact that property owners may petition for the creation of an underground conversion district and be bound to pay for the undergrounding instead of the utility* [under state law]*, does not prevent the Town from mandating the undergrounding* ***at utility expense****."* [Emphasis added]

Therefore, the Commission's contention that the Policy Statement is simply a restatement of state law is fatally flawed.[15,16]

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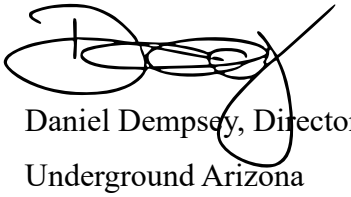
[13] See e.g. A.R.S. 41-1033(G).
[14] See e.g. A.R.S. 41-1091.
[15] Additionally, Underground Arizona has compiled dozens of examples on its website of the utility companies recovering the incremental cost of undergrounding from ratepayers without resistance from the Commission. Thus, its contention that it is disallowed by state law makes little sense.
[16] In TEP v. Board of Adjustment (2024), the Arizona Superior Court said: "*The State has also preempted the City's ability to determine where, but not how, transmission lines are constructed. The State clearly intended the Arizona Corporation Commission (ACC) to have exclusive authority over line siting for high-capacity transmission lines. A.R.S. § 40-360, et seq.*

Frankly, it seems that the Policy Statement's only purpose is for the Commission to improperly exert extra jurisdictional authority over the Line Siting Committee, which it succeeded at doing in practice.

CONCLUSION

For the foregoing reasons, pursuant to A.R.S. § 41-1033 et seq., and at the direction of the Commission, Underground Arizona respectfully requests that the Council hold a public meeting regarding the Commission's Policy Statement, which has been treated as a rule in practice, and determine it void as contrary to law.

Sincerely,



Daniel Dempsey, Director
Underground Arizona

See also 1971 Session Laws Ch 67, § 1. The purpose of this is to simplify the process of expanding Arizona's electrical grid, which is necessarily a matter of statewide importance. However, the Court has been unable to locate any law which restricts the City's authority to regulate how transmission lines are constructed. TEP is correct that there is no law which explicitly grants the City the authority to require undergrounding, but neither is there a specific law which purports to exempt utilities from all zoning regulations. Therefore, the Court finds that, as a matter of law, the City has the authority to require undergrounding of transmission lines." It is only reasonable to assume that an applicant pays the cost of complying with zoning regulations. The burden of proof that a municipality pays for the zoning compliance of any party is on TEP.

COMMISSIONERS
Kevin Thompson – Chairman
Nick Myers – Vice Chairman
Lea Márquez Peterson
Rachel Walden
René Lopez

Douglas R Clark
Executive Director

Thomas Van Flein
General Counsel
Office of General Counsel

ARIZONA CORPORATION COMMISSION

Office of General Counsel

April 28, 2025

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007
grrc@azdoa.gov

Re: Underground Arizona Petition

Dear Members of the Governor's Regulatory Review Council:

The Arizona Corporation Commission ("Commission" or "ACC") responds to the Governor's Regulatory Review Council's ("GRRC") request for comment on the Underground Arizona Petition, and requests that it be denied for lack of GRRC jurisdiction. As recently stated in a presentation by the GRRC staff attorney to the State Legislature in January 2025, "GRRC oversees nearly every state agency, with the exception of the Arizona Corporation Commission…."[1] The Commission was unable to locate any GRRC review of any rule or policy enacted by the Commission … since 1912.

A. GRRC Lacks Authority to Review ACC Rules or Policies

The Administrative Procedures Act ("APA"), Arizona Revised Statutes ("A.R.S.") Title 41, Chapter 6, and GRRC's rulemaking review authority do not apply to the ACC. A.R.S. § 41-1057(A)(2) states: "In addition to the exemptions stated in section 41-1005, this article does not

[1] https://azcapitoltimes.com/news/2025/03/06/gop-review-agency-rules/#:~:text=According%20to%20a%20presentation%20by%20a%20GRRC,exception%20of%20the%20Arizona%20Corporation%20Commission%20and ("GOP Lawmakers Want Power to Review Agency Rules") (March 6, 2025).

apply to: … 2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business." This exemption is noted on GRRC's website: https://grrc.az.gov/sites/default/files/Arizona%27s%20APA%20-%20The%20Role%20of%20GRRC%20Part%201.pdf (p. 16).[2] As A.R.S. § 41-1057(A)(2) expressly excludes the ACC, its rules and policies are not subject to GRRC review. The petition should be dismissed.

B. The ACC Has Exclusive Rulemaking Authority

Article XV, Section 6 of the Arizona Constitution grants the ACC sole authority to promulgate rules and regulations. In Docket AU-00000A-16-0141, Decision No. 78544 (April 28, 2022), the ACC adopted its own Rules Review Procedures, substantially similar to GRRC's but independent of APA oversight.

See https://docket.images.azcc.gov/0000206627.pdf?i=1656457201339, Exhibit A (attached). Arizona courts have affirmed this authority: "the foregoing constitutional provision gives the commission judicial, executive and legislative powers … [including] adopting rules and regulations." *Ethington v. Wright*, 66 Ariz. 382, 389, 189 P.2d 209, 214 (1948). The ACC's exclusive rulemaking power extends to rules necessary for its constitutional duties. *State ex rel. Corbin v. Arizona Corp. Comm'n*, 174 Ariz. 216, 219, 848 P.2d 301, 304 (App. 1992). The Arizona Administrative Code ("A.A.C.") notes the Commission's exemption from APA certification under A.R.S. § 41-1041. *See* A.A.C. Title 14, Chapter 5, Editor's Note.

[2] Another part of the GRRC website notes: "However, some agencies are exempt from the APA by law and do not need to seek Council approval before filing final rulemakings with the SOS." https://grrc.az.gov/rulemaking

https://apps.azsos.gov/public_services/Title_14/14-05.pdf. GRRC cannot review ACC rules or policies.

C. The Advisory Policy Statement Reflects Existing Law

Decision No. 79140, Policy Statement 3, restates existing statutes. A.R.S. § 40-341(13) defines "underground conversion cost" as "the costs to be paid by each owner to each public service corporation or public agency by the property owners within an underground conversion service area," ensuring costs fall on beneficiaries, not ratepayers. A.R.S. § 48-620 permits municipalities to fund underground utilities through tax assessments. Arizona Administrative Code R14-2-206.B(2)(c) requires a "customer requesting an underground service line in an area served by overhead facilities [to] pay for the difference between an overhead service connection and the actual cost of the underground connection." Policy Statement 3 clarifies that utilities should avoid undergrounding unless required for reliability, safety, or operational needs, aligning with these laws. GRRC lacks authority to alter these statutes.

D. The Petition is Potentially Barred by Res Judicata and Defensive Collateral Estoppel

Underground Arizona already challenged the ACC's policy in Maricopa County Superior Court, Case No. CV2024-033957, alleging that the ACC lacked statutory authority for the Policy. On January 6, 2025, the court dismissed the complaint with prejudice. *See* Exhibit B (attached). Issue preclusion serves to protect litigants from the burden of relitigating an identical issue and to promote judicial economy by preventing needless litigation. *See e.g.*, *Crosby-Garbotz v. State*, 246

Ariz. 54, 57, 434 P.3d 143, 146 (2019) ("the doctrine seeks to avoid the basic unfairness associated with duplicative, harassing litigation") (citations omitted).[3]

E. The Advisory Policy Statement is Not a Rule

Policy Statement 3 is a permissible substantive policy statement under A.R.S. § 41-1001(24), defined as "a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of … state statute, [or] administrative rule." The Policy states it is advisory, and nothing in the Policy is mandatory. This Policy interprets several state statutes mandating cost allocation for undergrounding to beneficiaries, not ratepayers, ***and imposes no new requirements***. Even if the APA applied, the statement is exempt from rulemaking and GRRC review. As GRRC explains, "an agency can create substantive policy statements to explain how the agency will enforce a rule, but the substantive policy statement itself cannot be enforced on the general public." https://grrc.az.gov/rulemaking

F. Conclusion

Based on the foregoing, and the ACC and Maricopa County Superior Court record referenced herein, the ACC requests the GRRC to dismiss Underground Arizona's petition for lack of jurisdiction. The ACC's broad constitutional authority, the policy's alignment with existing law,

[3] Under the doctrine of res judicata an existing final judgment rendered upon the merits, by a court of competent jurisdiction, is conclusive as to every point decided therein, and also as to every point raised by the record which could have been decided, with respect to the parties or their privies. *Hoff v. City of Mesa*, 86 Ariz. 259, 344 P.2d 1013 (1959).

and the prior court dismissal preclude GRRC action. Please contact the Office of General Counsel with questions.

Sincerely,

/s/ Robert Ridenour

Robert Ridenour, Senior Associate General Counsel
Office of General Counsel
rridenour@azcc.gov
(602) 542-3402

RLR:kj

Attachments:

1. Exhibit A, Decision No. 78544 Docket AU-00000A-16-0141
2. Exhibit B, Court Order of Dismissal

cc: Thomas Van Flein, General Counsel, Office of the General Counsel, tvanflein@azcc.gov
Ajo Improvement Company, John M. Key, jkey@fmi.com
Arizona Electric Power Cooperative, Inc., Erin Peters, epeters@azgt.coop
Arizona Public Service Company, Rachael Leonard, arizonapublicserviceregulatorydepartment@apsc.com
Columbus Electric Cooperative, Inc., Christopher Martinez, chrism@col-coop.com
Dixie-Escalante Rural Electric Association, Inc., Dane Johnson, danej@dixiepower.com
Garkane Energy Cooperative, Inc., Marcus V. Lewis, marcus.lewis@garkane.com
Graham County Electric Cooperative, Inc., Than Ashby, pcook@gce.coop
Mohave Electric Cooperative, Inc., Andrea Harless, aharless@mohaveelectric.com
Morenci Water and Electric Company, Johnny Key, jkey@fmi.com
Salt River Project Agricultural Improvement and Power District, Brandi Samaniego, brandi.samaniego@srpnet.com
Sulphur Springs Valley Electric Cooperative, Inc., Ronald Lee, rlee@ssvec.com
Trico Electric Cooperative, Inc., Brian Heithoff, bheithoff@trico.coop
Tucson Electric Power Company and UNS Electric, Inc., Andrea Jacobo ajacobo@tep.com

0000206627

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON– CHAIRWOMAN
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

Arizona Corporation Commission
DOCKETED
APR 28 2022
DOCKETED BY

IN THE MATTER OF THE INQUIRY INTO COMMISSION POLICIES.

DOCKET NO. AU-~~00000A-16~~-0141

DECISION NO. 78544

OPINION AND ORDER

OPEN MEETING
March 29, 2022
Phoenix, Arizona

BY THE COMMISSION:

In compliance with Arizona Revised Statutes § 41-1057(A)(2) the Commission finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Arizona Revised Statutes § 41-1057(A)(2) exempts the Arizona Corporation Commission ("Commission") from the statutes creating the Governor's Regulatory Review Council ("GRRC") and imposing requirements for GRRC review of rules and rulemakings but requires the Commission to "adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business."

2. Attachment A to this Order sets forth a Rules Review Procedure that is substantially similar to the GRRC review procedures set forth in A.R.S. §§ 41-1051-1057.

3. After due consideration at the March 29, 2022, Open Meeting, we find that it is in the public interest to adopt the Rules Review Procedure set forth in Attachment A and to place the Rules Review Procedure on the Commission's website. Further, we find that it is in the public interest for the new Rules Review Procedure to be effective immediately and to apply to all Commission rulemakings that have not yet had publication of a Notice of Proposed Rulemaking to commence the formal

rulemaking process.[1]

4. Under Art. 15, § 6 of the Arizona Constitution, the Commission has the authority to prescribe rules and regulations to govern proceedings instituted by and before it.

CONCLUSIONS OF LAW

1. The Commission is a constitutionally created agency with authority to promulgate orders, rules, and regulations regarding the conduct of its rulemaking processes pursuant to Article XV of the Arizona Constitution, and A.R.S. § 41-1057(A)(2).

2. It is in the public interest to adopt the attached Rules Review Procedure as contemplated by A.R.S. § 41-1057(A)(2).

ORDER

IT IS THEREFORE ORDERED that the Commission hereby adopts the Rules Review Procedure set forth in Attachment A, which shall apply to all Commission rulemakings that have not yet had publication of a Notice of Proposed Rulemaking to commence the formal rulemaking process.

IT IS FURTHER ORDERED that the Rules Review Procedure set forth in Attachment A shall be placed on the Commission's website.

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[1] This will allow the Commission to ensure that it is able to implement the Rules Review Procedure fully for each rulemaking to which it applies.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRWOMAN MÁRQUEZ PETERSON

DISSENT
COMMISSIONER KENNEDY

COMMISSIONER OLSON

COMMISSIONER TOVAR

COMMISSIONER O'CONNOR

IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 26 day of APR. 2022.

MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

ATTACHMENT A

RULES REVIEW PROCEDURE

I. Introduction

Arizona Revised Statutes § 41-1057(A)(2) exempts the Arizona Corporation Commission ("Commission") from the statutes creating the Governor's Regulatory Review Council ("GRRC") and imposing requirements for GRRC review of rules and rulemakings but requires the Commission to "adopt substantially similar review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business." The Commission adopts the following review procedures to govern its rules and rulemakings.

II. Commission review and approval

A. The Commission shall engage in a rulemaking process that is transparent and that considers input from stakeholders who are expected to be impacted by the resulting rules. Prior to beginning the formal rulemaking process, the Commission:

1. Shall open a Commission docket to serve as a repository of comments and informational filings from stakeholders and filings made by Commissioners and the Commission's Staff;

2. May invite input from stakeholders and the general public, through notices of inquiry soliciting responses to questions or workshops or other open meetings held to discuss and receive information on subjects that may be addressed in a rulemaking;

3. Shall file in the Commission docket a draft of contemplated rule changes, providing at least a 30-day period for comments to be filed concerning the draft; and

4. Shall, as set forth in subsection (III)(A), have a preliminary economic, small business, and consumer impact statement prepared by a third party for consideration and input from stakeholders in order to develop the final economic, small business, and consumer impact statement.

Comment: The above subsections exceed the requirements of the GRRC statutes.

B. The Commission shall accept an early review petition of a proposed rule, in whole or in part, if the proposed rule is alleged to violate any of the criteria prescribed in subsection (II)(E) and if the early petition is filed by a person who would be adversely impacted by the proposed rule. The Commission may determine whether the proposed rule, in whole or in part, violates any of the criteria prescribed in subsection (II)(E).

Comment: The above subsection corresponds to A.R.S. § 41-1052 (B).

C. Except as provided in subsection (II)(D), the Commission shall not commence formal rulemaking by submitting proposed rules for publication in the *Arizona Administrative*

Register unless the Commission has expressly made the following determinations based on the information known or reasonably available to the Commission at the time:

1. The economic, small business, and consumer impact summary in the preamble for the Notice of Proposed Rulemaking includes:

    a. An identification of the proposed rulemaking, including all of the following:

        i. The conduct and its frequency of occurrence that the rule is designed to change,

        ii. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed, and

        iii. The estimated change in frequency of the targeted conduct expected from the rule change;

    b. A brief summary of the information to be included in the economic, small business, and consumer impact statement; and

    c. The name and address of at least one Commission employee who may be contacted to submit or request additional data on the information to be included in the economic, small business, and consumer impact statement.

2. The approach taken in the proposed rules is expected to be the least intrusive or least costly alternative method of achieving the purpose of the proposed rulemaking.

3. The probable benefits of the proposed rules within Arizona outweigh the probable costs of the proposed rules within Arizona.

4. The proposed rules are written in a manner that is clear, concise, and understandable to the general public.

5. The proposed rules are not illegal, inconsistent with legislative intent, or beyond the Commission's legal authority.

Comment: The above subsections correspond to A.R.S.§ 41-1055(A)(1)-(3) and § 41-1052(D)(3)-(5).

D. Consistent with A.R.S. § 41-1055(D), the Commission shall engage in emergency rulemaking as authorized by A.R.S. § 41-1026 without preparing an economic, small business, and consumer impact statement. The Commission does not engage in expedited rulemaking as authorized by A.R.S. § 41-1027.

Comment: The above subsection corresponds to A.R.S. § 41-1055(D).

E. The Commission shall not approve adoption of rules in a Notice of Final Rulemaking unless the Commission has expressly made the following determinations based on the information known or reasonably available to the Commission at the time:

1. The final economic, small business, and consumer impact statement contains information from the state, data, and analysis as described in Section (III).

2. The final economic, small business, and consumer impact statement is generally accurate.

3. The probable benefits of the rules in Arizona outweigh the probable costs of the rules in Arizona, and the rules represent the alternative that imposes the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. The rules are written in a manner that is clear, concise, and understandable to the general public.

5. The rule is not illegal, inconsistent with legislative intent, or beyond the Commission's legal authority.

6. The Commission adequately addressed, in writing, the comments on the proposed rules and any supplemental proposed rules.

7. The rule is not a substantial change, considered as a whole, from the proposed rules and any supplemental proposed rules.

8. The preamble includes a reference to any study relevant to the rules that the Commission considered and either did or did not rely on in its evaluation of or justification for the rules.

9. The rules are not more stringent than a corresponding federal law unless there is legal authority to exceed the requirements of that federal law.

Comment: The above subsections correspond to A.R.S. § 41-1052(D) and § 41-1055(H).

F. The Commission shall verify that a rule with new fees does not violate § 41-1008.

Comment: The above subsection corresponds to A.R.S. § 41-1052(E). Omitted was the requirement of a 2/3 majority in the second sentence of 41-1052(E). The Commission acts by a majority vote, see A.R.S. § 40-102(C).

G. The Commission shall verify that a rule with an immediate effective date complies with § 41-1032.

Comment: The above subsection corresponds to A.R.S. § 41-1052(F). Omitted was the requirement of a 2/3 majority in the second sentence of 41-1052(F). The Commission acts by a majority vote, see A.R.S. § 40-102(C).

H. If the rule relies on scientific principles or methods, including a study disclosed pursuant to subsection (III)(E)(8), and a person submits an analysis to the Commission questioning whether the rule is based on valid scientific or reliable principles or methods, the Commission shall not approve the rule unless the Commission determines that the rule is based on valid scientific or reliable principles or methods that are specific and not of a general nature. In making a determination of reliability or validity, the Commission shall consider the following factors as applicable to the rule:

1. The authors of the study, principle or method have subject matter knowledge, skill, experience, training, and expertise.

2. The study, principle or method is based on sufficient facts or data.

3. The study is the product of reliable principles and methods.

4. The study and its conclusions, principles, or methods have been tested or subjected to peer-reviewed publications.

5. The known or potential error rate of the study, principle, or method has been identified along with its basis.

6. The methodology and approach of the study, principle, or method are generally accepted in the scientific community.

Comment: The above subsections correspond to A.R.S. § 41-1052(G).

I. At any time following the opening of the informal docket on rulemaking and at any time during the formal rulemaking process, a person may submit written comments to the Commission that are within the scope of subsections (II)(E), (F), (G), or (H). The Commission will also accept such comments during the formal rulemaking oral proceedings held by the Commission. The Commission may allow public comment or testimony at an Open Meeting or other proceeding that the Commission may order, within the scope of subsections (II)(E), (F), (G), or (H).

Comment: The above subsection corresponds to A.R.S. § 41-1052(I). The Commission accepts written comments at any time during its informal rulemaking process, and there is no time limit on when written comments can be submitted in the formal rulemaking proceedings.

III. Economic, small business, and consumer impact statement (A.R.S. § 41-1055)

A. Except as provided in subsection (II)(D), the Commission shall have prepared by a third party both a preliminary and a final economic, small business, and consumer impact statement for each proposed rulemaking, each of which shall include the following:

1. An identification of the proposed rulemaking.

2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.

3. A cost-benefit analysis of the following:

   a. The probable costs and benefits to the Commission and any other agencies directly affected by the implementation and enforcement of the proposed rules, including (if applicable) the probable costs to the Commission for and number of new full-time employees necessary to implement and enforce the proposed rules. The preparer of the economic, small business, and consumer impact statement shall notify the Commission of the number of new full-time employees necessary to implement and enforce the rules before the rules are approved by the Commission.

   b. The probable costs and benefits to a political subdivision of Arizona directly affected by the implementation and enforcement of the

proposed rules.

c. The probable costs and benefits to businesses directly affected by the proposed rules, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rules.

d. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of Arizona, and on industrial, commercial, and residential ratepayers (where applicable) directly affected by the proposed rules.

4. A statement of the probable impact of the proposed rulemaking on small businesses, including:

a. An identification of the small businesses subject to the proposed rules.

b. The administrative and other costs required for compliance with the proposed rules.

c. A description of the methods prescribed in A.R.S. § 41-1035 that the Commission may use to reduce the impact on small businesses, with reasons for the Commission's decision to use or not use each method.

d. The probable cost and benefit to private persons and consumers who will be directly affected by the proposed rules.

5. A statement of the probable effect of the proposed rules on state revenues.

6. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules, including quantification of the costs and benefits for each option to the extent possible and providing the rationale for not using non-selected alternatives.

7. A description of any data on which the proposed rules are based with a detailed explanation of how the data was obtained and why the data is acceptable data. For the purposes of this paragraph, "acceptable data" means empirical, replicable, and testable data as evidenced in supporting documentation, statistics, reports, studies, or research.

Comment: The above subsections correspond to A.R.S. § 41-1055(B). The contents of A.R.S. § 41-1055(A) are contained above in subsection (II)(C).

B. If for any reason adequate data are not reasonably available to comply with the requirements of subsection (III)(A), the third party engaged to produce the economic impact statement shall explain in the economic impact statement the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

Comment: The above subsection corresponds to § 41-1055(C). The Commission does not have the statutory authority to adopt the last sentence of § 41-1055(C), and it was not included.

C. The cost-benefit analysis required by subsection (III)(A) shall calculate only the costs and benefits that occur in this state.

Comment: The above subsection corresponds to § 41-1055(H).

D. If a person submits an analysis to the Commission regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, the Commission shall consider the analysis.

Comment: The above subsection corresponds to A.R.S. § 41-1055(I).

IV. Review by Commission of Existing Rules (A.R.S. § 41-1056)

A. At least once every five years, the Commission shall review all of its rules to determine whether any rule should be amended or repealed.

1. The Commission shall adopt a schedule for reviewing all of its rules, in sets by subject area, over the five years after the effective date of this document and shall post the schedule on its website.

2. The Commission shall establish an ongoing review schedule to be followed after the first five years.

3. The Commission may reschedule the review of a set of rules if all or the majority of the rules in the set have been newly adopted or substantially revised within the two years immediately preceding the due date of the scheduled review.

Comment: The above subsections correspond to the first sentence of § 41-1056(A) and with § 41-1056(C) and (H).

B. The Commission's review of its rules shall be memorialized in a report that includes a certification that the Commission is in compliance with § 41-1091 and a concise analysis of the following information for each individual section within the reviewed set of rules:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.

2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the Commission questioning whether the rule is based on valid scientific or reliable principals or methods.

3 Authorization of the rule by existing statutes.

4. Whether the rule is consistent with statutes, other Commission rules, and current Commission enforcement policy.

5. The clarity, conciseness, and understandability of the rule.

6. The estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule (if any).

7 Any analysis submitted to the Commission by another person regarding the

rule's impact on Arizona businesses' competitiveness as compared to the competitiveness of businesses in other states.

8. If applicable, that the agency completed the previous five year review process.

9. Whether the probable benefits of the rule in Arizona outweigh the probable costs of the rule in Arizona, and whether the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

10. Whether the rule is more stringent than a corresponding federal law and, if so, whether there is and the source of legal authority to exceed the requirements of that federal law.

11. For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with § 41-1037.

Comment: The above subsections correspond to § 41-1056(A)(1)-(11).

C. If the Commission determines that any of the rules within a set of rules needs to be revised due to the information included in the review report and based upon the factors listed in A.R.S. § 41-1056(E)(1)-(8), the Commission shall determine whether to initiate an informal rulemaking process or other appropriate rulemaking process for the rule/s and the timing of such process.

Comment: The above subsection corresponds to § 41-1056(E).

D. At least 90 days before the due date of a report, the Commission's Executive Director shall send a written notice to the Director of the Division responsible for preparing the report, providing the due date of the report and a list of the rules to be reviewed.

Comment: The above subsection corresponds to § 41-1056(L)

E. The Commission may review rules outside of the five-year-review process upon the request of a Commissioner.

Comment: The above subsection corresponds to § 41-1056(D).

F. The Commission may grant an extension of time to conduct its five-year review upon the demonstration of good cause by the Commission Division responsible for preparing the five-year-review report.

Comment: The above subsection corresponds to § 41-1056(I).

G. A person who is regulated by or could be regulated by an obsolete rule may petition the Commission to have the obsolete rule considered in a five-year-review report with a recommendation for repeal of the rule.

Comment: The above subsection corresponds to § 41-1056(M)

H. A person who is required to obtain or could be required to obtain a license may petition the Commission to consider including a recommendation for reducing the applicable licensing time frame in the five-year-review report for the applicable rule.

Comment: The above subsection corresponds to § 41-1056(N).

V. Submission of Final Rulemaking Packages (Nothing similar in the GRRC statute)

A. The Commission shall submit the final rulemaking package for rules that are not promulgated solely under the Commission's constitutional ratemaking authority to the Attorney General for review and approval pursuant to A.R.S. § 41-1044.

B. The Commission may submit the final rulemaking package for rules that are promulgated under the Commission's constitutional ratemaking authority directly to the Secretary of State for publication in the *Arizona Administrative Register* and inclusion in the Arizona Administrative Code.

Comment: The above subsections are authorized by A.R.S. § 41-1044 and *State ex rel. Corbin v. Arizona Corporation Commission*, 174 Ariz. 216 (App. 1992).

VI. Impact Statements; Appeals (A.R.S. § 41-1056.01)

A. Within two years after a rule is finalized, a person who is or may be affected by the rule may file a written petition with the Commission objecting to all or part of the rule on any of the following grounds:

1. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the final economic, small business, and consumer impact statement submitted during the making of the rule.

2. The actual economic, small business, or consumer impact was not estimated in the final economic, small business, and consumer impact statement submitted during the making of the rule, and that actual impact imposes a significant burden on persons subject to the rule.

3. The Commission did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

Comment: The above subsections correspond to § 41-1056.01(A).

B. The burden of proof is on the petitioner to show, by a preponderance of the evidence, that any of the provisions set forth in subsection (VI)(A) are met.

Comment: The above subsection corresponds to § 41-1056.01(B).

C. The Commission shall accept comment on and reevaluate the rule and its economic impacts as follows:

1. Within 30 days after the written petition is filed, the Commission shall have notice of the petition published in the *Arizona Administrative Register*.

2. The Commission shall establish a comment period of at least 30 days after publication of the notice and shall name a close of comment date. During the comment period, the Commission shall afford persons the opportunity to submit written statements, arguments, data, and views on the rule and its economic impacts through filings in an assigned Commission docket.

3. Within 30 days after the close of comment date, the Commission shall submit to the Office of the Secretary of State, for publication in the *Arizona Administrative Register*, a notice including a written summary of the comments received, the Commission's response to those comments, and the Commission's determination on whether to initiate a rulemaking to amend or repeal the rule.

4. If the Commission's determination is that a rulemaking should be initiated to amend or repeal the rule, the Commission shall, within 45 days after publication of its determination, open a Commission rulemaking docket and file with the Office of the Secretary of State a Notice of Rulemaking Docket Opening for the rulemaking.

Comment: The above subsections correspond to § 41-1056.01(C).

D. A person who is or may be affected by the Commission's determination on whether to initiate a rulemaking to amend or repeal the rule may request Commission reconsideration of that determination by filing a petition for reconsideration in the relevant Commission docket within 30 days after the Commission makes its determination.

Comment: The above subsection corresponds to § 41-1056.01(D).

E. The Commission shall place the petition for reconsideration on a Commission Open Meeting agenda if at least three Commissioners file letters making such a request in the relevant docket within 14 days after the filing of the petition for reconsideration with the Commission.

Comment: The above subsection corresponds to § 41-1056.01(E).

F. Upon reconsideration of the Commission's determination, the Commission shall consider the written summary prepared under subsection (VI)(C)(3), may consider additional public comment provided in the relevant docket or during Open Meeting or other public comment proceedings, and shall reach its determination on reconsideration based on the factors in subsection (VI)(A).

Comment: The above subsection corresponds to § 41-1056.01(F) and (G).

G. A person who is or may be affected by the Commission's determination on reconsideration may pursue any legal action against the Commission afforded under the law.

Comment: The above subsection exceeds the GRRC statutes.

Clerk of the Superior Court
*** Filed ***
01/07/2025 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-033957 01/06/2025

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT
A. Walker
Deputy

UNDERGROUND ARIZONA INC

UNDERGROUND ARIZONA INC
737 E 9TH ST
TUCSON AZ 85719

v.

ARIZONA CORPORATION COMMISSION, et al.

THOMAS VAN FLEIN

JUDGE HANNAH

MINUTE ENTRY

The Court has read and considered Defendant's Motion to Dismiss Complaint for Untimely Filing, the plaintiff's response and the defendant's reply.

The result here is dictated by *Arizona Corp. Commission v. Superior Court in and for Maricopa County*, 21 Ariz. App. 523 (1974). That case holds that the thirty-day appeal deadline in A.R.S. section 40-254(A) runs from the denial of the appealing party's application for rehearing. A party cannot avoid that deadline by appealing the subsequent denial of another party's petition for rehearing, even if the issues raised are the same. *Id.* at 525.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-033957 01/06/2025

IT IS ORDERED Defendant's Motion to Dismiss Complaint for Untimely Filing is granted. The complaint is hereby dismissed with prejudice.

Nothing remains pending in this case. This is a final order. Ariz. R. Civ. P. 54(c).

/s/ JOHN HANNAH

JUDGE JOHN HANNAH
JUDICIAL OFFICER OF THE SUPERIOR COURT

Underground Arizona
daniel@undergroundarizona.org
(I consent to service by email.)

September 3, 2024

ATTN: Legal Division
Arizona Corporation Commission
1200 West Washington St.
Phoenix, AZ 85007

RE: A.R.S. 41-1033 Petition to Repeal Policy Statement 3 of Decision 79140

Dear Legal Division,

Pursuant to A.R.S. 41-1033, Underground Arizona is petitioning the Arizona Corporation Commission ("ACC") to repeal Policy Statement 3 of Decision 79140 ("PS3"), adopted on October 4, 2023, which is being treated as a rule.[1] Pursuant to A.R.S. 41-1033(G), PS3 "is not specifically authorized by statute, exceeds the agency's statutory authority, [and] is unduly burdensome."

In Line Siting Case 232, in Finding of Fact 10 of the Certificate of Environment Compatibility filed on July 29, 2024, PS3 was used by the Line Siting Committee to determine that any incremental undergrounding cost borne by ratepayers or the utility was unrecoverable and therefore local ordinances and plans creating such costs were "unreasonably restrictive and compliance therewith [was] not feasible in view of technology available" under A.R.S. 40-360.06(D).[2,3,4] Therefore, the ACC attempted to pre-empt local laws in the line-siting process via a ratepayer recovery pre-determination based on a mere policy statement that went through no formal, public rulemaking process and no ratemaking process.

As the record in Line Siting Case 232 shows, Arizona utilities regularly recover the cost of undergrounding transmission (and distribution) lines from ratepayers—even where that

[1] Docket ALS-00000A-22-0320.
[2] Docket L-00000C-24-0118-00232. Finding of Fact 10 and Conditions 3 and 4.
[3] To add insult to injury, in that very case, the utility's application included the incremental cost of undergrounding many miles of distribution lines at millions of dollars in ratepayer expense. The utility also testified that the ratio of distribution to transmission lines in a municipality was about 15:1. As such, if $15 million is spent undergrounding 15 miles of distribution lines, spending $15 million to underground 1 mile of transmission lines should be an equally prudent expense.
[4] And that's to say nothing of the fact that the depreciated cost to ratepayers would be insignificant by any reasonable definition of significance. Otherwise, all a utility's expenses are significant.

undergrounding is not required by law.[5] Indeed, the applicant could not produce a single example of a utility ever being denied the recovery of the incremental costs of undergrounding an electric line, whether that undergrounding was required by law or not.

To that point, the Arizona courts have repeatedly interpreted Arizona's laws as allowing municipalities to require transmission (and distribution) undergrounding at utility expense.[6] Expenses required by law cannot be reasonably determined imprudent and unrecoverable and such a determination would not make those laws unenforceable—it would merely create an undue burden on the utilities. Moreover, the ACC cannot change the law or extend and intermingle its powers through policy statements.[7]

While the ACC has the *ex-post* power to determine what expenses are recoverable from ratepayers in the ratemaking process, it does not have the *ex-ante* power or expertise to make such determinations in the line siting process. PS3 improperly attempts to confuse and transpose these independent statutory powers to *ex-ante* determine what expenses are recoverable from ratepayers. Therefore, PS3 is not authorized by statute, the ACC has exceeded its statutory authority, and it has created undue burdens on the parties.

The ACC's own legal counsel warned of this on June 14, 2023, months before PS3 was adopted: *"It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statute. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines."*[8]

As such, we request that PS3 be repealed pursuant to A.R.S. 41-1033.

Sincerely,

~~Daniel~~ Dempsey
Underground Arizona

Also delivered by email to:
Legal Division: legaldiv@azcc.gov
Utility Division: utildivservicebyemail@azcc.gov
Doug Clark: dclark@azcc.gov
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[5] e.g. Docket L-00000C-24-0118-00232. July 25, 2024 Exhibit Filing Part 3 of 3. UAZ Exhibit 62, Slides 5-9.
[6] e.g. APS v. Town of Paradise Valley (1980) and TEP v. City of Tucson (2024).
[7] e.g. A.R.S. 41-1091.
[8] Docket ALS-00000A-22-0320: https://docket.images.azcc.gov/0000209995.pdf?i=1724790821816, page 16

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ARIZONA CORPORATION COMMISSION

Office of General Counsel

October 31, 2024

Mr. Daniel Dempsey
daniel@undergroundarizona.org

Re: *Petition to Invalidate Policy Statement 3 of Decision No. 79140*
Docket No. AIS-00000A-22-0320

Dear Mr. Dempsey:

This letter is the Arizona Corporation Commission's ("Commission") formal response to the September 10, 2024, Petition you filed in accord with A.R.S. § 41-1033(A).[1] A person may petition an agency to make, amend, or repeal a rule, or to review an existing agency practice or substantive policy statement that the petitioner alleges constitutes a rule. The petition must follow specific procedural requirements, including stating the reasons for the petition and providing supporting information. The Petition here meets the statutory requirements and thus the Commission is compelled to file this response.

For the reasons set forth below, the Commission denies your Petition as redundant, since your request to either invalidate an informal policy as an impermissible rule, or to have the policy enacted as a rule, is unnecessary. There exists already a formally adopted rule addressing the costs of undergrounding transmission wires, and two separate statutory regimes addressing undergrounding, thus the policy mentioned in Decision No. 79140 (October 4, 2023) is based on an existing, valid rule or statute. *See* A.A.C. R14-2-206(b)(2)(c). The Line Siting Committee's reliance on that rule and policy, in Line siting Docket No. L-00000C-24-0118-0232, Certificate of Environmental Compatibility (July 29, 2024) was therefore correct and legally warranted. *See*, Decision No. 79550 (September 13, 2024).

In addition to the rule, the policy is based on state law. Pursuant to A.R.S. §§ 40-341, et. seq., public service corporations can install underground transmission lines (1) *at their own*

[1] This statute provides, in relevant part:
A. Any person may petition an agency to do either of the following: 1. Make, amend or repeal a final rule. 2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

expense (i.e., that cannot be recovered in general rates) or (2) pursuant to a conversion service area. The legislature has created a statewide scheme for the creation of "underground conversion service areas" and each landowner within the "conversion area" must pay "the costs" for undergrounding to the public service corporation. The Decision advisory also cited A.R.S. § 48-620, which involves the creation of an improvement district established by a municipality via petitions from impacted property owners, for purposes of undergrounding. This statutory regime also requires the property owners to pay pro rata for the costs of undergrounding. Thus, under both the rule and the statutes, the costs of undergrounding cannot be recovered in the general utility rates.

The Commission policy in Decision No. 79140 fully complies with and is based upon these established laws. There are three lawful methods to pay for undergrounding:[2] (1) the utility can pay with no rate recovery; (2) an improvement district can be created, and the impacted property owners can pay; or (3) a conversion district can be created, and the impacted property owners can pay. No state law authorizes the costs of undergrounding to be spread among all ratepayers.

A complete analysis is provided below.

A. The Petition Is Validly Filed

The Petition from Mr. Dempsey is brought pursuant to A.R.S. § 41-1030. This statute provides that agencies must not make informal policies or guidelines that have the effect of being a rule of general application, nor can agencies make rules that exceed their statutory or Constitutional rulemaking authority.

The Petition here properly follows Arizona law, and the Commission informed the public in Attachment A, page 1, Note 1, of Decision No. 79140, of the public's right to file such a petition. Accordingly, a response from the Commission is required. The Petitioner is advised that he has 30 days to file an appeal if he so chooses.[3]

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[2] The Commission is aware that other sources, unrelated to ratepayers, could theoretically exist, such as legislative grants.

[3] A.R.S. § 41-1033(E) ("If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule."

B. The Advisory Statement and Contentions.

1. The Guidance in Decision No. 79140

At issue is the following statement in Decision No. 79140, which provides:

> 3. The Commission does not have express jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers, and neighborhood groups seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. §§ 48-620 *et seq.*

Commission Decision No. 79140, ¶ 15. The above guidance statement was enacted on October 4, 2023. The guidance pertains to excluding the costs of undergrounding from recovery through rates. The guidance makes clear that those requesting and benefitting from undergrounding should pay for the costs of undergrounding, not ratepayers in general. As fully discussed below, this mirrors state law.

In a recent Line Siting Committee decision, the Committee referred to this guidance as a policy to which it will adhere. The Committee explained:

> [G]iven the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023), the Committee finds pursuant to A.R.S. § 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground 'is unreasonably restrictive and compliance therewith is not feasible in view of technology available." This finding is conditioned on the City and TEP not finding a means to, within six (6) months of the date of the Commission's approval of this Certificate, either (a) fund the incremental cost to construct the Project below ground from a source other than through TEP's utility rates or from TEP, its affiliates, subsidiaries, or patent companies absent agreement between the parties; or (b) obtain the City's authorization to construct the Project above ground

> through the City's special exception or variance process, provided that TEP files a special exception or variance application for the route approved within ten (10) weeks of the Commission's approval of this Certificate.

Line Siting Committee, Certificate of Environmental Compatibility, p. 15 at ¶ 10, Docket No. L-00000C-24-0118-232 (July 29, 2024). Thus, the Committee logically deemed the guidance to be a policy it should follow, even without reference to the rule and passing reference to the improvement district statute.

In addition to the Committee's analysis and application of the guidance, the Commission's legal division provided guidance in a June 14, 2023, memorandum, in which it stated:

> It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates, and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statutes. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines.

Legal Division Memorandum, p. 16, Docket ALS-00000A-22-0320 (June 14, 2023). While the Line Siting Committee does not have express jurisdiction over undergrounding transmission lines,[4] and it does not have jurisdiction over ratepayer recovery of costs, the Commission does have jurisdiction over the rate allocations and underground conversion service areas.

The Committee's action to comport with Commission guidance is prudent and warranted. Moreover, both the Commission and the Committee are of aware of, and seek compliance with, state law regarding improvement districts and conversion districts. The Line Siting Committee has every reason, and obligation, to comport with state law, which plainly disallows undergrounding costs to be allocated among all ratepayers. Any decision by the Line Siting Committee would be reasonable to take those restrictions into account, and doing so does not assert jurisdiction over rates or over undergrounding.

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[4] The Commission does, however, have jurisdiction in some circumstances to approve undergrounding in conversion service areas. ARS 40-344(J): "The corporation commission or the board of supervisors shall not establish any underground conversion service area without prior approval of such establishment by resolution of the local government"); and (K): "If the underground conversion service area contains overhead electric or communication facilities of a public service corporation and public agency, then neither the public service corporation nor the public agency shall be required to commence conversion until the corporation commission's order, the board of supervisors' order or the city or town council's order has become final." Query whether the Line Siting Committee should have the initial review of the creation of a conversion service area inasmuch as it has the technical and historic expertise on line siting issues.

C. The Commission Has The Legal Authority To Create an Advisory Policy Consistent With and Based on State Law.

The Petitioner asserts that the Commission does not have the Constitutional or legislative authority to create and enforce the guidance or policy that was set forth in Decision No. 79140. This is not correct.

In the Petition, p. 1, it is alleged that:

> In Line Siting Case 232, in Finding of Fact 10 of the Certificate of Environment Compatibility filed on July 29, 2024, PS3 was used by the Line Siting Committee to determine that any incremental undergrounding cost borne by ratepayers, or the utility was unrecoverable and therefore local ordinances and plans creating such costs were "unreasonably restrictive and compliance therewith [was] not feasible in view of technology available" under A.R.S. § 40- 360.06(D). If the underground costs were determined recoverable from ratepayers or the utility, this A.R.S. § 40-360.06(D) determination could not be made.

The Petition also asserts that the Commission legal counsel "warned" that adopting a policy within the line siting rules would be "outside the scope of authority granted under the line siting statute" and that "the Line Siting Committee does not have jurisdiction over underground transmission lines." The jurisdiction of the Line Siting Committee is not at issue here. The Committee was appropriately recognizing state law limitations on cost recovery for undergrounding. At issue is the ability of the Commission to have rules and policies regarding rates and recovery of costs, and this is definitively within the core jurisdiction of the Commission. The Committee merely recognized the Commission's role over rates, but in no manner did the Committee attempt to exert its authority extra jurisdictionally.

The letter referred to in the Petition from the Legal Division, dated June 14, 2023, did not refer to the rule here, A.A.C. R14-2-206(b)(2)(c) (the costs for undergrounding single phase (residential mainly) service lines to be paid by the user), or the undergrounding statutes pertaining to conversion and improvement districts. The Commission adopted the recommendations from the Legal Division as far as it went, stating: "We adopt Legal Division's recommendation: however, the Commission's Policy Statement shall also include the following" and thereafter the Commission set forth the guidance based on A.A.C. R14-2-206(b)(2)(c)). In this manner, the Commission did not err.

The Commission rule to prevent the extra costs of undergrounding from being rolled into general ratepayer rates is a core rule based on the Commission's plenary authority to

govern reasonable and just rates. Decision No. 79140 expressly noted that "The Commission has jurisdiction over the subject matter..." (Commission Decision No. 79140 at p. 3). The Commission has made it clear to the Municipalities, and others, that undergrounding is not prohibited. The Petition's reference to state law allowing municipalities to order undergrounding is not at issue and not in conflict. The Commission is simply noting that the very high cost of undergrounding, and the reliability and maintenance problems associated with undergrounding, cannot be recovered in the general rates—a core jurisdictional issue for the Commission. Further, as noted above, state law mirrors this advisory.

The Commission even referred those who want undergrounding (including Municipalities) to a possible method, such as creating an improvement district under A.R.S. § 48-620. (Decision No. 79140 at p. 3). More directly however, are the underground conversion districts set forth in A.R.S. §§ 40-341 *et. seq*. State law mandates that the requesting party or parties, and the beneficiary property owners, pay for all undergrounding costs.

There are multiple sections of statute and rules that address undergrounding:

A.A.C. R14-2-207: This regulation outlines the requirements for utilities regarding distribution line extensions, including underground extensions in subdivision developments. It specifies that single-phase electric lines necessary to furnish permanent electric service to new residential buildings or mobile homes within a subdivision must be installed underground unless it is not feasible from an engineering, operational, or economic standpoint. Under R14-2-206(B)(2)(b), costs are not allowed to be allocated to general ratepayers and the "customer requesting an underground service line in an area served by overhead facilities shall pay" for the costs of undergrounding. These rules establish jurisdiction of the Commission to address special conditions, exceptions, and approval of line extensions and who should pay.

A.R.S. § 48-620: This statute states that the assessment for an underground electrical power line shall be assessed against only the property owners benefiting from the burial of the power line.

A.R.S. § 40-342, 40-344, 40-346 & 347: These statutes provide the petition procedure for establishing an underground conversion service area, including the requirement for a hearing by the corporation commission, to determine the feasibility and approval of the conversion service area. Under A.R.S. 40-347, the underground conversion costs are to be allocated to each lot or parcel of real property within the underground conversion service area—not to the general ratepayers. ARS 40-343(F) (requiring "the estimated costs to be assessed to each

> lot or parcel of real property for placing underground the facilities of the public service corporation.").[5]

Should the Commission want to adopt the advisory as a formal rule, it could do so, and it would be in harmony with state law and public policy. The Arizona Constitution, Article 15, Section 3, grants the Commission the power to "make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the state." *State v. Tucson Gas, Elec. Light & Power Co.,* 15 Ariz. 294 (1914). This constitutional provision vests exclusive power in the Commission to govern public service corporations, except where the Constitution explicitly grants such power to the Legislature. *State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. at 300-301. The Commission authority includes judicial, executive, and legislative powers, allowing it to adopt rules and regulations, as well as to adjudicate issues, and set rates. *Miller v. Arizona Corp. Com'n*, 227 Ariz. 21, 24-25 (2011).[6]

The Commission's creation and powers stem from the framers' intent to protect the public from corporate abuses and overreaching, granting it extensive regulatory authority unique among state commissions. *Burns v. Arizona Public Service Company*, 254 Ariz. 24 (2022). This historical context underscores the Commission's role in ensuring effective regulation and consumer protection. *Miller v. Arizona Corp. Com'n*, 227 Ariz. at 28-29. The Commission is also obligated to protect and prevent unfairness to consumers and ratepayers. Thus, compelling non-beneficiaries to pay for the costs of undergrounding has been deemed unfair and unreasonable by the Commission in its advisory policy, a policy that mirrors the state legislature's undergrounding statutory plan. In short, the Legislature and the Commission concur that the costs of undergrounding cannot be shared among non-beneficiaries as defined by law.

D. The Advisory Policy Mirrors Existing State Law.

As noted, the Petitioner is operating under the misimpression that the guidance and policy statement set forth in Decision No. 79140 is not based on an existing rule or state law and thus constitutes a new "rule" that was enacted without following the procedures of the Administrative Procedures Act (APA). The Petitioner errs.

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[5] It is notable that the Commission has jurisdiction over petitions to underground "transmission lines" at "nominal voltages in excess of twenty-five thousand volts, or having a current capacity in excess of twelve thousand kva." ARS 40-342(E). This raises the question whether the Line Siting Committee should have the opportunity to address transmission line undergrounding petitions over 25Kv as it has expertise in this.

[6] Arizona statutory law, A.R.S. § 40-202, further confirms the Commission's authority to regulate public service corporations and to adopt rules necessary for this purpose. Specifically, the statute empowers the Commission to protect the public against deceptive practices, ensure confidentiality of customer information, and regulate contractors working with regulated entities. *Id.* The statute also mandates the Commission to encourage competition and growth in the telecommunications industry and to establish procedures for regulating competitive markets. *Id.*

The advisory policy in Decision No. 79140 is based on a previously enacted rule that complies with the APA as well as a state statutory scheme pertaining to undergrounding. The rule regarding undergrounding enacted in accordance with the APA, A.A.C. R14-2-206(b)(2)(c), provides:

> "[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution."

A.A.C. R14-2-206(b)(2)(c). Thus, this validly enacted rule establishes that the cost of undergrounding shall be borne by the "customer requesting underground service." The advisory policy reiterates this rule.

In addition to this rule, there is an extensive statutory scheme that also mandates that the customers who seek, and benefit from, undergrounding, shall pay for the costs of undergrounding, not the ratepayers in general. Specifically, A.R.S. § 40-342(F) provides:

> A summary of the estimate of the costs to be assessed against each lot or parcel of real property located within the proposed underground conversion service area for the conversion of facilities within public places and the estimated costs to be assessed to each lot or parcel of real property for placing underground the facilities of the public service corporation or public agency located within the boundaries of each parcel or lot then receiving service shall be mailed by the public service corporation or public agency to each owner of real property located within the proposed underground conversion service area to the address of such owner as set forth on the petition for the cost study.

A.R.S. § 40-342(F). The Commission advisory reflects this statutory payment scheme. The costs of undergrounding are to be paid for by the customers requesting and benefitting from the undergrounding. If the advisory is deficient, it is that it did not expressly refer to the rule and the statutes. But that is not required.

The Commission agrees that there is a rule already enacted, and the advisory statement in the decision is consistent with that rule.[7] Under the APA, a "rule" is defined as an agency

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[7] "An entity's internal guidelines, however, are not rules." *Duke Energy Arlington Valley, LLC v. Ariz. Dep't of Rev.*, 219 Ariz. 76, 80, ¶ 18, 193 P.3d 330, 334 (App.2008). Whether the advisory constitutes an "internal guideline" need not be addressed inasmuch as there is an existing APA-enacted rule and a statutory regime that mirrors the advisory.

statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. *Phoenix Children's Hosp. v. Arizona Health Care Cost Containment System Admin.,* 195 Ariz. 277 (1999); A.R.S. § 41-1001(17).

In the present matter, there is existing state law and a state rule, all compelling the allocation of the undergrounding costs on those directly benefitting from the undergrounding. The advisory merely parrots those statutes, and the Commission need not formally adopt a potentially redundant rule.

The Commission, however, could adopt a formal rule on allocating the costs of undergrounding, if it so chose, as long as the formal rule was consistent with state law. The challenge to the undergrounding advisory pertains directly to rate making (i.e., can the costs of undergrounding be shared among all ratepayers), a core function of the Commission and one over which it has plenary authority. Thus, if the Commission so chose, it could enact the advisory as a stand-alone rule. Whether it should do so is a decision it can deliberate upon,[8] but the fact remains the advisory policy is itself consistent with an APA-enacted undergrounding cost rule and two statutory undergrounding cost statutes.

The Commission has the Constitutional authority to establish rules that pertain to public service corporation rates. The advisory statement at issue clearly pertains to the costs of undergrounding of utilities and the exclusion of those costs from being foisted upon classes of ratepayers who did not request, and do not benefit from, the undergrounding of utilities. This is within the Commission's Constitutional authority and is aligned with legislative policy.

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[8] The rules pertaining to rate making can be created and enacted by the Commission without approval of the Attorney General or the APA. *See U S West Communications, Inc. v. Arizona Corp. Com'n*, 197 Ariz. 16 (1999) (appellate court invalidated some Commission rules that were not ratemaking rules and affirmed other rules that were rate making rules, none of which had APA or attorney general review). Courts in general grant deference to the agency's interpretation of statutes and its own regulations. *Arizona State University ex rel. Arizona Bd. of Regents v. Arizona State Retirement System*, 237 Ariz. 246 (2015).

The language in Decision No. 79140 stems from an existing rule and statutory scheme and is therefore valid. Under the rule, A.A.C. R14-2-206(b)(2)(c), whoever requests the undergrounding, and whoever benefits from it geographically (the adjoining properties) must pay for the undergrounding costs: "[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution." Thus, if a Municipality requests or mandates undergrounding, it must pay for it, not the ratepayers. This is consistent with the holding in *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447 (Ariz. 1980), wherein the right of a municipality to require undergrounding was affirmed. However, that does not address who should pay. The Commission, through its advisory, and the Legislature, through statute, has made it clear that the customer mandating or requesting the undergrounding shall pay, and the costs cannot be shifted to all ratepayers.

E. The Guidance Does Not Exceed the Commission's Authority.

Mr. Dempsey asserts that the guidance exceeds the Commission's constitutional and statutory authority. On that basis he seeks its invalidation. This is incorrect because the Commission has plenary constitutional authority to make rules impacting rate designs.

Inasmuch as the guidance in Decision No. 79140 directly pertains to a public service corporation's recovery of costs in undergrounding utilities, Mr. Dempsey errs. The Commission has the Constitutional authority to formulate rules that pertain to rates. The Constitutional power and authority for the Corporation Commission to enact rules for rates are derived from Article 15, Section 3 of the Arizona Constitution. This section provides:

> The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used, and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein, ***and make reasonable rules, regulations, and orders***, by which such corporations shall be governed in the transaction of business within the state.

Arizona Constitution, Art. 15, Sec. 3 (emphasis added). *See State v. Tucson Gas, Elec. Light & Power Co.*, 15 Ariz. 294, 301, 138 P. 781, 784 (1914).

The Arizona Supreme Court has "repeatedly held that the power to make reasonable rules and regulations and orders by which a corporation shall be governed refers to the power to prescribe just and reasonable classifications and just and reasonable rates and charges." *U.S. West Comms v. Arizona Corporation Commission*, 197 Ariz. 16, 23, 3 P.3d 936, 943 (Az. App. 1999) *citing Tonto Creek Homeowners v. Arizona Corporation* 177 Ariz. 49, 56,

864 P.2d 1082, 1088 (App. 1993) (*quoting Williams v. Pipe Trades Indus. Program of Ariz.*, 100 Ariz. 14, 17, 409 P.2d 720, 722 (1966)).

The Commission is directly vested with rule making authority under the Arizona Constitution, Art. 15, Sec. 3, which means that no legislative action is necessary for the Commission to exercise its ratemaking powers, and it has exclusive authority to set rates and charges. *Johnson Utilities, L.L.C. v. Arizona Corporation Commission*, 249 Ariz. 215, 221, 468 P.3d 1176, 1182 (2020). Additionally, the rules and regulations related to ratemaking issued by the Commission do not require attorney general certification to be effective. Ariz. Const. Art. 15, § 3; *Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc.*, 207 Ariz. 95, 115, 83 P.3d 576, 593 (App. 2004). Where the Commission is implementing rules pursuant to its constitutional authority, the rules are not subject to review by the executive branch. *State ex rel. Corbin v. Arizona Corporation Commission*, 174 Ariz. 216, 219, 848 P.2d 301, 304 (App.1992).[9]

The Office of General Counsel concludes that the Commission has the constitutional authority to create a formal rule if it so chooses, as set forth as A.A.C. R14-2-206(b)(2)(c), which the guidance set forth in Commission Decision No. 79140, ¶ 15 reiterated.

F. Is the Guidance a "rule" that should be formally adopted?

Agency guidelines, policies, suggestions or practices may need to be adopted as a rule under the APA when certain criteria are met. The APA defines a "rule" as:

> an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

A.R.S. § 41–1001(19). The question here is whether the undergrounding guidance in the Decision rises to the level of a "policy" or is simply a reminder of state law and existing rule. Since several state laws require payment by the requesting customer, and the APA enacted rule also mandates the requesting party to pay for undergrounding, the advisory merely reiterates the obvious—the Commission will follow the law and it will not allow costs for undergrounding to be included in general rates. There is not a requirement to

[9] However, submitting a proposed rule to the Attorney General for review under the APA for purposes of determining if the rule is clear, concise, and understandable, if not also within the Commission's authority, can be done voluntarily. If a reviewing court were to conclude, as was done in *U.S. West*, that the rule should have been reviewed under the APA, then there is no harm in submitting to review.

adopt the guidance as a formal rule. The Decision recites what is state law. Adopting a formal rule would be duplicative to some extent.

In addition, A.R.S. § 40-346(F) grants the Commission the authority to issue an order "establishing the underground conversion service" and the Commission "***shall set forth the underground conversion costs to be charged to each lot or parcel.***" Thus, the Commission policy mirrors state law and state law directs the Commission on allocating costs to the parcel owner of the adjoining property. The costs for undergrounding cannot be included in a generalized rate, but must be assessed against the property owners directly benefitting from undergrounding in the geographic adjacent area.

These regulations and statutes collectively govern the process of undergrounding electrical transmission lines in Arizona, ensuring that the projects are economically feasible, technically sound, and fairly assessed to benefiting property owners. The Decision advisory merely repeats existing law.[10]

State law requires the costs of undergrounding to be borne by the beneficiaries of undergrounding, which is precisely what the Commission guidance emphasized in Decision No. 79140. For example, local governments have the authority to require the undergrounding of utility lines within their boundaries, absent a clear statewide preemptive policy. *Arizona Public Service Co. v. Town of Paradise Valley*, 125 Ariz. 447 (1980). The legislature has given cities and towns the power to require the undergrounding of utility lines as part of their zoning powers. *Town of Paradise Valley*, 125 Ariz. at 450-452.

However, the decision to mandate undergrounding is separate from the allocation of costs of undergrounding. As explained, conversion areas and improvement areas are allowed, but the costs are assessed to property owners within the underground conversion service area who benefit from the conversion or undergrounding. A.R.S. § 40-342. As set forth in statute:

> F. A summary of the estimate of the costs to be assessed against each lot or parcel of real property located within the proposed underground conversion service area for the conversion of facilities within public places and the estimated costs to be assessed to each lot or parcel of real property for placing

[10] The Commission has jurisdiction over some undergrounding, as conveyed by the Legislature: The Commission has adopted rules that impact and regulate single-phase undergrounding. *See* A.C.C. R14-2-207(E) (regulating "Single phase underground extensions"); (E)(2) ("The utility shall construct or cause to be constructed and shall own, operate, and maintain all underground electric distribution and service lines along public streets"); (d) "Underground service lines from underground residential distribution systems shall be owned, operated and maintained by the utility, and shall be installed pursuant to its effective underground line extension and service connection tariffs on file with the Commission").

> underground the facilities of the public service corporation or public agency located within the boundaries of each parcel or lot then receiving service shall be mailed by the public service corporation or public agency to each owner of real property located within the proposed underground conversion service area to the address of such owner as set forth on the petition for the cost study.

A.R.S. § 40-342(F). The Commission policy comports with Commission rules and state law. The costs of undergrounding are to be paid for by the customers requesting and benefiting from the undergrounding.

The policy at issue in Decision No. 79140 is reflected in the Commission's rules. Specifically, A.A.C. R14-2-206(b)(2)(c) states that, regarding company provided facilities, "[a] customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection as a nonrefundable contribution." *Id.* This rule supports the Commission's position because it indicates both that the Commission retains the authority to allocate undergrounding costs, and that Commission previously adopted a rule like its policy at issue.

Mr. Dempsey cites *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447 (1980) and *Tucson Electric Power, Co. v. City of Tucson*, Pima County Sup. Ct., Case No. C20235484 (2024), but these decisions do not support Mr. Dempsey's position. The Commission advisory does not preclude or limit a municipality's right to require undergrounding. The Commission advisory merely parrots state law and policy on the allocation of the costs of undergrounding.

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The Petition is denied. The Commission advisory is a restatement of existing law and public policy. While the Commission could adopt another formal rule on allocation of undergrounding costs, it is not required to do so.

Sincerely,

Douglas Clark
Executive Director, Arizona Corporation Commission

Approved as to form and content:

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Rene Lopez

Douglas R Clark
Executive Director

Thomas Van Flein
General Counsel
Office of General Counsel

ARIZONA CORPORATION COMMISSION

Office of General Counsel

March 3, 2025

Chairperson Jessica Klein
Governor's Regulatory Review Counsel
100 N 15th Avenue Suite 302
Phoenix, AZ 85007

Re: Arizona Corporation Commission Decision 79140, Policy Statement 3

Dear Chairperson Klein:

This letter is to put forth the Arizona Corporation Commission's ("Commission") legal office's position on an appeal to the Governor's Regulatory Review Council ("GRRC") from Underground Arizona dated November 8, 2024. Thank you for taking the time to listen to our concerns. When we were notified of the petition, we were also informed "[a]t this time there is nothing the Arizona Corporation Commission need to do with regards to this petition." Therefore, we did not have a representative attend the February 25, 2025, meeting.

A. The Governor's Regulatory Review Council Does Not Have Authority to Review the Arizona Corporation Commissions Rules or Policy Statements

Arizona Revised Statutes ("A.R.S.") title 41 article 5 establishes and identifies powers given to GRRC. A.R.S. § 41-1057(A) states that this article does not apply to the Commission. Because the article that establishes GRRC specifically exempts the ACC from the powers given to GRRC, our rules and policies are not subject to review in this forum.

A.R.S. § 41-1057(A)(2) states that the Commission shall adopt substantially similar rule review procedures, but we are outside of the procedures adopted and administered by GRRC. The Commission's rules are published in the Arizona Administrative Code Title 14 and have complied with the rulemaking process and have been published accordingly. The policy statement issued in Commission decision 79140 is not a rule and is not required to go through the formal rulemaking process. The guidance issued in the form of a policy statement, as discussed below, is simply a restatement of existing laws and rules.

B. Costs Associated with Undergrounding Transmission Lines Are Part of The Ratemaking Process

At issue is Commission decision number 79140 dated October 4, 2023, and specifically, the guidance provided in policy statement 3 contained in the decision. Policy statement 3 basically restates existing state law and properly promulgated rules. The policy states that installing electric transmission lines underground is more expensive to install and more costly and challenging to maintain and repair. Because of the additional expense, they should only be installed if necessary for reliability or safety purposes. If the stakeholder wants them underground for other reasons, they should form an improvement district as provided in A.R.S. § 48-620 et. seq. Forming an improvement district will ensure that the additional cost of undergrounding the transmission lines will be paid for by the stakeholders making the request.

The cost of undergrounding transmission lines is significantly more expensive than above ground. Costs associated with installation of transmission lines feed directly into rates and ratemaking and is a constitutionally directed function of the Commission. The Arizona Constitution, Article 15, Section 3 provides that "[t]he corporation commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein." The section goes on to grant the Commission the power to "make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transactions within the state."

All aspects of ratemaking, including determining appropriate costs, and issuing rules, are core constitutional duties of the Commission. Because these matters are constitutionally directed, the executive and legislature do not have the authority to reduce or alter the scope of responsibilities tasked to the Commission.

The Commission determines the rates that a public service corporation (a "utility") may charge. The Commission sets rates by finding the "fair value" of a utility's in-state property. Because the cost of undergrounding transmission lines directly impacts the fair value of those lines, the costs associated with installing and maintaining transmission lines is directly included in ratemaking. The Commissions guidance that requires the stakeholder to directly pay for the additional expense is following the law, as set forth below, and directly within the Commission's ratemaking authority.

C. The policy is Well Grounded in Existing State Law

Arizona law has three distinct statutes that address apportioning additional costs of undergrounding directly to the person requesting the change.

First, under A.R.S. § 40-341 et. seq. petitioners can form an underground conversion service area. When an underground service area is proposed, the utility for that area shall make a study to determine the "underground conversion cost." "Underground conversion cost means the costs to be paid by each owner to each public service corporation or public agency by the property owners within an underground conversion service area, as provided in this article." The statute directly requires the cost to be paid by each owner in the area, and not be apportioned to all utility ratepayers.

Second, A.R.S. § 48-620 allows a municipal governing body to establish an underground utility facility. And again, costs are determined prior to approval, and then if approved, the expense shall be collected through a tax assessment not to exceed fifteen years.

Third, A.A.C. R 14-2-206.B(2)(c) states a "customer requesting an underground service line in an area served by overhead facilities shall pay for the difference between an overhead service connection and the actual cost of the underground connection to the nonrefundable contribution."

These are the direct basis for the guidance issued in Decision 79140 through policy statement 3. The policy is merely a restatement of the law and is intended to provide guidance of the stakeholder's responsibility to pay additional costs associated with undergrounding transmission lines.

The reason for the policy is to assure that the cost of any unnecessary undergrounding is bore by the stakeholders that want it. Under A.R.S. §§ 40-341 et seq., public service corporations can install underground transmission lines (1) at their own expense (i.e., that cannot be recovered in general rates) or (2) pursuant to a conversion service area. The legislature has created a statewide scheme for the creation of "underground conversion service area" and each landowner with the conversion area must pay the costs for undergrounding to the public service corporation.

Underground Arizona, in its petition, cites Arizona Public Service Co. v. Town of Paradise Valley, 125 Ariz. 447 (1980), for the premise that state law allows municipalities to require undergrounding at utility expense. APS v Paradise Valley did say that state law does not prevent a city from mandating undergrounding of utilities at utility expense, but that was in a motion for summary judgment in which the Supreme Court accepted "the Town's allegations that although the initial cost of undergrounding may be more, the maintenance costs are less and the long term cost is the same or less that the cost of above ground utility poles." Because this was an issue of fact, the Court had to look at it in a light most favorable to the Town. Forty-five years later, and same policy statement at issue here, included a statement that underground lines are much more expensive to install and can be more costly and challenging to maintain and repair.

D. Conclusion

For the reasons stated above, the Commission requests that GRRC take no action on Underground Arizona's appeal of the Commission's determination. If you have any questions, feel free to reach out to our office.

Sincerely,

Robert Ridenour

Robert Ridenour, Senior Associate General Counsel
Office of General Counsel
rridenour@azcc.gov
(602) 542-3402

cc: Rana Lashgari, member
Jeff Wilmer, member
Jenny Poon, member
John Sundt, member
Frank Thorwald, member
Jenna Bentley, member

Underground Arizona, Inc.
ATTN: Daniel Dempsey
PO Box 41745
Tucson, AZ 85717
daniel@undergroundarizona.org
(520) 360-0590

March 4, 2025

Governor's Regulatory Review Council
100 N Fifteenth Ave, Suite 302
Phoenix, AZ 85007
grrc@azdoa.gov

RE: Arizona Corporation Commission March 3, 2025 Letter

Dear Members of the Governor's Regulatory Review Council,

This letter is a response to the March 3, 2025 letter sent to you by the Arizona Corporation Commission ("Commission"). The Commission makes a lot of arguments that are irrelevant to the questions before you.

A. The Governor's Regulatory Review Council ("GRRC") Does Have Authority

Arizona Revised Statutes ("A.R.S.") § 41-1057(B) states that the Commission may opt into the GRRC process. The Commission advised Underground Arizona that it could appeal pursuant to A.R.S. § 41-1033(E), which exclusively refers to the GRRC process. Moreover, the Commission did not advise Underground Arizona of an equivalent Commission-established independent process and we remain unaware of an equivalent independent process at the Commission.

A.R.S. 41-1044 mandates that exemptions under A.R.S. 41-1057 are subject to attorney general review. It would seem to us that if GRRC denies itself jurisdiction then the attorney general's office has jurisdiction. However, we see no reason for GRRC to deny itself jurisdiction when the Commission's actions clearly align with A.R.S. § 41-1057(B) and it is best equipped to issue an opinion. To deny jurisdiction is to leave Underground Arizona and similar parties at the mercy of non-existent processes.

B. The Issue is Line Siting Jurisdiction Not Ratemaking Jurisdiction

Again, as with its original response, the Commission spends most of its letter arguing red herrings. The issue before GRRC is a line siting policy statement not a ratemaking policy statement. Decision 79140 makes this fact very clear.[1] Frankly, reading the policy statement alone makes it clear because the leading sentence is effectively, "we don't have jurisdiction over any of this."[2] Can you issue policy statements or rules on issues for which you lack jurisdiction? Can you avoid having a rule reviewed by calling it a policy statement? We believe the answers to both are obviously no. Again, the Commission's own counsel said as much in a public legal memo on June 14, 2023.[3] By focusing only on its ratemaking jurisdiction and ignoring the limits of its line siting jurisdiction and the memo of its legal counsel, it seems the Commission is trying to confuse you and sidestep the actual issue because it has no arguments responsive to the actual issue.

Line siting jurisdiction is limited to overhead transmission lines under A.R.S. § 40-360(10). The Commission cannot expand line siting jurisdiction beyond its statutory limitations with policy statements or rules. Additionally, line siting is a creature of statute not the Arizona Constitution. Thus, the constitutional questions the Commission is attempting to raise by mischaracterizing a line siting policy statement as a ratemaking policy statement are a distraction and not responsive to the actual issue.

C. Conclusion

For the aforementioned reasons, Underground Arizona requests that GRRC determine the Commission's line siting policy statement is a rule, and that whether it is a policy statement or a rule, it is invalid and contrary to the very statute that created the Line Siting Committee.

Sincerely,

/s/ Daniel Dempsey

Daniel Dempsey, Director

Underground Arizona

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[1] Decision 79140 Finding of Fact 1: *"On December 23,2023. Arizona Corporation Commission Chairwoman Marquez Peterson opened this docket by memorandum to consider the adoption of a substantive policy statement to guide the Line Siting Committee"* https://docket.images.azcc.gov/0000209995.pdf

[2] *"3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."*

[3] See page 16 of Decision 79140: https://docket.images.azcc.gov/0000209995.pdf

Gmail

Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

GRRC February 25, 2025 Study Session

Daniel Dempsey <daniel@undergroundarizona.org> Tue, Feb 25, 2025 at 1:50 PM
To: GRRC - ADOA <grrc@azdoa.gov>
Cc: Simon Larscheidt <simon.larscheidt@azdoa.gov>, Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

Thanks! When you say next meeting, do you mean in a month or in a week?

When I spoke to an attorney at the ACC, his statement was that because the Line Siting Committee is a creature of statute/legislation and not the Constitution, it fell under GRRC. As where ratemaking is a creature of the Constitution. He also said, basically, the ACC can setup its own equivalent review process but never has so it probably defaults GRRC anyways. I don't want to get him in trouble though as this was an informal conversation and may not be the ACC's official position.

In a few sentences, the issue is: can the ACC extend ratemaking authority to the Line Siting Committee with a mere policy statement that doesn't reflect any actual law? Ratemaking authority is broad, the ACC can basically deny the recovery of any cost. Line siting authority is super narrow: it only applies to overhead transmission lines. The ACC is trying to give Line siting the same broad authority as ratemaking without any legal basis for expanding its jurisdiction. This is what the ACC's legal memo pointed out.

Thanks,
Dan

On Thu, Feb 20, 2025 at 9:22 AM GRRC - ADOA <grrc@azdoa.gov> wrote:
[Quoted text hidden]

Gmail

Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

GRRC February 25, 2025 Study Session

Daniel Dempsey <daniel@undergroundarizona.org> Tue, Mar 4, 2025 at 8:52 AM
To: GRRC - ADOA <grrc@azdoa.gov>
Cc: Simon Larscheidt <simon.larscheidt@azdoa.gov>, Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

Good Morning, Simon and Thomas,

In advance of your executive session on the ACC, I want to point out that whether the AG opines that you can or cannot enforce your ruling, it is useful and helpful to us and others to have a ruling against the ACC in pushing back against perversion of process. One would think that because the ACC told us to use this process, it would be bound to your ruling.

Ultimately, this isn't an issue of agreeing or disagreeing with the policy. It's an issue of agreeing or disagreeing that limited jurisdiction can be made unlimited through policy statements. If it's allowed, it can be used to do literally anything. The ACC could ban clean energy or gas peaker plants by issuing a line siting policy statement. That's not how any of this is supposed to work according to a half century of precedent or statute.

Thanks,
Dan
[Quoted text hidden]

Underground Arizona, Inc.
ATTN: Daniel Dempsey
PO Box 41745
Tucson, AZ 85717
daniel@undergroundarizona.org

April 30, 2025

Governor's Regulatory Review Council
100 N Fifteenth Ave, Suite 302
Phoenix, AZ 85007
grrc@azdoa.gov

RE: Response to the Commission's April 28, 2025 A.R.S. § 41-1033(H)(3)(c) Statement

Dear Members of the Governor's Regulatory Review Council,

This letter is a response to the April 28, 2025 A.R.S. § 41-1033(H)(3)(c) statement by the Arizona Corporation Commission ("Commission"). Once again, the Commission repeats a lot of arguments that are irrelevant to the questions before you and fails to address the underlying issue of the express statutory limits on the Commission's line siting jurisdiction.

A. Arizona Revised Statutes ("A.R.S.") § 41-1057(A) Exemption Does Not Apply

Arizona Revised Statutes ("A.R.S.") § 41-1057(A)(2) says: "A. In addition to the exemptions stated in section 41-1005, **this article** does not apply to…2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business." [Emphasis added] "This article" is Article 5 of Chapter 6. Underground Arizona filed an A.R.S. § 41-1033 or Article 3 of Chapter 6 petition. Article 5 exemptions only apply to Article 5 as cited above. Therefore, Underground Arizona's Article 3 petition is not exempt from Governor's Regulatory Review Council ("GRRC") review.

B. The Commission Opted into GRRC Review

As stated in previous responses, even if Article 5 exemption did apply to Article 3 petitions, the statute states in A.R.S. § 41-1057(B) that the Commission may opt into the GRRC process. The Commission advised the public in Decision 79140, and Underground Arizona in its response to our original September 3, 2024 petition, among other communications, that policy statements could be

appealed pursuant to A.R.S. § 41-1033, which establishes and governs the GRRC substantive policy statement review process.[12] The Commission has not established an alternative Article 3 substantive policy statement review process—and we can find no Article 3 exemption available to the Commission even if it had established an alternative. In any event, the Commission's statements and directions must reasonably be interpreted as actions that opted the Commission into GRRC process were Article 5 exemptions available. Moreover, the Commission's inaction in failing to timely advise Underground Arizona of alternative processes despite countless opportunities to do so in the last eight months equally illustrates that the Commission voluntarily opted into GRRC review of Article 3 petitions.

The Commission now, for the first time in its third response, eight months after receiving the original petition, cites Decision 78544 as controlling. Only, once again, the subject of Decision 78544 is Article 5, not Article 3. Decision 78544 does not address Article 3 at all, let alone establish an independent Article 3 equivalent process. Quite simply, Decision 78544 does not apply to the issue before you. It does, however, raise the question of whether the Commission established a sufficiently independent alternative to GRRC for Article 5 reviews. Does the Commission approving its own rules satisfy the intent of the Legislature and the letter and spirit of Article 5 exemption? We suspect not.

C. The Issue is Policy Statement 3 of Decision 79140; Appeal of Decision 79550 is Irrelevant

The court's dismissal of Underground Arizona's appeal of Decision 79550 as untimely is irrelevant. While the appeal included discussion of the policy statement issue (because Decision 79550 cites the invalid policy statement—and surely so will many more decisions), there was no court decision on the merits. Furthermore, Underground Arizona filed its Article 3 petition weeks prior to the Commission even issuing Decision 79550, and months prior to filing any court appeal.

D. The Issue is Line Siting Jurisdiction Not Ratemaking Jurisdiction

Once again, as with its original response to our petition, and its March 3, 2025 response, the Commission spends most of its statement arguing red herrings. The issue before GRRC is a line siting policy statement, not a ratemaking policy statement. Decision 79140 makes this fact very clear.[3]

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[1] See footnote 1 of Attachment A here: https://docket.images.azcc.gov/0000209995.pdf

[2] The Commission responded on October 31, 2024, stating, on page 2: "The Petitioner is advised that he has 30 days to file an appeal if he so chooses. (3) A.R.S. § 41-1033(E) ("If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule.)"

[3] Decision 79140 Finding of Fact 1: *"On December 23,2023. Arizona Corporation Commission Chairwoman Marquez Peterson opened this docket by memorandum to consider the adoption of a substantive policy statement to guide the Line Siting Committee"* https://docket.images.azcc.gov/0000209995.pdf

Frankly, reading the policy statement alone makes it clear because the leading sentence is effectively, "we don't have jurisdiction over any of this."[4] The Commissioners also stated as much at the public hearing.[5] Can you issue policy statements (let alone allow them to be treated as rules in practice) on issues for which you explicitly lack jurisdiction? We believe the answer is obviously no. Again, the Commission's own counsel said as much in a docketed legal memo on June 14, 2023.[6] By focusing only on its ratemaking jurisdiction and ignoring the limits of its line siting jurisdiction, it seems the Commission is trying to confuse you and sidestep the actual issue because it has no arguments responsive to the actual issue.

Line siting jurisdiction is limited to overhead transmission lines under A.R.S. § 40-360(10). The Commission cannot expand line siting jurisdiction beyond its statutory limitations with policy statements or rules. Moreover, even if an underground line were subject to line siting jurisdiction, the line siting process cannot predetermine ratemaking outcomes. Line siting is a creature of the Legislature, not the Arizona Constitution or the Commission. Thus, the constitutional questions the Commission is attempting to raise by mischaracterizing a line siting policy statement as a ratemaking policy statement are a distraction and not responsive to the actual issue.

E. Existing Law is that Municipalities Can Require Undergrounding at Utility Expense

The Arizona Supreme Court in *APS v Town of Paradise Valley (1980)*, and, more recently, the Arizona Superior Court in *TEP v. Board of Adjustment (2024)*, as cited in our petition and prior responses, found that existing law does not exempt utilities from municipal zoning ordinances. That said, determining whether undergrounding is allowed by law or not is not the subject of this petition. The question before you is: can the Commission issue policy statements (let alone allow them to be treated as rules in practice) on issues for which it explicitly lacks jurisdiction? Again, the answer is

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[4] *"3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 et. seq."*

[5] On September 21, 2023, at the Commission's Open Meeting, in regard to Commissioner Myers' Proposed Amendment No. 1, the following statement was made: Commissioner Myers: "I think it is beneficial to clarify the Commission's stance on [rates and undergrounding] but at the same time make sure that it's clear that we don't have jurisdiction over [rates and undergrounding] when it comes to line siting stuff." https://azcc.granicus.com/player/clip/5766

[6] See page 16 of Decision 79140: https://docket.images.azcc.gov/0000209995.pdf

obviously no, even according to memos from the Commission's own counsel. Only the Legislature can expand line siting jurisdiction to include undergrounding or ratemaking.

F. Conclusion

Underground Arizona suspects that the Commission did not adopt a rule (even though its attorneys advised it that a rulemaking would be required) because it would have failed either GRRC or attorney general review. By issuing a policy statement instead and letting it be treated as a rule in practice, the Commission has attempted to sidestep statutory process and avoid the checks and balances prescribed by the Legislature.

For the aforementioned reasons, Underground Arizona requests that GRRC determine that:

1. Underground Arizona has made an Article 3 petition;
2. Article 5 exemptions do not apply to Article 3 petitions;
3. Regardless, the Commission's actions and/or inactions have or would have opted the Commission into a GRRC review process under either article; and,
4. The Commission's line siting policy statement is void because it "is not specifically authorized by statute, exceeds the agency's statutory authority, and is unduly burdensome."

Sincerely,
/s/ Daniel Dempsey
Daniel Dempsey, Director
Underground Arizona

P.S. It is not clear why the Commission cc'd electric utilities in its statement. We believe this is a straightforward case on the merits and, much like a court of law, we will not be soliciting comments to the Council from supporters or the public. If public comment matters to GRRC's analysis and we should, please advise. Frankly, allowing the unilateral creation of policy statements that expand an agency's jurisdiction are as much a risk to the electric utilities as they are to the public or the rule of law. The sanctity of the rule of law is important to everyone.

Gmail

Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>

Additional ARS 41-1033 Appeal Note

Daniel Dempsey <daniel@undergroundarizona.org> Thu, May 1, 2025 at 10:37 AM
To: GRRC - ADOA <grrc@azdoa.gov>, Thomas Mc Neeley <thomas.mcneeley@azdoa.gov>, Simon Larscheidt <simon.larscheidt@azdoa.gov>

Good Morning, GRRC!

One additional comment:

The Commission cited AAC Title 14, Chapter 5 as recording a note about a claimed exemption to external review. Chapter 5 is about Railroads and Pipeline Safety, not Line Siting. The note states that it only applies to Chapter 5. Line Siting is under Chapter 3, Article 2. And neither Chapter 3 nor Article 2 contain a similar note of a claimed exemption--as would be expected.

We don't think it matters in the grand scheme because the issue before you is not a rule and is not a power created by the Constitution, but it does add to the incredible volume of Commission red herrings--and that should matter.

Thanks,
Dan
--
Daniel Dempsey
Underground Arizona

0000209995

BEFORE THE ARIZONA CORPORATION COMMISSION

JIM O'CONNOR
Chairman
LEA MÁRQUEZ PETERSON
Commissioner
ANNA TOVAR
Commissioner
KEVIN THOMPSON
Commissioner
NICK MYERS
Commissioner

Arizona Corporation Commission
DOCKETED
OCT 4 2023
DOCKETED BY

IN THE MATTER OF SUBSTANTIVE POLICY STATEMENTS TO GUIDE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE.	DOCKET NO. ALS-00000A-22-0320 DECISION NO. 79140 ORDER

Open Meeting
September 21, 2023
Phoenix, Arizona

FINDINGS OF FACT

1. On December 23, 2023, Arizona Corporation Commission ("Commission") Chairwoman Márquez Peterson opened this docket by memorandum to consider the adoption of a substantive policy statement to guide the Arizona Power Plant and Transmission Line Siting Committee ("Line Siting Committee" or "Committee").

2. On January 5, 2023, Chairwoman Márquez Peterson docketed a letter and notice of inquiry seeking feedback on a potential policy statement.

3. On February 8, 2023, Arizona Electric Power Cooperative, Inc., ("AEPCO") Salt River Project Agricultural Improvement and Power District ("SRP"), Tucson Electric Power Company ("TEP"), and UNS Electric, Inc. ("UNSE") (collectively, "Affected Utilities") filed joint Comments in this docket.

4. On February 16, 2023, Arizona Public Service Company filed a Response in this docket.

5. On February 20, 2023, the Affected Utilities filed joint Comments in this docket.

6. On March 14, 2023, Strata Clean Energy filed Comments in this docket.

7. On March 30, 2023, AEPCO, TEP, and UNSE filed joint Comments in this docket.

8. On May 5, 2023, Commissioner Myers docketed a letter requesting that Commission Utilities Division Staff ("Staff") and the Commission Legal Division ("Legal Division") respond to seven proposals for potential policy statements detailed in Commissioner Myers' letter.

9. On June 6, 2023, Southwestern Power Group filed a Response in this docket.

10. On June 14, 2023, Staff and the Legal Division filed their Response to Commissioner Myers' letter.

11. On June 19, 2023, SRP filed Comments in this docket.

12. On June 27, 2023, TEP and UNSE filed a joint Response in this docket.

13. On August 9, 2023, the proposals contained in Commissioner Myers' letter were discussed and considered at the Staff Open Meeting.

14. At the August 9, 2023, Staff Open Meeting, the Legal Division was directed to prepare a policy statement addressing proposals one and two in Commissioner Myers' letter concerning substations and hybrid hearings.

15. Attached to this Order as Attachment A is the Legal Division's recommendation for the Arizona Corporation Commission Policy Statement regarding Practice and Procedure Before the Power Plant and Transmission Line Siting Committee for Commission consideration. We adopt Legal Division's recommendation; however, the Commission's Policy Statement shall also include the following policy statement:

> 3. The Commission does not have jurisdiction over the undergrounding of electric transmission lines. A.R.S. § 40-360(10). Installing electric transmission lines

> underground is much more expensive than building them above ground. Underground transmission lines also can be more costly and challenging to maintain and repair. As a general matter, utilities under the Commission's jurisdiction should avoid incurring these higher costs unless underground installation of a transmission line is necessary for reliability or safety purposes, or to satisfy other prudent operational needs. Installing a transmission line underground for other reasons, such as stakeholders' preferences, would add unnecessarily to costs recovered through rates. Third parties, including cities, customers, and neighborhood groups, seeking to fund the underground construction of a transmission line may do so, among other ways, by forming an improvement district for underground utilities as provided in A.R.S. § 48-620 *et. seq.*

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter in this proceeding pursuant to Titles 40 and 41 of the Arizona Revised Statutes.

2. The Commission, having reviewed Attachment A and the record herein, concludes that it is just and reasonable and in the public interest to adopt the policy statement reflected in Attachment A, as modified herein.

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ORDER

IT IS THEREFORE ORDERED that the policy statement reflected in Attachment A, Arizona Corporation Commission Policy Statement regarding Practice and Procedure Before the Power Plant and Transmission Line Siting Committee, is adopted as modified herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN O'CONNOR COMMISSIONER MARQUEZ PETERSON

DISSENT

COMMISSIONER TOVAR COMMISSIONER THOMPSON COMMISSIONER MYERS

IN WITNESS WHEREOF, I, DOUGLAS R. CLARK, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 4th day of October, 2023.

DOUGLAS R. CLARK
EXECUTIVE DIRECTOR

DISSENT: Anna Tovar

DISSENT: _____

ATTACHMENT A

ARIZONA CORPORATION COMMISSION POLICY STATEMENT[1] REGARDING PRACTICE AND PROCEDURE BEFORE THE POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

Background

Before constructing a plant or transmission line in this state, Arizona law requires that utilities receive a Certificate of Environmental Compatibility ("CEC") from the Arizona Power Plant and Transmission Line Siting Committee ("Line Siting Committee" or "Committee") and approved by the Arizona Corporation Commission ("Commission"). The process for obtaining a CEC is governed by the line siting statutes, Arizona Revised Statutes ("A.R.S.") § 40-360 *et seq.* Prior to this year, the line siting statutes had not been updated since their adoption in 1971.

The outdated nature of the statutes, coupled with the increased need for power in the Southwest and Arizona specifically, has dramatically increased the number of CEC applications that have come before the Line Siting Committee. The Committee, Commission, and Arizona Legislature have taken numerous steps to address the backlog of applications pending before the Committee.

On December 23, 2022, Chairwoman Márquez Peterson's Office opened this docket to consider the adoption of substantive policy statements to provide guidance to the Line Siting Committee and regulated entities regarding when a CEC is required. The docket has generated valuable discussion and proposals from Commissioners and regulated entities alike.

On April 5, 2023, House Bill 2496 was signed into law by the Governor. That bill amends the definition of "transmission line" to clarify that "transmission line" means:

> five or more new structures that span more than one mile in length as measured from the first structure outside of the substation, switchyard or generating site to which the line connects to the fifth structure and that are erected above ground and support one or more conductors designed for the transmission of electric energy at nominal voltages of one hundred fifteen thousand volts or more and all new switchyards to be used therewith and related thereto for which expenditures or financial commitments for land acquisition, materials, construction or engineering exceeding $50,000 have not been made before August 13, 1971. Transmission line does not include structures located on the substation, switchyard or generating site to which the line connects.

[1] This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

This updated definition of "transmission line" addresses much of the ambiguity identified in the generic docket concerning when a CEC is required.

In addition, on March 6, 2023, the Commission's Legal Division opened Docket No. ALS-00000A-23-0063 for purposes of its 5-Year-Review of the Rules of Practice and Procedure before the Power Plant and Transmission Line Siting Committee, Arizona Administrative Code Title 14, Chapter 3, Article 2. On August 25, 2023, the Commission issued Decision No. 79083, directing the Legal Division to open a new rulemaking docket to update the line siting rules. Accordingly, revisions to the line siting rules will be addressed in that docket.

In order to provide additional guidance regarding the Commission's interpretation of the requirements under the line siting statutes, it is reasonable and appropriate to adopt the policy statements set forth herein. Policy Statement No. 1 addresses the Commission's interpretation of "transmission line," as updated in House Bill 2496. Policy Statement No. 2 provides the Commission's preferred approach to conducting hearings before the Line Siting Committee.

Policy Statements

1. The definition of "transmission line" provided in A.R.S. § 40-360, and as amended by House Bill 2496, includes "switchyards," but notably does not include "substations." The Commission presumes the Legislature intentionally excluded "substations" from the definition of "transmission line" and therefore interprets A.R.S. § 40-360 as imposing no requirement for a utility to obtain a CEC to construct a substation.

2. The line siting statutes require that a hearing be held on an application "in the general area within which the proposed plant or transmission line is to be located or at the state capitol at Phoenix," as determined by the Chairman of the Committee. A.R.S. § 40-360.04(A). Since the COVID-19 pandemic, the Committee has authorized virtual or hybrid virtual and in-person hearings. The Commission affirms the Committee's use of hybrid hearings and encourages the continued use of hybrid hearings to streamline the hearing process and allow for more robust public participation at Line Siting Committee hearings.

Attachment 2

ORIGINAL

E000024350

OSBORN MALEDON
ATTORNEYS AT LAW

Megnan H. Grabel
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February 20, 2023

Re: In the Matter of Substantive Policy Statements to Guide the Arizona Power Plant and Transmission Line Siting Committee (ALS-00000A-22-0320)

Arizona Corporation Commissioners
Members of the Arizona Power Plant
and Transmission Line Siting Committee and
All Interested Stakeholders:

Arizona Electric Power Cooperative, Inc., Salt River Project Agricultural Improvement and Power District, Tucson Electric Power Company, and UNS Electric, Inc. (collectively "Affected Utilities") reiterate our thanks to Commissioner Marquez Peterson for opening this docket and raising important issues regarding the Arizona power plant and line siting process. As stated in the January 17, 2023 letter filed in this docket, the Affected Utilities support efforts to clarify and modernize the Arizona Power Plant and Transmission Line Siting Committee's ("Committee") rules and procedures. Among other things, the Affected Utilities are concerned with the current Committee backlog, which results primarily from the exceptionally large number of generation interconnection "tie-line" applications now being filed. At present, the backlog is such that applicants for a CEC cannot get a hearing scheduled until the end of 2024. That reality is highly concerning to our companies because it has the potential to hinder our respective abilities to get needed projects approved and on-line when required to serve our customers and members in Arizona.

Moreover, as Commissioner Marquez Peterson points out, the process for obtaining a certificate of environmental compatibility ("CEC") is complex and costly. Indeed, an applicant for a CEC typically must retain consultants to help prepare the environmental and other impact studies required by Arizona law to accompany a CEC Application, as well as attorneys to help facilitate the hearing process. In addition, the Committee is required by law to hold a hearing in the county in which the transmission line will be constructed, which is often in rural or remote areas of the State. The responsibility for securing and funding both a hearing venue of adequate size and hotel accommodations for Committee members, attorneys, witnesses, and other participants in the process falls on the applicant. The applicant must also fund an audio-visual team to provide internet and virtual hearing capabilities, as well as ensure that the room will be equipped with sufficient tables, chairs, and other amenities for all participants. Hearings are always scheduled to begin in the afternoon on the first day to give Committee members who reside far from the hearing location time to get there, which means that the hearing itself typically lasts a minimum of two days, even for the least controversial of applications. For this and other reasons, it is not unusual for the total cost of the CEC application process to exceed $250-300,000 for the most basic of applications, rising to in excess of $650,000 and much higher as the proceedings become increasingly complex. For the Affected Utilities, that amount ends up being recovered in rates paid by our customers and members.

ACC - Docket Control - Received 2/20/2023 10:05 AM
ACC - Docket Control - Docketed 2/21/2023 8:24 AM

The Affected Utilities understand the need for this process for most projects. Such an extensive evaluation is important for significant projects that must be fully vetted to ensure their compatibility with the environment and ecology of Arizona. But it should not be required for smaller projects that, by their nature, have little to no environmental footprint. We recognize that the Legislature may be taking steps to remedy this concern. However, we also agree with Commissioner Marquez Peterson that any legislative solution will take several months to implement if it passes at all, and that a more urgent, Commission-driven solution is needed.

The Affected Utilities therefore offer the following suggestions for the Commission's potential inclusion in a substantive policy statement:

(1) Interpret "series of structures" to mean "three or more" poles, but exclude from the series any poles located on the site of existing energy infrastructure.

An important first step, as suggested in the Draft Potential Substantive Policy Statement No. 1, is to clarify what projects constitute a "transmission line" within the meaning of A.R.S. § 40-360(10) – specifically, what constitutes "a series of new structures."[1] As a legal matter, no caselaw exists regarding how many poles constitute a "series" in the line siting context. However, the Arizona Court of Appeals has interpreted the meaning of the word "series" in the criminal context (examining the phrase "continuing series of violations") as meaning three or more.[2] In doing so, the Court relied on the definition of "series" contained in Webster's Third New International Dictionary (1966): "a group of *usually three or more* things or events standing or succeeding in order and having a like relationship to each other."[3] Notably, that version of Webster's dictionary was published close in time to the promulgation of the line siting statutes in 1971, thus indicating that the common and approved use of "series" at that time constituted "three or more."[4]

This interpretation is also consistent with how the phrase "series of structures" has historically been interpreted by the Commission and the Committee. For example, during a 2021 pre-filing meeting, former line siting Chairman Thomas Chenal expressed his observation that "the Corporation Commission . . . has, at least traditionally, customarily thought of a series as

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[1] A.R.S. § 40-360.

[2] *State v. Tocco*, 156 Ariz. 110, 115 (App. 1986) (citing *United States v. Valenzuela*, 596 F.2d 1361, 1367 (9th Cir. 1979) ("[W]hile all dictionaries may not precisely specify the number of related, successive events which are necessary to constitute a series, we think the District Court's instruction that a series must consist of three or more federal narcotic law violations was squarely based on common usage.") (internal citations omitted)).

[3] *Id.* (emphasis added).

[4] *See* A.R.S. § 1-213 (requiring that statutory "[w]ords and phrases shall be construed according to the common and approved use of the language.")

being three or more."[5] The Commission has also opined that the construction of a substation and two transmission poles is **not** a "transmission" line that would trigger the need for a CEC.[6] This interpretation is also consistent with the Affected Utilities' historical understanding of the phrase.

However, absent from the definition of "transmission" line is any indication of what poles should be counted towards one of the series. Here, the Declaration of Policy underlying the siting statutes is instructive:

> The legislature hereby finds and declares that there is at present and will continue to be a growing need for electric service which will require the construction of **major new facilities**. It is recognized that such facilities cannot be built without in some way **affecting the physical environment where the facilities are located**. The legislature further finds that it is essential in the public interest **to minimize any adverse effect upon the environment and upon the quality of life of the people of the state which such new facilities might cause**.[7]

Clearly, the original drafters of the line siting statutes were focused on balancing the impact of "major new facilities" – large but necessary energy infrastructure – with the existing physical environment. However, if the environment is already impacted by energy infrastructure (be it a switchyard, substation, or generation site), the construction of the new facilities would have no incremental adverse effect on the environment or anyone's quality of life, and those facilities should thus not be considered part of the "series" of new structures for which the environmental impact should be analyzed. This reading of the statute makes it more likely that only "major new facilities" will be required to file for a CEC, not small projects to be constructed on land that, at least in part, has already been impacted by energy infrastructure.

For the same reason, reconductoring a line or replacing old structures with new ones within the location approved by the Commission in the underlying CEC should not trigger the CEC process, because doing so does not have any new adverse impact on the environment as contemplated by the line siting statutes.

The Commission's policy should also make clear that the "series of structures" contemplated is linear in nature and that a CEC would not be required for the construction of, for example, two sets of two poles that feed into a substation or switchyard in a parallel or another non-linear fashion. Such a construction conforms to the commonly understood meaning of "series" (things that are "succeeding in order"[8]) would be consistent with the legislature's intent that only "major new facilities" should be subject to the siting process (not a handful of minor new facilities).

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[5] *See e.g.* Cielo Azul Prefiling Conference Transcript, June 17, 2021 (Chairman Chenal) at 25:16-19

[6] *See* Decision No. 77761 (October 2, 2020).

[7] *Declaration of Policy*, Laws of Arizona 1971, Chapter 67, p. 180 (emphasis added).

[8] *See State v. Tocco*, 156 Ariz. at 115.

Finally, the Commission should memorialize in policy its historical practice of not requiring a CEC for the construction of a substation. A.R.S. § 360(10) defines transmission line to mean, in relevant part, "a series of new structures erected above ground and supporting one or more conductors designed for the transmission of electric energy at nominal voltages of one hundred fifteen thousand volts or more **and all new switchyards** to be used therewith..." (emphasis added). While the statute requires a "switchyard" (which is part of the transmission system) to be sited as part of a transmission line, it makes no similar requirement for a substation. The Commission has acknowledged that substations do not need to go through the CEC process, *see* Decision No. 77761, and it makes sense to reflect that interpretation as part of any forthcoming policy.

(2) Establish a priority system for CEC hearings.

At present, the Committee Chair schedules hearings on a first-come, first-served basis. This practice worked fine when the Committee only handled a few CEC applications each year. However, the Committee is now scheduled to hear no fewer than 33 CEC applications in the next 18 months – and the pace of new applications is not slowing. To ensure that a project has a spot in the queue, the Affected Utilities must ask for hearings to be set years in advance. This process is unworkable, and there is no system in place to ensure that projects that need to be on-line sooner than the current scheduling process would allow will have a timely hearing. As a practical matter, the line siting statutes require the Committee to hold a hearing on an application within a specified timeframe after the application is filed.[9] A frustrated applicant, unable to work through the existing process, could just file an application with the Commission and the Committee will have to accommodate it, or the project could be built without any regulatory evaluation or approval.[10] Certainly, such an outcome is not in the public interest. The Commission should thus work with impacted stakeholders and the Committee Chair's office to develop a system for identifying and prioritizing more urgent projects.

(3) Make changes and provide guidance that will improve the CEC process for non-exempt projects.

Finally, the Commission should include in any policy the following recommendations that will improve the overall CEC process:

- The Affected Utilities are routinely asked by stakeholders to underground transmission facilities. As the Commission knows, undergrounding a transmission line can be ten to twenty times more expensive than building a line above ground. The Commission has often acknowledged that ratepayers should not pay the extra cost of undergrounding a transmission line. Including language to that effect in a policy would be helpful to applicants who need to explain the issue to stakeholders in a CEC proceeding.

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[9] *See* A.R.S. § 40-360.04.
[10] *See* A.R.S. § 40-360.08(B).

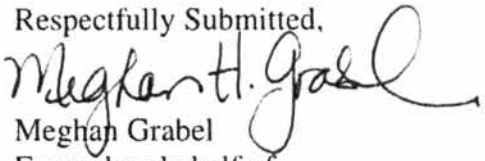
- A frequent issue in CEC proceedings is the efficacy of the applicant's public outreach process. The statutory outreach requirements are minimal, providing only for notice in a newspaper of general circulation and to certain affected jurisdictions. However, the Committee and the Commission often, and reasonably, expect more than that from applicants. Explaining what type of and how much public outreach the Commission expects of CEC applicants would be useful to ensure that all are on the same page as to what is required and that all reasonable expectations are met.

- Since the COVID-19 pandemic, CEC hearings have been conducted in a hybrid virtual/physical attendance platform. Given the remoteness of certain projects that require a CEC, the practice of allowing virtual participation has proven to be helpful to both the applicants and the Committee. The Commission should endorse the continuation of the hybrid platform for CEC hearings.

- CEC dockets are one of the two types of proceedings before the Commission that still require physical filings. Applicants are required to file 25 physical copies of a CEC application and all other documents that need to be filed during the course of the CEC proceeding (and then 13 hard copies for any documents to be filed after the CEC is awarded). Given the size of CEC applications, this requirement is both costly and environmentally unsound. The Commission should allow electronic filing in CEC dockets, with the understanding that if any Commissioner or Committee member wants a hard copy, they can reach out to the applicant through the Chairperson of the Committee and will receive one.

Again, we are grateful for Commissioner Marquez Peterson's attention to these matters and look forward to working with Chairman O'Connor and all of the Commissioners on the important issues raised in this docket.

Respectfully Submitted,



Meghan Grabel
For and on behalf of
Arizona Electric Power Cooperative, Inc.,
Salt River Project Agricultural Improvement and Power District,
Tucson Electric Power Company,
UNS Electric, Inc.

Attachment 3

ORIGINAL

E000027753

MEMORANDUM

TO: Docket Control

FROM: Douglas R. Clark
Interim Director
Utilities Division

Robin Mitchell
Director/Chief Counsel
Legal Division

DATE: June 14, 2023

RE: IN THE MATTER OF SUBSTANTIVE POLICY STATEMENTS TO GUIDE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE. (DOCKET NO. ALS-00000A-22-0320)

SUBJECT: RESPONSE TO COMMISSIONER NICK MYERS' MAY 5 LETTER

On May 5, 2023, Arizona Corporation Commission ("Commission") Commissioner Nick Myers docketed a letter requesting Commission Utilities Division Staff ("Staff") and the Commission Legal Division ("Legal Division") respond to seven proposals detailed in Commissioner Myers' letter. This memorandum represents Staff's and the Legal Division's joint response to the seven proposals. Staff and the Legal Division appreciate the opportunity to provide this response addressing recommendations regarding the backlog of Certificate of Environmental Compatibility ("CEC") applications with the Arizona Power Plant and Transmission Line Siting Committee ("Committee").

The responses below include a brief analysis from the Commission's Legal Division regarding whether the proposed changes can be adopted by Commission vote, substantive policy statement, rulemaking, or if a statutory change is required. Many of the proposals require revising existing rules, and therefore necessitate rulemaking.

Conveniently, the five-year review of the Rules of Practice and Procedure before the Power Plant and Transmission Line Siting Committee ("line siting rules") is taking place in Docket No. ALS-00000A-23-0063. Stakeholder comments regarding revisions to the line siting rules are due June 19, 2023. In that Docket, the Legal Division will prepare and submit to the Commission a Five-Year-Review Report, which will identify areas that could be improved in a subsequent rulemaking docket. While some of the recommendations in Commissioner Myers' letter may properly be adopted through a substantive policy statement, the Legal Division generally recommends adopting these changes through rulemaking rather than policy statements.

ACC - Docket Control - Received 6/14/2023 2:29 PM
ACC - Docket Control - Docketed 6/14/2023 2:48 PM

1. Substations

The first recommendation was to affirm that the construction of a substation does not require a CEC.

Arizona Revised Statutes ("A.R.S.") § 40-360(10) does not include "substation" as part of the definition of a "transmission line" but does include "switchyard."

For clarity, Staff suggests defining "switchyard" and "substation." A switchyard transmits high voltage power from generation plants to a utility's distribution system. On the other hand, a substation transforms high voltage power into lower voltages suitable for local distribution.[1]

Staff does not oppose clarifying that constructing a substation does not require a CEC; however, this clarification may not have any substantial impact to the number of applications coming before the Committee. Staff is not aware of any previous CEC applications only involving substations that would not have gone to a hearing due to the proposed clarification.[2]

It may be beneficial to seek input from the Line Siting Committee on the number of utilities that seek a CEC to construct only a substation and whether adopting a policy regarding substations would reduce the number of CEC applications that require a hearing.

Clarifying that constructing a substation does not require a CEC and/or that the definition of "transmission line" does *not* include substations would require the Commission to issue a substantive policy statement because the Commission would be informing the public of the agency's approach to or opinion of requirements under the line siting statutes.[3] The substantive policy statement could also include the Commission's approach to or opinion of what constitutes a "switchyard" and "substation," as recommended by Staff. However, these changes may be better addressed through rulemaking, which the Legal Division generally recommends.

2. Hybrid hearings

Staff understands why the Committee began conducting hybrid virtual/in-person hearings and has no issue with the Committee's decision to conduct hybrid virtual/in-person hearings.

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[1] In Case No. 186, Tucson Electric Power witness Edmond Beck provided a helpful discussion of the difference between substation and switchyard, noting that the legislature's use of only "switchyard" in the statute was likely deliberate because "[s]witchyards are required to interconnect transmission lines whereas substations are typically used for load serving purposes." Direct Testimony of Edmond Beck at 6, https://docket.images.azcc.gov/0000200968.pdf.

[2] *See Id.* (stating that "TEP's long-standing position has been to include information regarding substations but not request approval of them.").

[3] A substantive policy statement informs the public of the agency's approach to or opinion of the requirements under statutes and regulations, including the agency's "current practice, procedure or method of action based upon that approach or opinion." A.R.S. 41-1001(24). A substantive policy is advisory only. *Id.* It can only affect the internal procedures of the agency and cannot impose additional requirements or penalties on regulated parties. *Id.*

A.A.C. R14-3-201(A) provides the Committee with discretion to hold sessions at the time and place that the Committee's business may require. Accordingly, any directive from the Commission that the Committee *must* conduct hybrid hearings would require a change to the rules.[4]

3. Undergrounding transmission lines

The Legal Division cautions against setting policies that may constrain the Commission in exercising its discretion when setting rates. The facts of each case are unique, and there may be instances where a utility demonstrates that ratepayer recovery of undergrounding transmission lines is warranted. Importantly, the Commission has discretion to disallow investments that were not prudently incurred. Thus, the Commission can ensure ratepayers do not bear the burden of undergrounding transmission lines where it is not warranted.

It is worth noting that stakeholders often cover the cost of undergrounding transmission lines so that costs are not passed on to ratepayers. For example, industrial customers, like data centers, have paid the cost to underground lines or have split costs with the municipality requesting the lines be undergrounded.

If the Commission decides to move forward with this proposal, a rulemaking would be required because the Commission would be prescribing law or policy. It would not be appropriate to adopt a rule regarding ratepayer recovery as part of the line siting rules, however. The Line Siting Committee has no jurisdiction over rates, and a line siting rule regarding ratepayer recovery would therefore be outside the scope of authority granted under the line siting statutes. Additionally, the Line Siting Committee does not have jurisdiction over underground transmission lines. A.R.S. § 40-360(10) defines "transmission lines" as "a series of new structures erected *above ground* . . ." (emphasis added).

4. Public outreach

Additional public outreach prior to filing a CEC application can be beneficial. Additional forms of public outreach could include posts or ads on social media and mailing fliers to a wider radius of homes and businesses in the project area.

Specifying the additional forms of public notice would require a rule change because an existing rule defines what is required for public notice. *See* A.A.C. R14-3-208(C). A policy statement would not be sufficient in this instance because the proposal would impose new requirements on regulated parties.

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[4] A rule is a "statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency." A.R.S. § 41-1001(21). Prescribing fees or the amendment or repeal of a prior rule requires rulemaking. *Id.* Rules must only be promulgated pursuant to existing constitutional or statutory authority. In other words, a rule cannot exceed the scope of authority granted in the constitution or statute.

5. Electronic filing

Similar to the filing of other documents, the electronic filing of line siting documents would be beneficial. Eliminating the paper filing requirement would require a rule change because an existing rule establishes the paper filing requirement. *See* A.A.C. R14-3-203.

6. Reconductoring a line or replacing old structures

Careful consideration should be given to whether or not replacing structures should require a CEC hearing, since there is a possibility that older structures may be replaced with different ones that were not originally approved or discussed during the hearing. One option may be to consider establishing that reconductoring a line or replacing old structures with new ones **that do not differ in size or appearance from the previously approved ones** does not require a hearing or CEC process.

The Commission could issue a substantive policy statement informing the public that it does not believe reconductoring a line requires a CEC. If the Commission includes language that a CEC is not needed to replace old structures with new structures **that do not differ in size or appearance from those previously approved**, as recommended by Staff, the Commission could likely adopt the change through a policy statement. A.A.C. R14-3-207(B) requires Committee approval of amendments that substantially deviate from the original project. Including the language suggested by Staff would be consistent with the rule, and therefore would not require a rule change. If the language is not included, however, a rule change may be necessary.

It is unclear whether this proposal would have a significant impact on reducing the number of hearings since the passage of HB 2496 changed the definition of "transmission line" to "five or more new structures that span more than one mile in length . . ." It is possible that the new definition of "transmission line" will exclude a large portion of repair projects identified in this proposal.

It may be beneficial to receive input from the Line Siting Committee as to whether adopting a policy statement would reduce the number of CEC applications that require a hearing after the new definition of "transmission line" takes effect.

7. Establish a priority system for CEC hearings

Making a determination on the urgency of projects without clear standards for prioritizing projects may be difficult and subjective. Staff therefore recommends that if the Commission decides to move forward with this proposal, the Commission should take steps to establish clear criteria for the prioritization of projects.

In addition, Staff analyzes System Impact Studies ("SIS") after a CEC application is filed to determine whether the proposed project improves the reliability and/or safety of the operation of the grid and the delivery of power in Arizona. When an applicant wishes to interconnect with one

of Arizona's load-serving entities, it submits a request for interconnection and the project is placed in an interconnection queue. It is Staff's understanding that the SIS must be completed in the order of the interconnection requests. Thus, having the Committee select projects it deems more urgent could lead to some applications being filed without the necessary studies being completed, which would make it difficult for Staff to evaluate the technical impacts of proposed projects.

Additionally, the line siting statutes **require** applicants to provide an SIS as part of a power flow and stability analysis. A.R.S. § 40-360.02(C)(7). Failure to provide this analysis "constitute[s] a ground for refusing to consider an application of such a person." A.R.S. § 40-360.02(E). Because processing an application without a power flow and stability analysis would violate the line siting statutes, regulated entities may be hesitant to proceed without one.

Replacing the first-come, first-served approach would require *both* a statutory change and a rule change. A.R.S. § 40-360.04 requires the Chairman of the Committee to provide public notice of the time and place for a hearing within 10 days of receiving an application. The statute requires a hearing be held not less than 30 nor more than 60 days after notice is given. *Id.* The line siting rules require the same timeline. A.A.C. R14-3-208(A)-(B). The statute and rules effectively establish the first-come, first-served approach utilized by the Line Siting Committee, and therefore both the statute and rules would need to be amended.

As discussed above, adopting a prioritization system would likely impact the requirement to submit a power flow and stability analysis under A.R.S. § 40-360.02(C)(7) and could require a change to that statute as well. However, Staff does not recommend removing that requirement, as it enables Staff to determine impacts from proposed projects to the grid.

Finally, if a prioritization system were to be adopted through statutory and rule change, the Legal Division agrees with Staff's recommendation that the Commission establish clear criteria for prioritizing projects. The criteria would need to be adopted by statute or rule.

DRC:LH:KMU:jn

Originators: Luke J. Hutchison and Kathryn M. Ust

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JIM O'CONNOR – CHAIRMAN
LEA MÁRQUEZ PETERSON
ANNA TOVAR
KEVIN THOMPSON
NICK MYERS

Arizona Corporation Commission
DOCKETED
SEP 13 2024
DOCKETED BY

IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY, IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. 40-360, ET SEQ., FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE MIDTOWN RELIABILITY PROJECT, WHICH INCLUDES THE CONSTRUCTION OF A NEW 138 KV TRANSMISSION LINE ORIGINATING AT THE EXISTING DEMOSS-PETRIE SUBSTATION (SECTION 35, TOWNSHIP 13 SOUTH, RANGE 13 EAST), WITH AN INTERCONNECTION AT THE PLANNED VINE SUBSTATION (SECTION 06, TOWNSHIP 14 SOUTH, RANGE 14 EAST), AND TERMINATING AT THE EXISTING KINO SUBSTATION (SECTION 30, TOWNSHIP 14 SOUTH, RANGE 14 EAST), EACH LOCATED WITHIN THE CITY OF TUCSON, PIMA COUNTY, ARIZONA.

DOCKET NO. L-00000C-24-0118-00232

CASE NO. 232

DECISION NO. 79550

ORDER

September 5, 2024
Open Meeting

BY THE COMMISSION:

Pursuant to A.R.S. § 40-360 et seq., after due consideration of all relevant matters, the Arizona Corporation Commission ("Commission") finds and concludes that the Certificate of Environmental Compatibility ("CEC") issued by the Arizona Power Plant and Transmission Line Siting Committee ("Siting Committee") is hereby approved as granted by this Order.

The Commission, in reaching its decision, has balanced all relevant matters in the broad public interest, including the need for an adequate, economical, and reliable supply of electric power with the desire to minimize the effect thereof on the environment and ecology of this state, and finds that granting the Project a CEC is in the public interest.

The Commission further finds and concludes that in balancing the broad public interest in this matter:

1. The Project is in the public interest because it aids the state in meeting the need for an adequate, economical, and reliable supply of electric power.

2. In balancing the need for the Project with its effect on the environment and ecology of the state, the conditions placed on the CEC effectively minimize its impact on the environment and ecology of the state.

3. The conditions placed on the CEC resolve matters concerning the need for the Project and its impact on the environment and ecology of the state raised during the course of proceedings and, as such, serve as the findings on the matters raised.

4. In light of these conditions, the balancing in the broad public interest results in favor of granting the CEC.

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THE CEC ISSUED BY THE SITING COMMITTEE IS INCORPORATED HEREIN AND IS APPROVED BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN O'CONNOR

COMMISSIONER MARQUEZ PETERSON

COMMISSIONER TOVAR

COMMISSIONER THOMPSON

COMMISSIONER MYERS

IN WITNESS WHEREOF, I, DOUGLAS R. CLARK, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 13th day of September, 2024.

DOUGLAS R. CLARK
Executive Director

DISSENT: _____

DISSENT: _____

BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION OF TUCSON ELECTRIC POWER COMPANY, IN CONFORMANCE WITH THE REQUIREMENTS OF A.R.S. § 40-360, ET SEQ., FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AUTHORIZING THE MIDTOWN RELIABILITY PROJECT, WHICH INCLUDES THE CONSTRUCTION OF A NEW 138 KV TRANSMISSION LINE ORIGINATING AT THE EXISTING DEMOSS-PETRIE SUBSTATION (SECTION 35, TOWNSHIP 13 SOUTH, RANGE 13 EAST), WITH AN INTERCONNECTION AT THE PLANNED VINE SUBSTATION (SECTION 06, TOWNSHIP 14 SOUTH, RANGE 14 EAST), AND TERMINATING AT THE EXISTING KINO SUBSTATION (SECTION 30, TOWNSHIP 14 SOUTH, RANGE 14 EAST), EACH LOCATED WITHIN THE CITY OF TUCSON, PIMA COUNTY, ARIZONA.	Docket No. L-00000C-24-0118-232 Case No. 232 **CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY**

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A. INTRODUCTION

Pursuant to notice given as provided by law, the Arizona Power Plant and Transmission Line Siting Committee ("Committee") held public hearings in Tucson, Arizona, on July 8, 2024, through July 19, 2024, in conformance with the requirements of Arizona Revised Statutes ("A.R.S.") § 40-360 *et seq.* for the purpose of receiving evidence and deliberating on the May 24, 2024 Application of Tucson Electric Power Company ("TEP" or "Applicant") for a Certificate of Environmental Compatibility ("Certificate") authorizing construction of a 138 kilovolt ("kV") transmission line in Tucson, Arizona in Pima County (the "Midtown Reliability Project" or "Project").

The following members and designees of members of the Committee were

present at one or more of the hearing days for the evidentiary presentations, public comment and/or the deliberations:

Adam Stafford	Chairman, Designee for Arizona Attorney General Kris Mayes
Gabby Mercer	Designee of the Chairman, Arizona Corporation Commission ("Commission")
Leonard Drago	Designee for Director, Arizona Department of Environmental Quality
David French[1]	Designee for Director, Arizona Department of Water Resources
Nicole Hill	Designee for Director, Governor's Energy Office
Scott Somers	Appointed Member, representing cities and towns
David Kryder	Appointed Member, representing agricultural interests
Margaret "Toby" Little	Appointed Member, representing the general public
Jon Gold	Appointed Member, representing the general public
David Richins	Appointed Member, representing the general public

The Applicant was represented by Meghan H. Grabel and Elias J. Ancharski of Osborn Maledon, P.A. and in-house counsel for TEP, Megan C. Hill. The following parties were granted intervention pursuant to A.R.S. § 40-360.05: Banner—University Medical Center Tucson Campus, LLC and Banner Health represented by Michelle De Blasi of the Law Office of Michelle De Blasi; City of Tucson represented by Roi I. Lusk and Jennifer J. Stash; Pima County represented by Bobby Yu; and Underground Arizona represented by Daniel Dempsey.

At the conclusion of the hearing, the Committee, after considering the (i) Application, (ii) evidence, testimony, and exhibits presented by the parties, and (iii) comments of the public, and being advised of the legal requirements of A.R.S. §§ 40-360 through 40-360.13, upon motion duly made and seconded, voted 9 to 0 in

[1] Member French was excused from the second week of the hearing and did not participate in the vote.

favor of granting Applicant, its successors and assigns, this Certificate for the construction of the Project.

B. Overview Project Description

The Project will involve the construction of the new DeMoss Petrie-to-Vine-to-Kino 138 kV transmission line approximately 8.5 miles in length mounted on steel monopole structures. The Project will loop the existing TEP DeMoss Petrie ("DMP") 138 kV Substation to the existing TEP Kino 138 kV Substation with a connection at the planned Vine 138 kV Substation. TEP's preferred route is a combination of Alternative Routes B and 4.

DeMoss Petrie-to-Vine Alternatives

Alternative Route B (Preferred Route) – Preferred Route B leaves the existing DMP Substation to the southeast for a distance of 0.3 miles, turning east for approximately 2 miles on West Grant Road, which turns into East Grant Road at North Stone Avenue. Route B turns south on North Park Avenue for approximately 0.6 miles, then east onto East Adams Street for approximately 0.4 miles, then north on North Vine Avenue for approximately 0.16 miles, terminating at the planned Vine Substation. Alternative Route B is approximately 3.5 miles in length.

Alternative Route D – Alternative Route D leaves the existing DMP Substation to the southeast for a distance of 0.3 miles, turning east on West Grant Road for approximately 2.75 miles, which turns into East Grant Road at North Stone Avenue. Alternative Route D continues east along East Grant Road to North Campbell Avenue, where it turns south to an alignment centered between East Lester Street and North Ring Road for approximately 0.4 miles, turning west for approximately 0.35 miles, where it terminates at the planned Vine Substation. Alternative Route D is approximately 3.8 miles in length.

Vine-to-Kino Alternatives

Alternative Route 4 (Preferred Route) – Preferred Route 4 leaves the planned Vine Substation to the south on North Vine Avenue for a distance of 0.16 miles, turns west on East Adams Street for approximately 0.4 miles, and south onto North Park Avenue for approximately 0.3 miles. At East Speedway Boulevard the route turns west for approximately 0.15 miles, then south on North Euclid Avenue for approximately 1.1 miles, continuing to East 12th Street where it turns west for approximately 0.05 miles and then south for approximately 0.11 miles to span East Aviation Parkway and the Union Pacific Railroad. At South Toole Avenue Route 4 turns south for approximately 0.55 miles, following South Toole Avenue until it turns into South Euclid Avenue at East 16th Street. At East 19th Street the route jogs east for approximately 0.03 miles to then turn south for approximately 1.3 miles to continue on South Euclid Avenue. Route 4 turns east onto East 36th Street for approximately 0.78 miles, which it follows to terminate at the existing Kino Substation. Alternative Route 4 is approximately 5.0 miles in length.

Alternative Route 1 – Alternative Route 1 leaves the planned Vine Substation to the east on an alignment centered between East Lester Street and North Ring Road to North Campbell Avenue for a distance of 0.33 miles. At North Campbell Avenue the route turns south, continuing onto South Campbell Avenue at East Broadway Boulevard for approximately 2.8 miles. Route 1 crosses East Aviation Parkway and the Union Pacific Railroad, and continues on South Campbell Avenue where it intersects with East 22nd Street. At the intersection with East Fairland Stravenue, the route turns southwest onto East Willis Way for approximately 0.1 miles, then southeast on South Cherrybell

Stravenue for approximately 0.1 miles, and southwest onto East Silverlake Road for approximately 0.2 miles. Just east of South Warren Avenue, the route turns south onto an alley for approximately 0.03 miles, and then east for approximately 0.04 miles to the intersection of East Barleycorn Lane and South Martin Avenue, where it turns south onto South Martin Avenue, which it follows for approximately 0.5 miles to the intersection with East 36th Street. Route 1 turns west onto East 36th Street for approximately 0.05 miles, and then terminates at the existing Kino Substation.

Alternative Route 1.2 – Alternative Route 1.2 leaves the planned Vine Substation to the south along Vine Road to Mabel Street for a distanced of 0.2 miles. At Mabel Street the route turns east for 0.1 miles to Cherry Avenue. Route 1.2 turns south for a distance of 0.2 miles to Speedway Boulevard. At Speedway Boulevard the route turns east to Campbell Avenue for a distance of 0.25 miles then south on Campbell Avenue continuing onto South Campbell Avenue at East Broadway Boulevard for approximately 1.9 miles. Route 1.2 crosses East Aviation Parkway and the Union Pacific Railroad, and continues on South Campbell Avenue where it intersects with East 22nd Street. At the intersection with East Fairland Stravenue, the route turns southwest onto East Willis Way for approximately 0.1 miles, then southeast on South Cherrybell Stravenue for approximately 0.1 miles, and southwest onto East Silverlake Road for approximately 0.2 miles. Just east of South Warren Avenue, the route turns south onto an alley for approximately 0.03 miles, and then east for approximately 0.04 miles to the intersection of East Barleycorn Lane and South Martin Avenue, where it turns south onto South Martin Avenue, which it follows for approximately 0.5 miles to the intersection with East 36th Street. Route 1.2 turns west onto East 36th Street for approximately 0.05 miles, and then terminates at the existing Kino Substation.

The Committee approves the preferred route, B4, and alternative routes D, 1, and 1.2 in their entirety, subject to the Findings of Fact and Conclusions of Law contained herein. A map of the Project, including all of the preferred and alternative routes proposed by the Applicant, is included as **Exhibit A**. Maps of the final approved routes and their respective corridor widths are attached as **Exhibit B**.

CONDITIONS

This Certificate is granted upon the following conditions:

1. This authorization to construct the Project shall expire ten (10) years from the date this Certificate is approved by the Commission, with or without modification ("Time Period"). Construction of the Project shall be complete, defined as the Project being in-service, within this Time Period. However, prior to the expiration of the Time Period, the Applicant may request that the Commission extend the Time Period.

2. In the event that the Project requires an extension of the term(s) of this Certificate prior to completion of construction, the Applicant shall file such time extension request at least one hundred and eighty (180) days prior to the expiration of the Certificate. The Applicant shall use reasonable means to promptly notify the City of Tucson, the City of South Tucson, Pima County, Arizona Department of Transportation ("ADOT"), Arizona State Land Department ("ASLD"), and all landowners and residents within a one (1) mile radius of the centerline of the Project, all persons who made public comment at this proceeding who provided a mailing or email address, and all parties to this proceeding. The notification provided will include the request and the date, time, and place of the hearing or open meetings during which the Commission will consider the request for extension. Notification shall be no more than three (3) business days after the Applicant is made aware of the hearing date or the open meeting date.

3. Subject to this Committee's findings as set forth in the Findings of Fact and Conclusions of Law, during the development, construction, operation, maintenance and reclamation of the Project, the Applicant shall comply with all existing applicable air and water pollution control standards and regulations, and with all existing applicable statutes, ordinances, master plans and regulations of any governmental entity having jurisdiction including, but not limited to, the United States of America, the State of Arizona, Pima County, the City of Tucson, the City of South Tucson, and their agencies and subdivisions, including but not limited to the following:

(a) All applicable land use regulations;

(b) All applicable zoning stipulations and conditions including, but not limited to, landscaping and dust control requirements;

(c) All applicable water use, discharge and/or disposal requirements of the Arizona Department of Water Resources and the Arizona Department of Environmental Quality;

(d) All applicable noise control standards; and

(e) All applicable regulations governing storage and handling of hazardous chemicals and petroleum products.

4. Subject to this Committee's findings as set forth in the Findings of Fact and Conclusions of Law, the Applicant shall obtain all approvals and permits necessary to construct, operate and maintain the Project required by any governmental entity having jurisdiction including, but not limited to, the United States of America, the State of Arizona, Pima County, the City of Tucson, the City of South Tucson, and their agencies and subdivisions.

5. The Applicant shall comply with the Arizona Game and Fish Department ("AGFD") guidelines for handling protected animal species, should any be encountered during construction and operation of the Project, and shall consult

with AGFD or U.S. Fish and Wildlife Service, as appropriate, on other issues concerning wildlife.

6. The Applicant shall design the Project's facilities to incorporate reasonable measures to minimize electrocution of and impacts to avian species in accordance with the Applicant's avian protection program. Such measures will be accomplished through incorporation of Avian Power Line Interaction Committee guidelines set forth in the current versions of *Suggested Practices for Avian Protection on Power Lines* and *Reducing Avian Collisions with Power Lines manuals*.

7. The Applicant shall consult the State Historic Preservation Office ("SHPO") pursuant to A.R.S. § 41-861 through 41-864, the State Historic Preservation Act. Construction for the Project shall not occur without SHPO concurrence. Any project involving federal land is a federal undertaking and requires SHPO concurrence on the adequacy of the survey and area of potential effects. The Applicant shall coordinate with SHPO regarding the status of Section 106 consultation.

8. If any archaeological, paleontological, or historical site or a significant cultural object is discovered on private, state, county, or municipal land during the construction or operation of the Project, the Applicant or its representative in charge shall promptly report the discovery to the Director of the Arizona State Museum ("ASM"), and in consultation with the Director, shall immediately take all reasonable steps to secure and maintain the preservation of the discovery as required by A.R.S. § 41-844 or A.R.S. § 41-865, as appropriate.

9. The Applicant shall comply with the notice and salvage requirements of the Arizona Native Plant Law (A.R.S. § 3-901 *et seq.*) and shall, to the extent feasible, minimize the destruction of native plants during the construction and operation of the Project.

10. The Applicant shall make every reasonable effort to promptly investigate, identify, and correct, on a case-specific basis, all complaints of interference with radio or television signals from operation of the Project addressed in this Certificate and where such interference is caused by the Project take reasonable measures to mitigate such interference. The Applicant shall maintain written records for a period of five (5) years of all complaints of radio or television interference attributable to operations, together with the corrective action taken in response to each complaint. All complaints shall be recorded and shall include notation on the corrective action taken. Complaints not leading to a specific action or for which there was no resolution shall be noted and explained. Upon request, the written records shall be provided to the Staff of the Commission. The Applicant shall respond to complaints and implement appropriate mitigation measures. In addition, the Project shall be evaluated on a regular basis so that damaged insulators or other line materials that could cause interference are repaired or replaced in a timely manner.

11. If human remains and/or funerary objects are encountered during the course of any ground-disturbing activities related to the construction or maintenance of the Project, the Applicant shall cease work on the affected area of the Project and notify the Director of the ASM as required by A.R.S. § 41-865 for private land, or as required by A.R.S. § 41-844 for state, county, or municipal lands.

12. One hundred eighty (180) days prior to construction of the Project, the Applicant shall post signs in or near public rights-of-way, to the extent authorized by law, reasonably adjacent to the Project giving notice of the Project. Such signage shall be no smaller than a roadway sign. The signs shall:

(a) Advise the area is a future site of the Project;

(b) Provide a phone number and website for public information regarding the Project; and

(c) refer the public to the Docket.

Such signs shall be inspected at least once annually and, if necessary, be repaired or replaced, and removed at the completion of construction.

The Applicant shall make every reasonable effort to communicate the decision either approving or disapproving the Certificate in digital media.

The Applicant shall also communicate through its Project website the status and location of the route ultimately constructed and the removal and undergrounding of the existing utility infrastructure along that route.

13. At least ninety (90) days before construction commences on the Project, the Applicant shall provide the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, Pascua Yaqui Tribe, and known builders and developers who are building upon or developing land within one (1) mile of the centerline of the Project with a written description, including the approximate height and width measurements of all structure types, of the Project. The written description shall identify the location of the Project and contain a pictorial depiction of the facilities being constructed. The Applicant shall also encourage the developers and builders to include this information in their disclosure statements. Upon approval of this Certificate by the Commission, the Applicant may commence construction of the Project.

14. The Applicant shall use non-specular conductor and non-reflective surfaces for the transmission line structures on the Project.

15. The Applicant shall remove all 46 kV substations and lines, including wires, poles, and other equipment, that are no longer required as a result of the upgraded 138 kV substation and transmission line. Removals are estimated to begin in 2027 and complete by 2037, based on an estimated in-service date of the Vine Substation and associated 138 kV transmission line in 2027.

16. The Applicant shall move all existing parallel overhead lower voltage distribution lines underground, currently located within the same road right-of-way as

the Project as constructed. The Applicant shall notify all joint use attachers within six (6) months of Certificate approval so they can begin design to relocate their facilities.

17. The Applicant shall collaborate with each neighborhood and/or neighborhood association that parallels the route in which the Project is ultimately constructed on residential roads to determine the preferred transmission pole finish for that neighborhood. Pole finishes may include weathering steel, galvanized, or painted in Mojave Sage. In the event the neighborhood cannot decide on a preference following a good faith effort, the Applicant will use the preferred weathering steel pole finish.

18. The Applicant will work with the City of Tucson, as part of the Project, to discuss the potential to incorporate any right-of-way enhancements into the approved route including, but not limited to, multi-use pathways, chicanes, artwork, and landscaping;

19. The Applicant shall be responsible for arranging that all field personnel involved in the Project receive training as to proper ingress, egress, and on-site working protocol for environmentally sensitive areas and activities. Contractors employing such field personnel shall maintain records documenting that the personnel have received such training.

20. The Applicant shall follow the most current Western Electricity Coordinating Council ("WECC") and North American Electric Reliability Corporation ("NERC") planning standards, as approved by the Federal Energy Regulatory Commission ("FERC"), National Electrical Safety Code ("NESC") standards, and Federal Aviation Administration ("FAA") regulations.

21. The Applicant shall participate in good faith in state and regional transmission study forums to coordinate transmission expansion plans related to the Project and to resolve transmission constraints in a timely manner.

22. When Project facilities are located parallel to and within one hundred (100) feet of any existing natural gas or hazardous pipeline, the Applicant shall:

(a) Ensure grounding and cathodic protection studies are performed to show that the Project's location parallel to and within one hundred (100) feet of such pipeline results in no material adverse impacts to the pipeline or to public safety when both the pipeline and the Project are in operation. The Applicant shall take appropriate steps to ensure that any material adverse impacts are mitigated. The Applicant shall provide to Staff of the Commission, and file with Docket Control, a copy of the studies performed and additional mitigation, if any, that was implemented as part of its annual compliance-certification letter; and

(b) Ensure that studies are performed simulating an outage of the Project that may be caused by the collocation of the Project parallel to and within one hundred (100) feet of the existing natural gas or hazardous liquid pipeline. The studies should either: (a) show that such simulated outage does not result in customer outages; or (b) include operating plans to minimize any resulting customer outages. The Applicant shall provide a copy of the study results to Staff of the Commission and file them with Docket Control as part of the Applicant's annual compliance certification letter.

23. The designation of the corridors in this Certificate, as shown in **Exhibit B**, authorizes a right-of-way no greater than 100 feet wide for the transmission line nor does it grant the applicant exclusive rights within the corridors outside of the final designated transmission right-of-way.

24. The Applicant shall submit a compliance certification letter annually, identifying progress made with respect to and current status of each condition

contained in this Certificate. The letter shall be submitted to Commission's Docket Control commencing on December 1, 2025. Attached to each certification letter shall be documentation explaining how compliance with each condition was achieved. Copies of each letter, along with the corresponding documentation, shall be submitted to the Arizona Attorney General's Office. With respect to the Project, the requirement for the compliance letter shall expire on the date the Project is placed into operation. Notification of such filing with Docket Control shall be made to the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, the Pascua Yaqui Tribe, all parties to this Docket, and all parties who made a limited appearance in this Docket.

25. The Applicant shall provide a copy of this Certificate to the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, and the Pascua Yaqui Tribe.

26. Any transfer or assignment of this Certificate shall require the assignee or successor to assume, in writing, all responsibilities of the Applicant listed in this Certificate and its conditions as required by A.R.S. § 40-360.08(A) and R14-3-213(F) of the Arizona Administrative Code.

27. In the event the Applicant, its assignee, or successor, seeks to modify the Certificate's terms at the Commission, it shall provide copies of such request to the City of Tucson, the City of South Tucson, Pima County, ADOT, ASLD, the Pascua Yaqui Tribe, all parties to this Docket, and all parties who made a limited appearance in this Docket.

28. The Certificate Conditions shall be binding on the Applicant, its successors, assignee(s) and transferees, and any affiliates, agents, or lessees of the Applicant who have a contractual relationship with the Applicant concerning the construction, operation, maintenance or reclamation of the Project. The Applicant shall provide in any agreement(s) or lease(s) pertaining to the Project that the contracting parties and/or lessee(s) shall be responsible for compliance with the

Conditions set forth herein, and the Applicant's responsibilities with respect to compliance with such Conditions shall not cease or be abated by reason of the fact that the Applicant is not in control of or responsible for operation and maintenance of the Project facilities.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Certificate incorporates the following Findings of Fact and Conclusions of Law:

1. The Midtown Reliability Project is required to ensure the continued provision of safe and reliable electric service to TEP customers.

2. While no party disputed the need for the Midtown Reliability Project, certain parties asserted that applicable local ordinances and plans required that portions of the routes be constructed below ground.

3. Constructing the Midtown Reliability Project below ground is not needed for safety, reliability, or other utility operational reasons.

4. Evidence in the record indicates that constructing portions of the Project below ground could be more expensive than constructing the route entirely above ground.

5. As part of the Project as conditioned by this Certificate, TEP will relocate existing overhead distribution lines below ground along the selected route. Additionally, the Project will enable the retirement of up to eight existing 46 kV substations and approximately 19 miles of existing 46 kV lines in the next ten years.

6. The evidence indicated that the Applicant needs the Project to be in service by 2027 to maintain safe and reliable service in order to avoid additional investment in the existing 46 kV system serving the area.

7. The Applicant determined the need for and proposed location of the Vine substation through the use of a saturation study. The actual site was selected based on available land and its immediate adjacent proximity to two (2) existing

substations, one of which is a 46 kV substation that will be retired and removed as part of this Project.

8. In light of the incremental cost of building the Project underground compared to overhead, the Applicant requested a finding from this Committee that any local ordinance or plan that would require underground construction of the Project was "unreasonably restrictive and [that] compliance therewith is not feasible in view of technology available" pursuant to A.R.S. § 40-360.06(D).

9. The City and Underground Arizona disagree that a finding of fact pursuant to A.R.S. § 40-360.06(D) is necessary and believe that it is feasible to construct the Project consistent with local ordinances and plans with the technology available and those local ordinances are not unreasonably restrictive. The Parties have reserved and asserted all rights to judicial relief on this issue.

10. However, given the Commission's Policy Statement found in Decision No. 79140 (October 4, 2023), the Committee finds pursuant to A.R.S. § 40-360.06(D) that any local ordinance or plan that requires TEP to incur an incremental cost to construct the Project below ground "is unreasonably restrictive and compliance therewith is not feasible in view of technology available." This finding is conditioned on the City and TEP not finding a means to, within six (6) months of the date of the Commission's approval of this Certificate, either (a) fund the incremental cost to construct the Project below ground from a source other than through TEP's utility rates or from TEP, its affiliates, subsidiaries, or parent companies absent agreement between the parties; or (b) obtain the City's authorization to construct the Project above ground through the City's special exception or variance process, provided that TEP files a special exception or variance application for the route approved within ten (10) weeks of the Commission's approval of this Certificate.

11. A.R.S. § 40-360.06(D) provides that "[w]hen it becomes apparent to the chairman of the committee or to the hearing officer that an issue exists with respect to

whether such an ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available, the chairman or hearing officer shall promptly serve notice of such fact by certified mail on the chief executive officer of the area of jurisdiction affected and, notwithstanding any provision of this article to the contrary, shall make such area of jurisdiction a party to the proceedings on its request and shall give it an opportunity to respond on such issue." The City of Tucson was provided notice and made a party to the proceedings under this provision and was provided an opportunity to respond.

12. The Project aids TEP and the state in meeting the need for an adequate, economical, and reliable supply of electric power without negatively affecting the southwestern electric grid.

13. When constructed in compliance with the conditions imposed in this Certificate, the Project aids the state, preserving a safe and reliable electric transmission system.

14. During the course of the hearing, the Committee considered evidence on the environmental compatibility of the Project as required by A.R.S. § 40-360 *et seq*. In doing so, the Committee determined that it was in the public interest to adopt Preferred Routes B and 4, and Alternatives D, 1, and 1.2, which are the final approved routes shown in **Exhibit B**.

15. The Project and the conditions placed on the Project in this Certificate effectively minimize the impact of the Project on the environment and ecology of the state.

16. The conditions placed on the Project of this Certificate resolve matters concerning balancing the need for the Project with its impact on the environment and ecology of the state arising during the course of the proceedings, and, as such, serve as finding and conclusions on such matters.

17. The Project is in the public interest because the Project's contribution to meeting the need for an adequate, economical, and reliable supply of electric power outweighs the minimized impact of the Project on the environment and ecology of the state.

18. The Project substation is not jurisdictional because the definition of a "transmission line" under A.R.S. § 40-360(10) only includes "new switchyards to be used therewith," not substations.

DATED this 29th day of July, 2024.

THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

By: _____
Adam Stafford, Chairman

CERTIFICATION OF MAILING

Pursuant to A.A.C. R14-3-204, the **ORIGINAL** of the foregoing and 26 copies were filed this 29th day of July, 2024 with:

Utilities Division – Docket Control
ARIZONA CORPORATION COMMISSION
1200 W. Washington St.
Phoenix, AZ 85007

COPIES of the foregoing mailed this 29th day of July, 2024 to:

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Chief Counsel/Division Director
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lealdiv@azcc.gov
Counsel for Legal Division Staff

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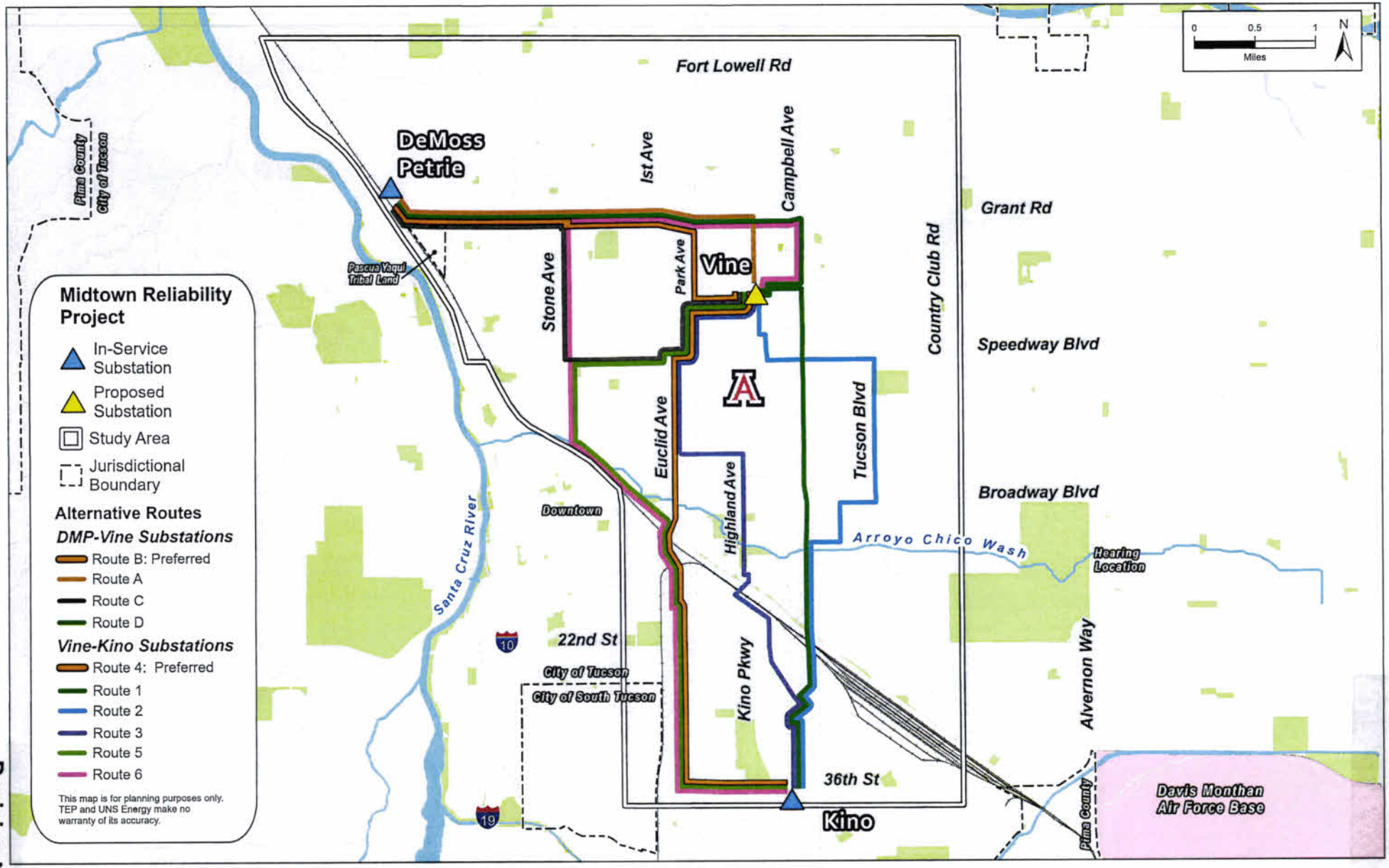
Attorney for Pima County

CEC 232

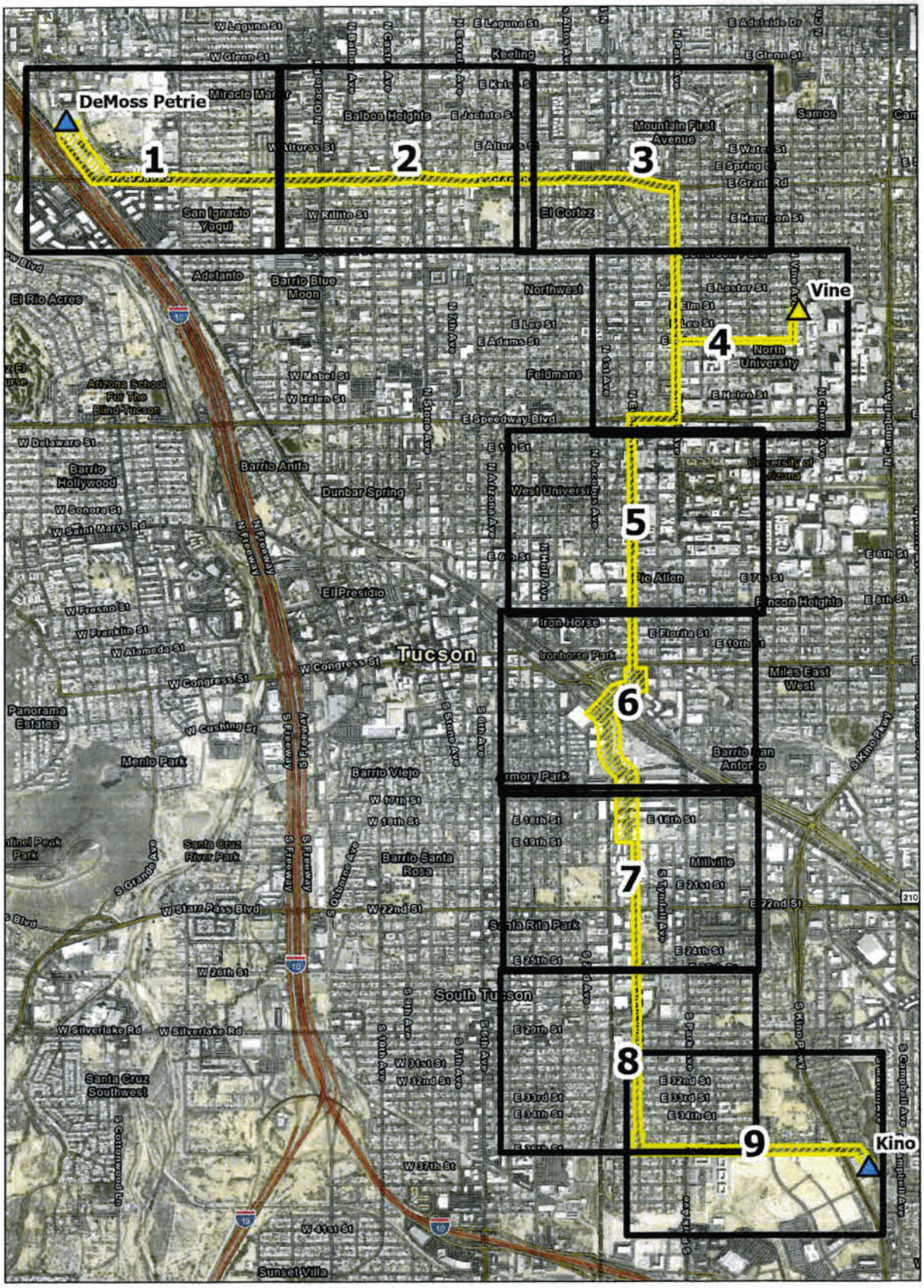
Exhibit A



Decision No. 79550

L-00000C-24-0118-00232

Exhibit B



Midtown Reliability Project

Route Alternative B4 Overview

In-Service 138kV Substation

Proposed 138kV Substation

Proposed Reduced Corridor

Map Index

0 950 1,900

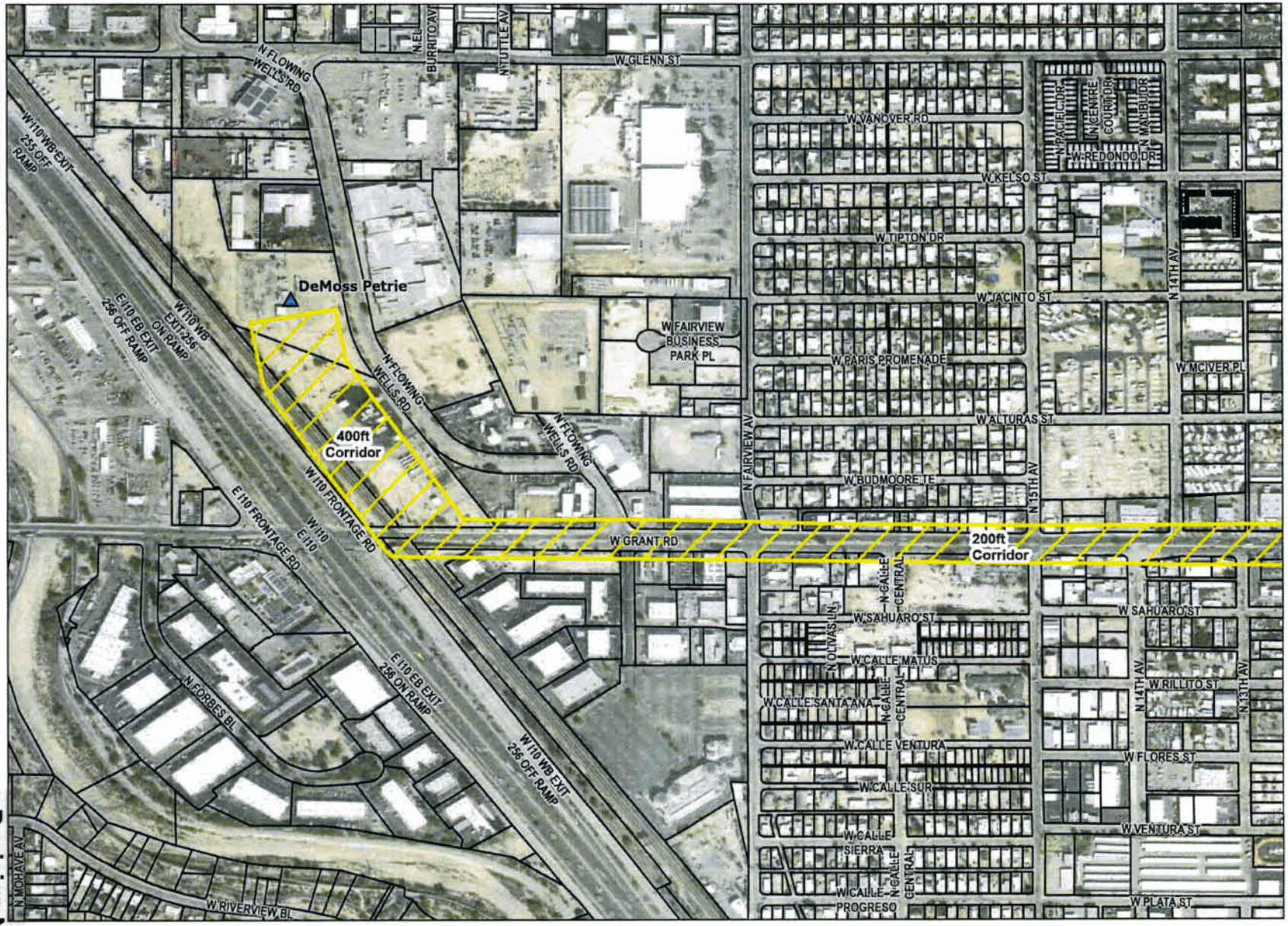
200 Feet = 1 Inch

TEP Tucson Electric Power
Land Resources

Sources: Esri, UNS, TEP, BLM, and Pima County GIS
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery

This map is for planning purposes only. TEP and UNS Energy make no warranty of its accuracy.

7/11/2024 Arizona



TEP
Tucson Electric Power
Land Resources

Midtown Reliability Project

Route Alternative B4

- In-Service 138kV Substation
- Proposed Reduced Corridor
- Pima Parcels

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0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS
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Basemap: Esri World Imagery

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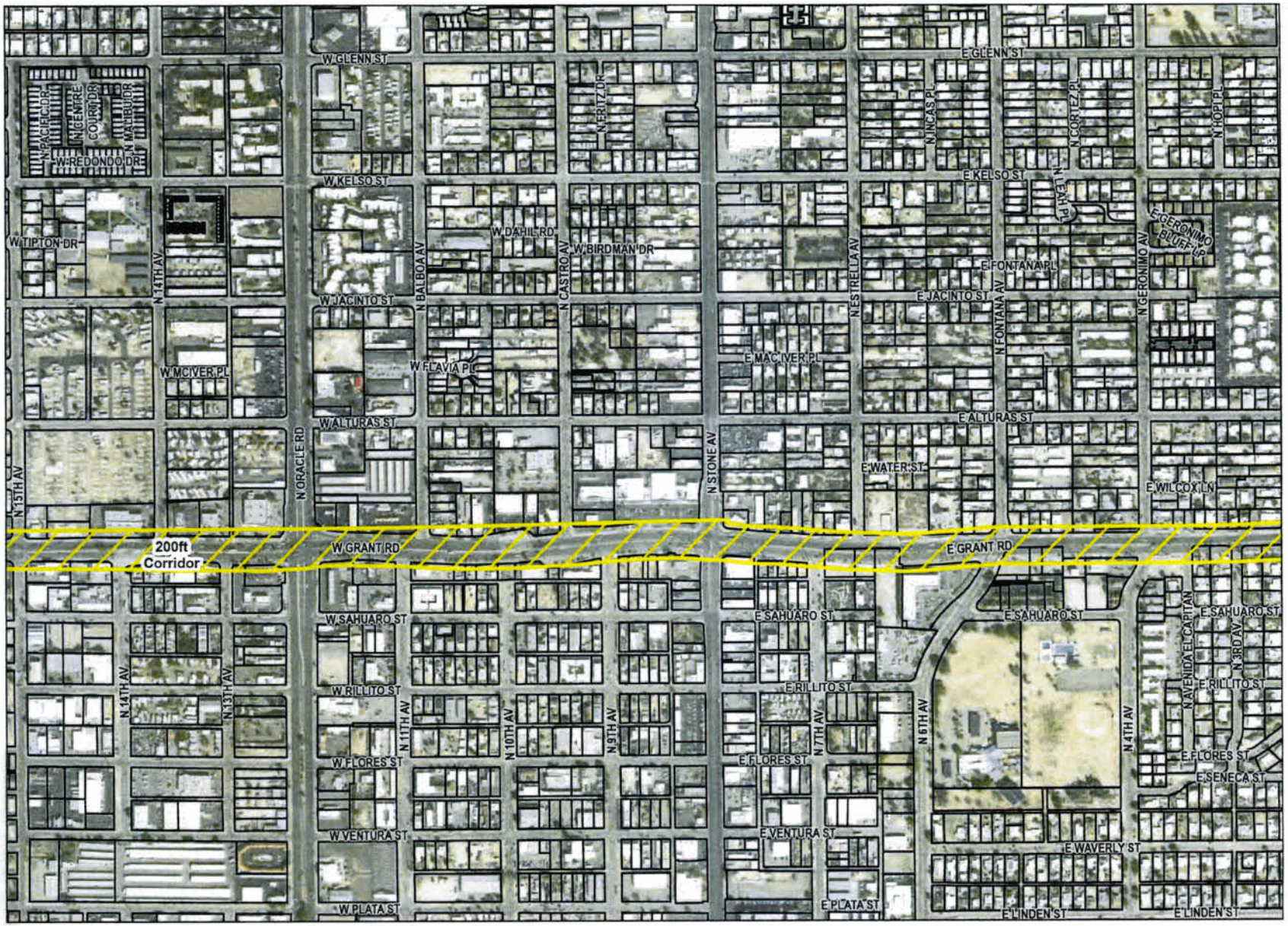
Decision No. 79550



TEP
Tucson Electric Power
Land Resources

Midtown Reliability Project

Route Alternative B4

Proposed Reduced Corridor

Pima Parcels

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0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
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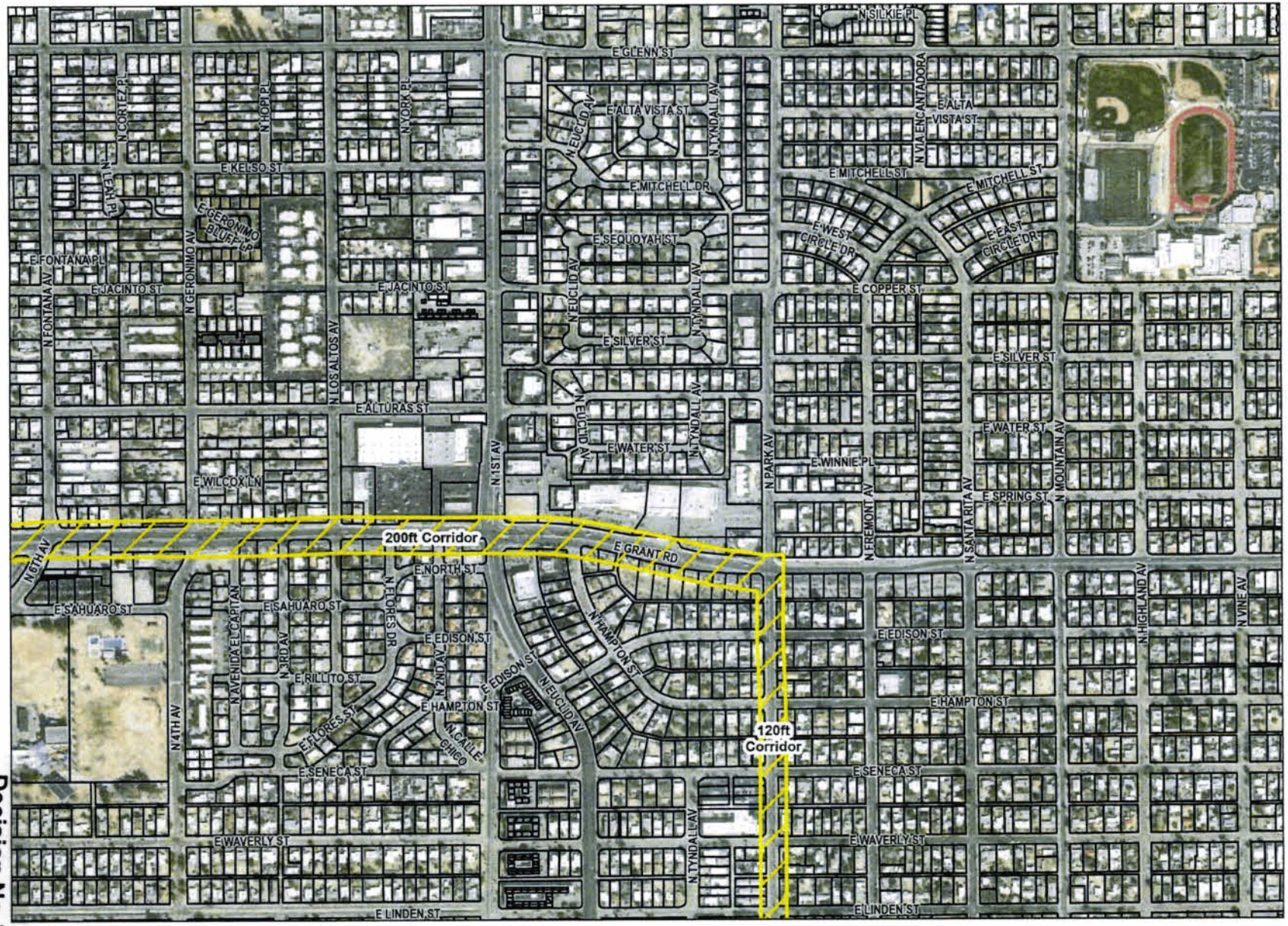

Tucson Electric Power
Land Resources

Midtown Reliability Project

Route Alternative B4

Proposed Reduced Corridor

Pima Parcels

Page 3 of 9

0 250 500
Feet

Sources: Esri, UNS, TEP, BLM, and Pima County GIS.
Projection: NAD 1983 UTM Zone 12N
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TEP
Tucson Electric Power
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Proposed Reduced Corridor
Pima Parcels
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N
0
250
500
Feet
Sources: Esri, UNS, TEP, BLM, and other GIS User Community
Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery
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Vine
100ft Corridor
120ft Corridor
200ft Corridor
N VINE AV
N MOUNTAIN AV
N HIGHLAND AV
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N SANTA RITA AV
N JACOBUS AV
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E LINDEN ST
E LESTER ST
E CHAUNCEY LN
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E LEE ST
E ADAMS ST
E DRACHMAN ST
E MABEL ST
E HELEN ST
E SPEEDWAY BL
N RING RD
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N OLIVE RD
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E 2ND ST

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Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery
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120ft Corridor
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N 6TH AV
N HOPE AV
N HERBERT AV
N BEAN AV
N JACOBUS AV
N ARIZONA AV
E BABCOCK DR
E HARVILL DR
N MOUNTAIN AV
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E JAMES E ROGERS WY
E SOUTH CAMPUS DR
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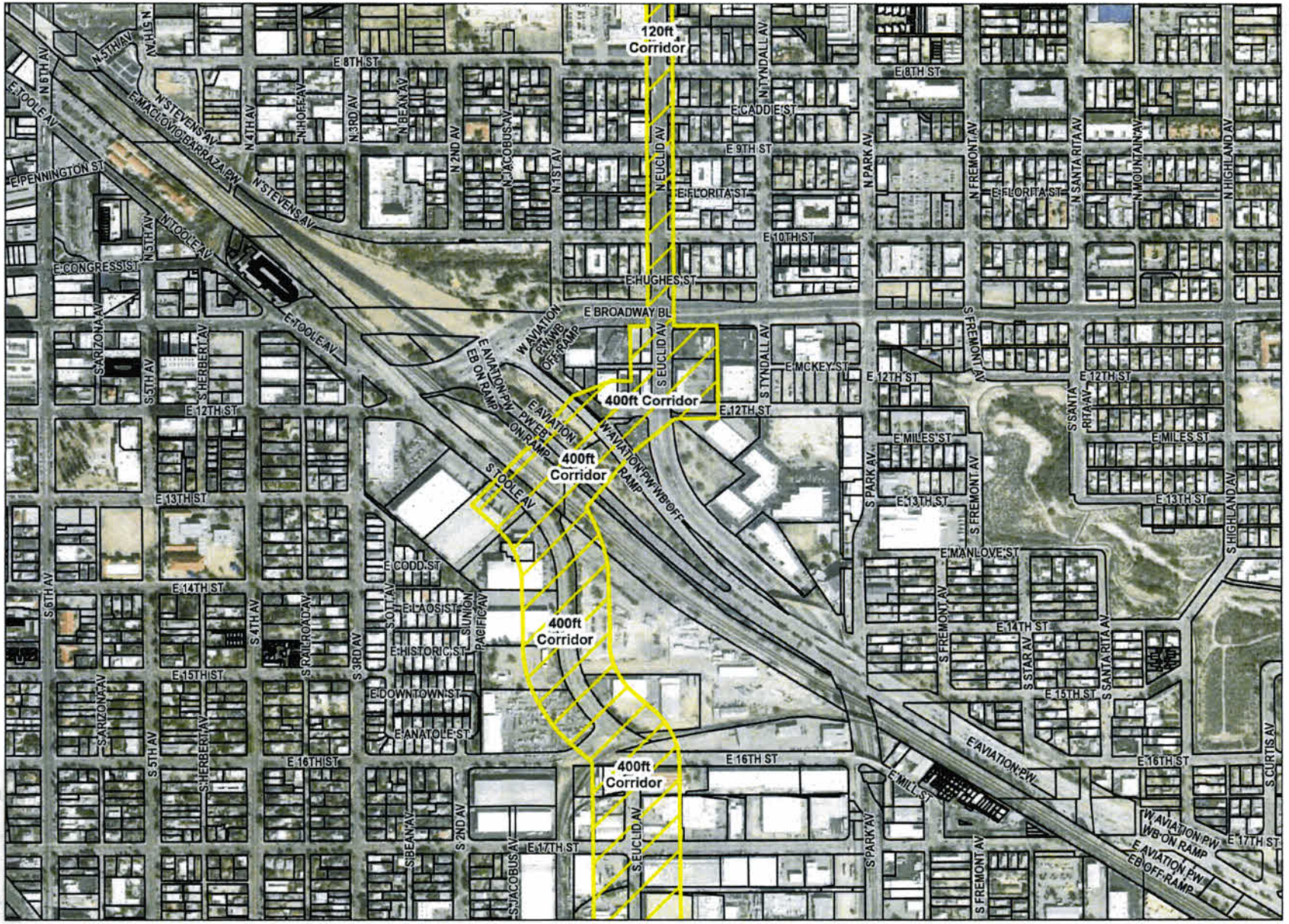

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400ft Corridor
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S HERBERT AV
S RAILROAD AV
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E WAREHOUSE AV
E MILL ST
S STAR AV
S SANTA RITA AV
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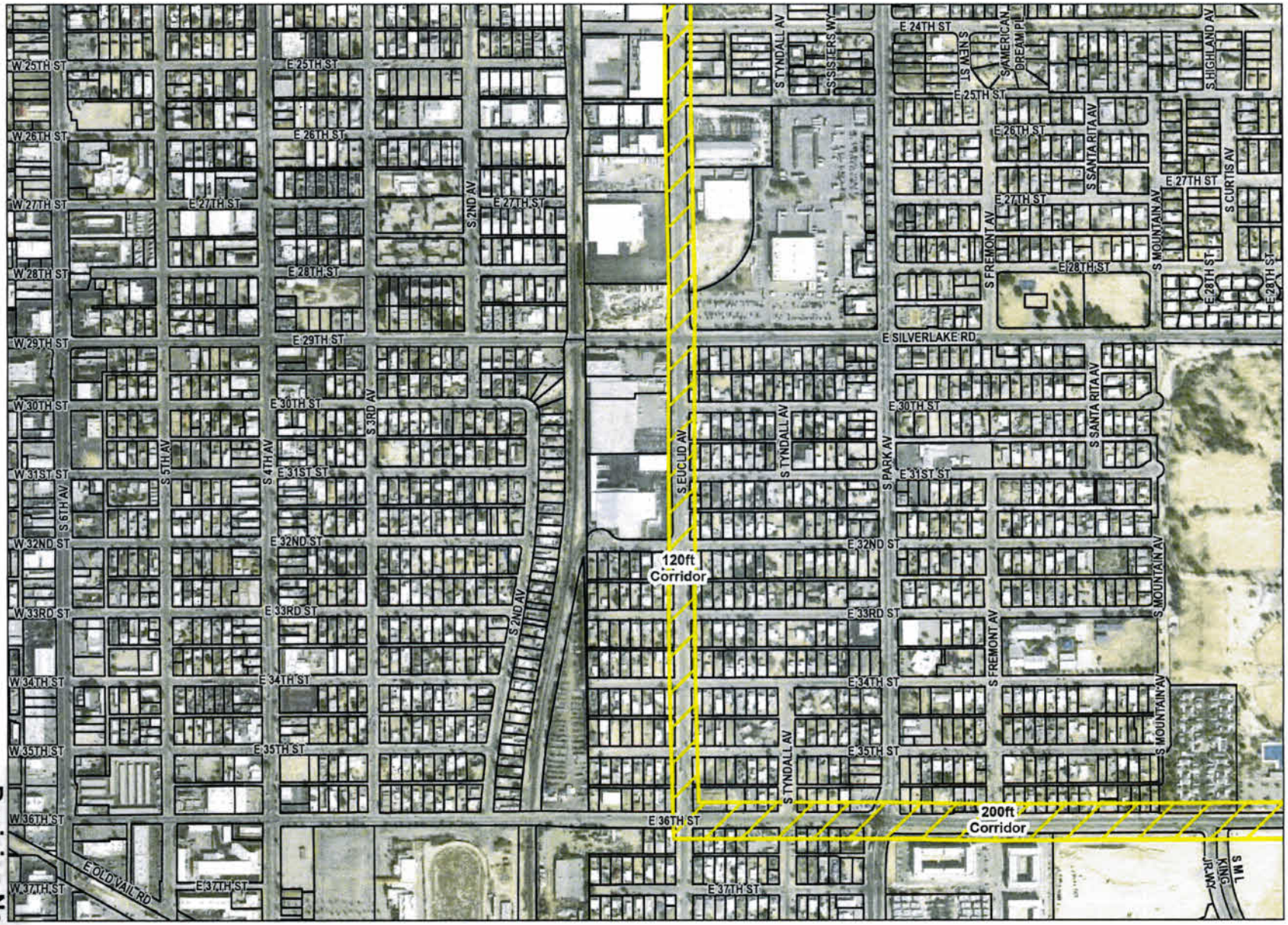
S AMERICAN DREAM PL
S NEW ST



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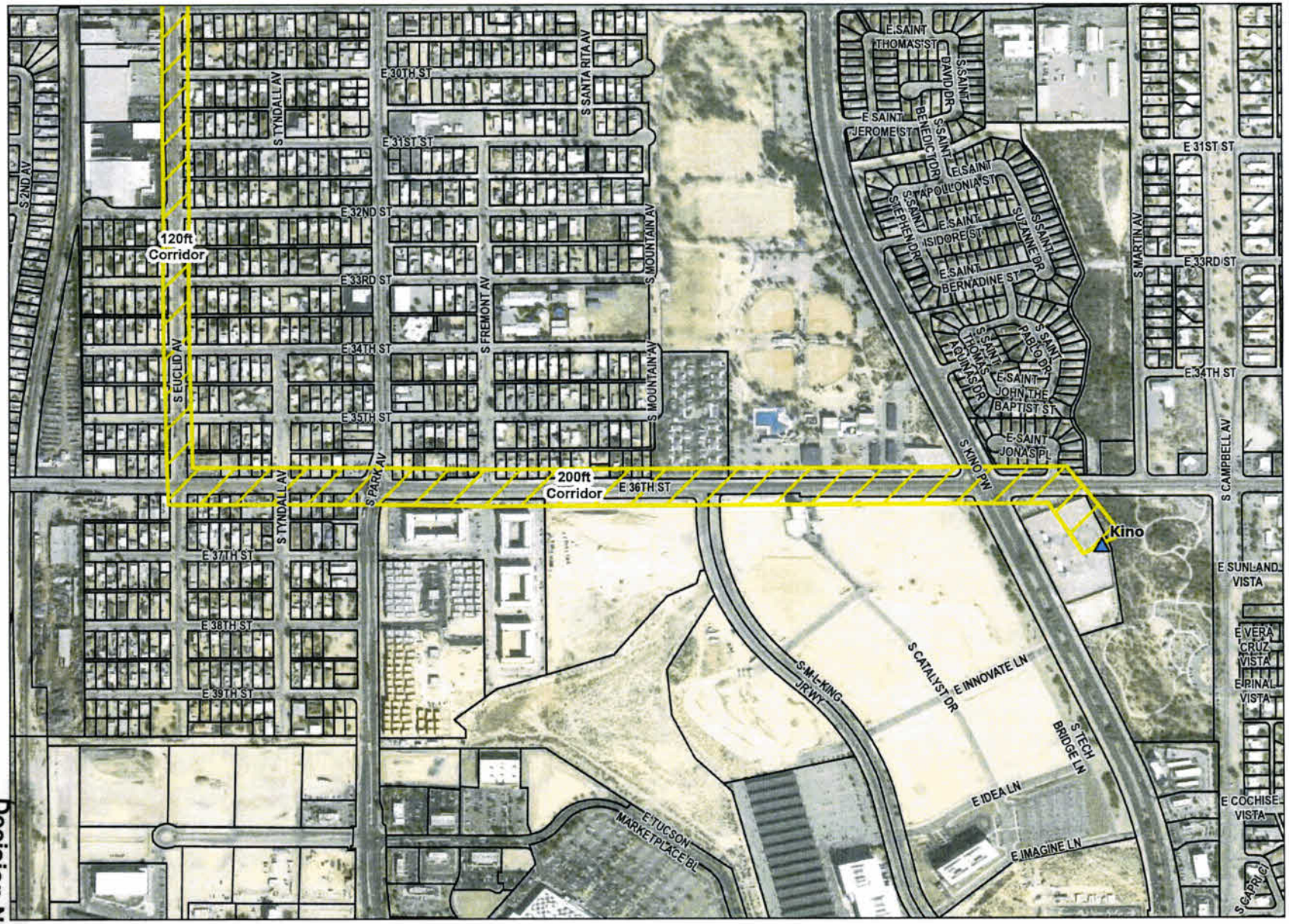

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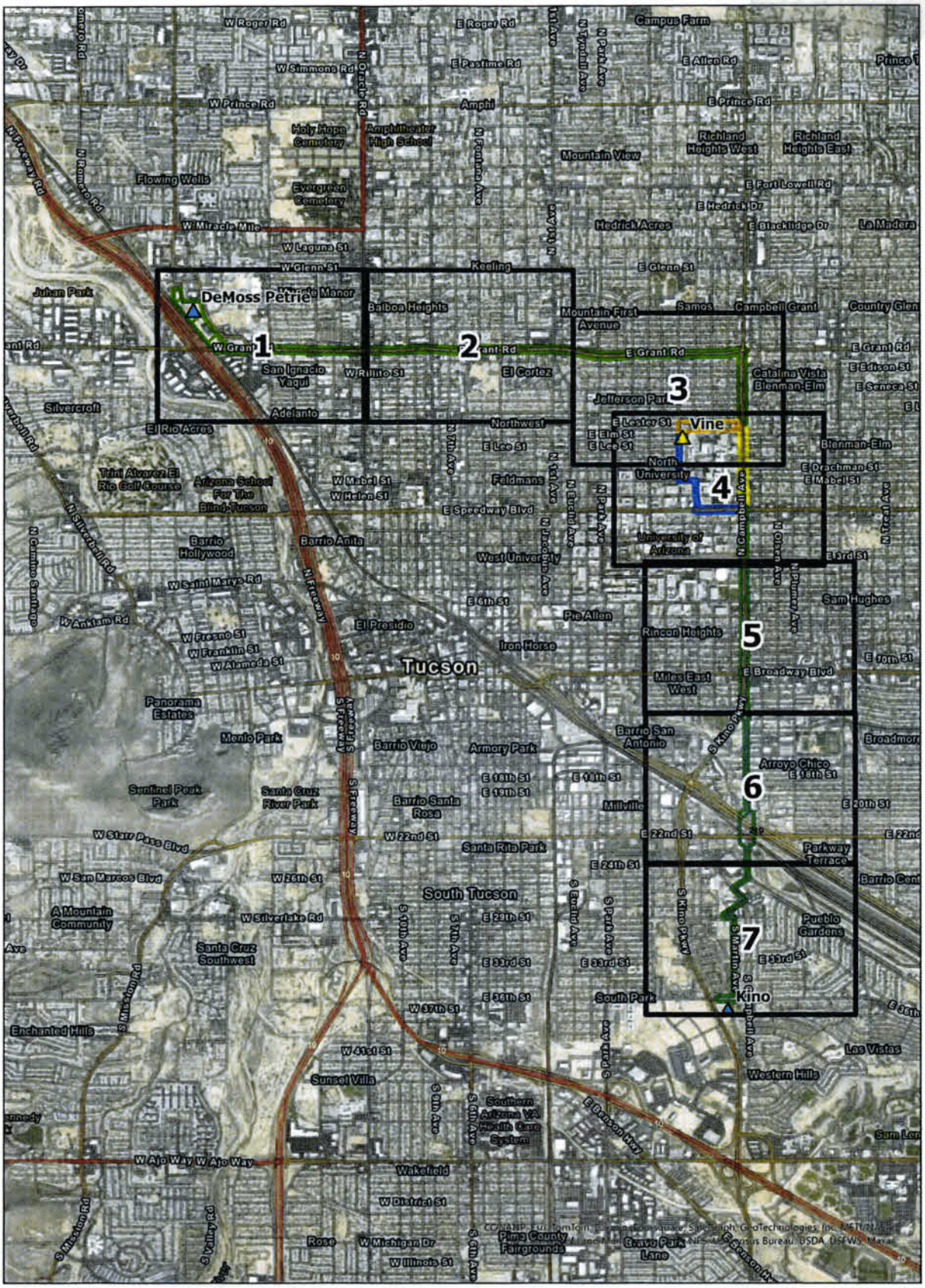

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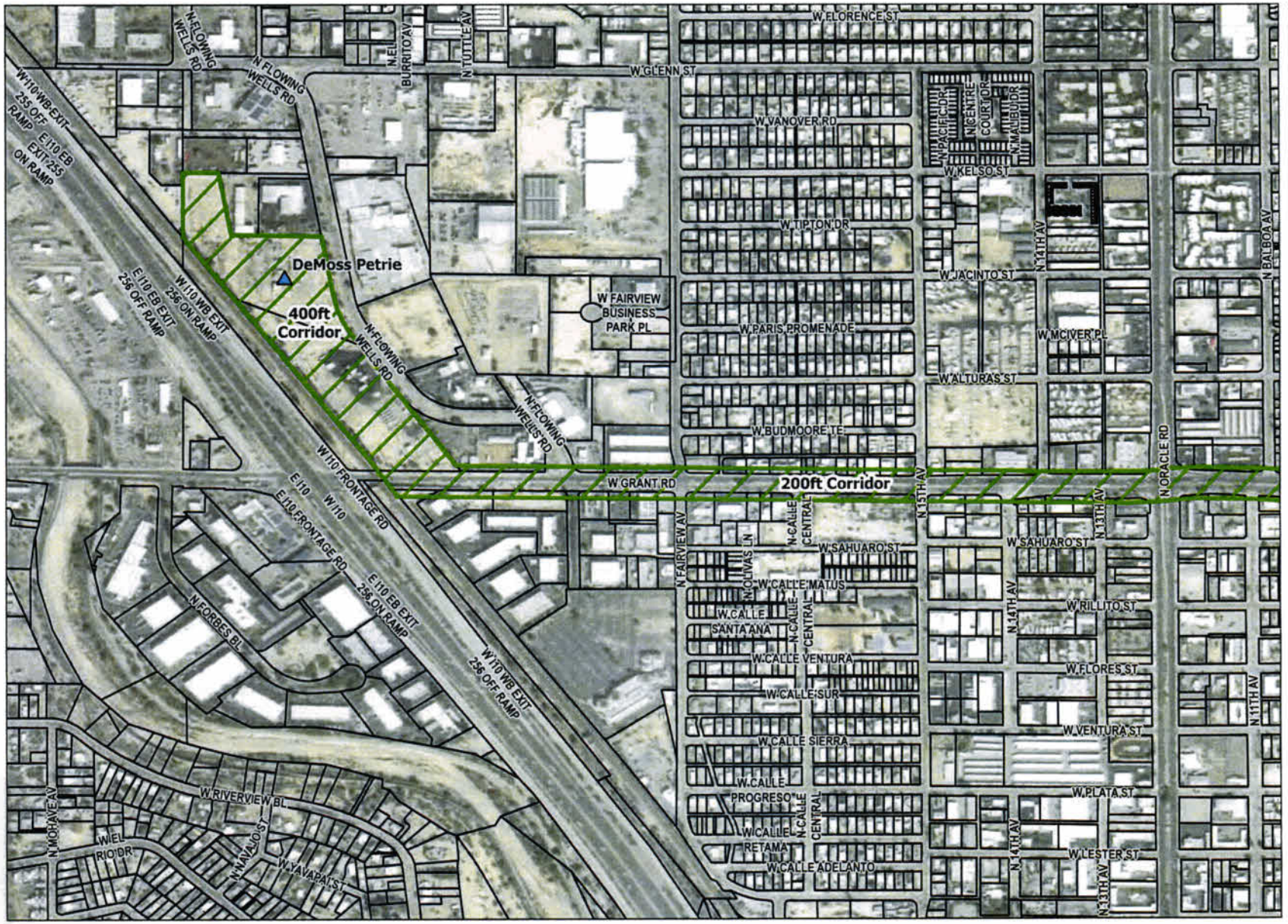

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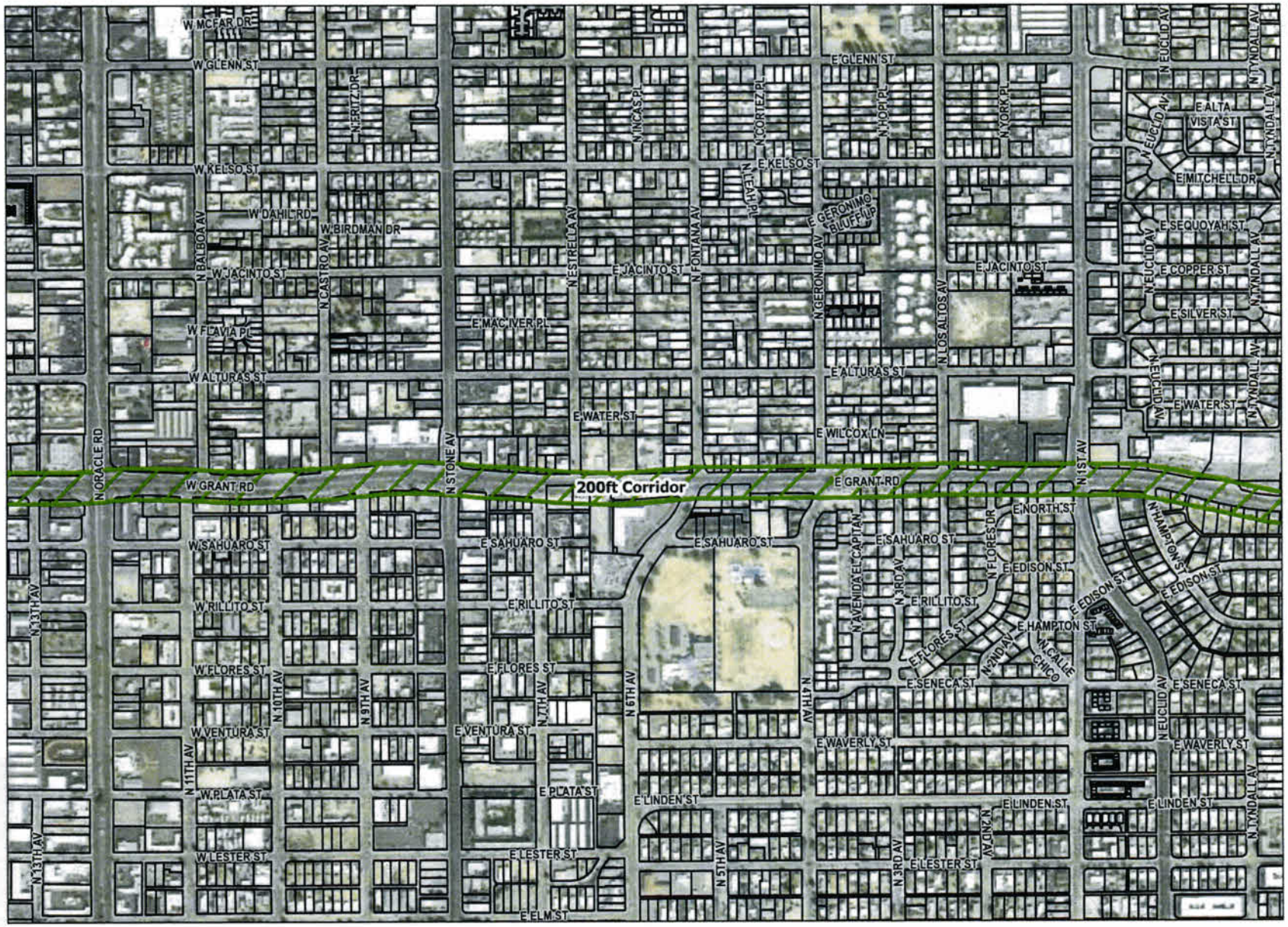

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Projection: NAD 1983 UTM Zone 12N
Basemap: Esri World Imagery
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200ft Corridor
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E ADAMS ST
E DRACHMAN ST
N PLUMER AV
N OLSEN AV
N NORRIS AV
N KRAMER AV
N SIERRA VISTA DR
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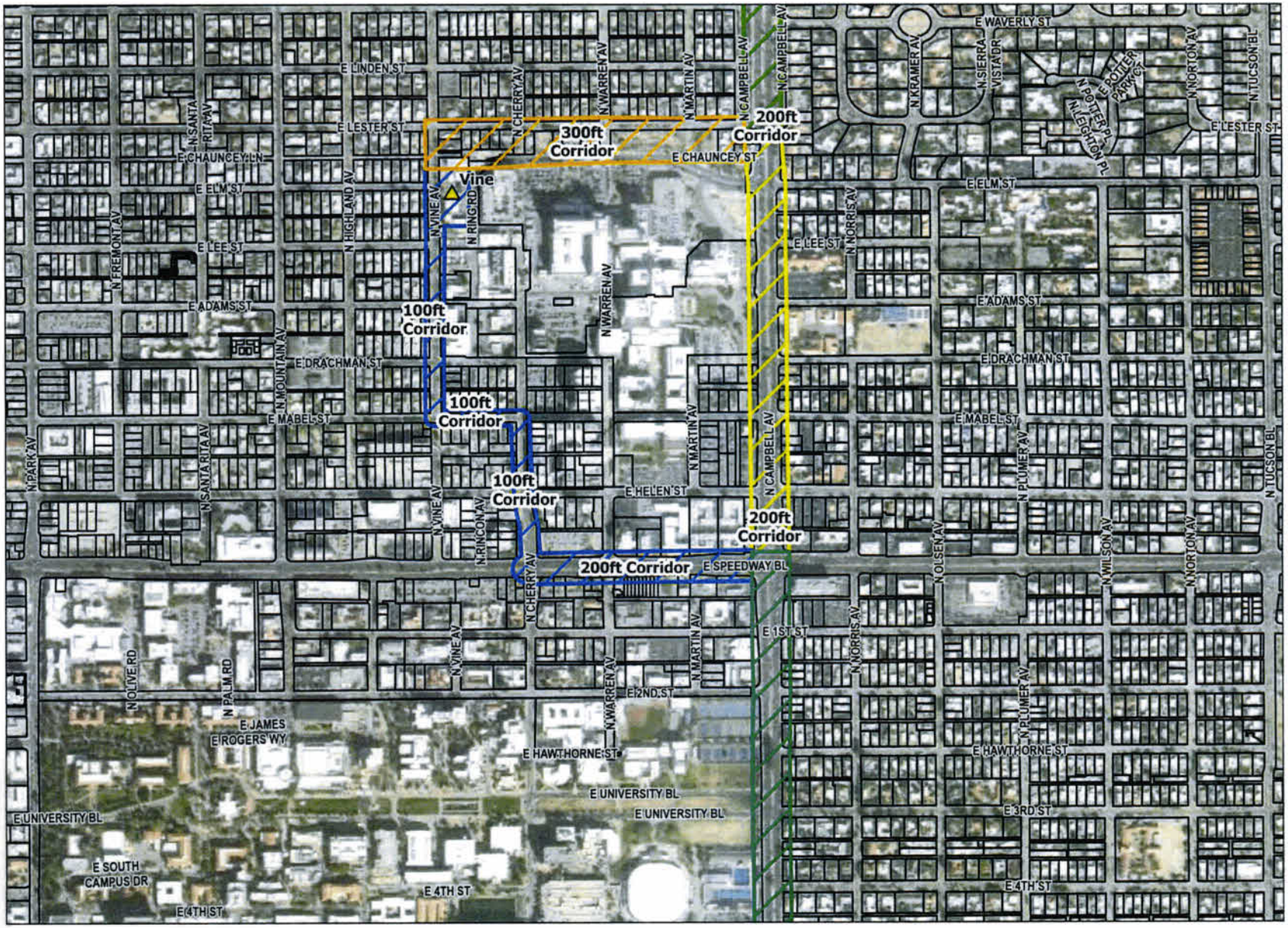

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200ft Corridor
100ft Corridor
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N VINE AV
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E 19TH ST
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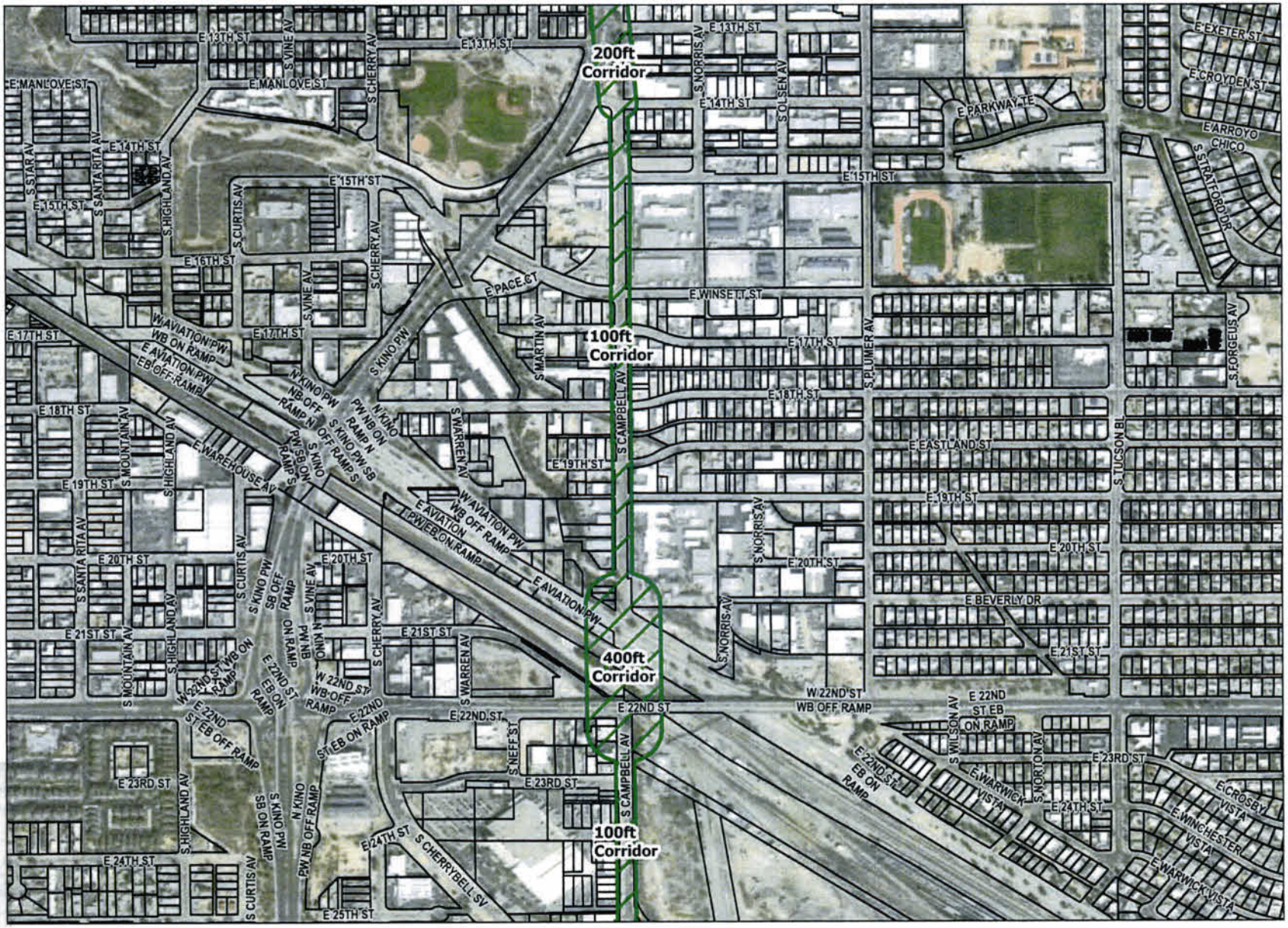

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Alternative Routes D, 1, 1.2

Route 1 and 1.2

Pima Parcels

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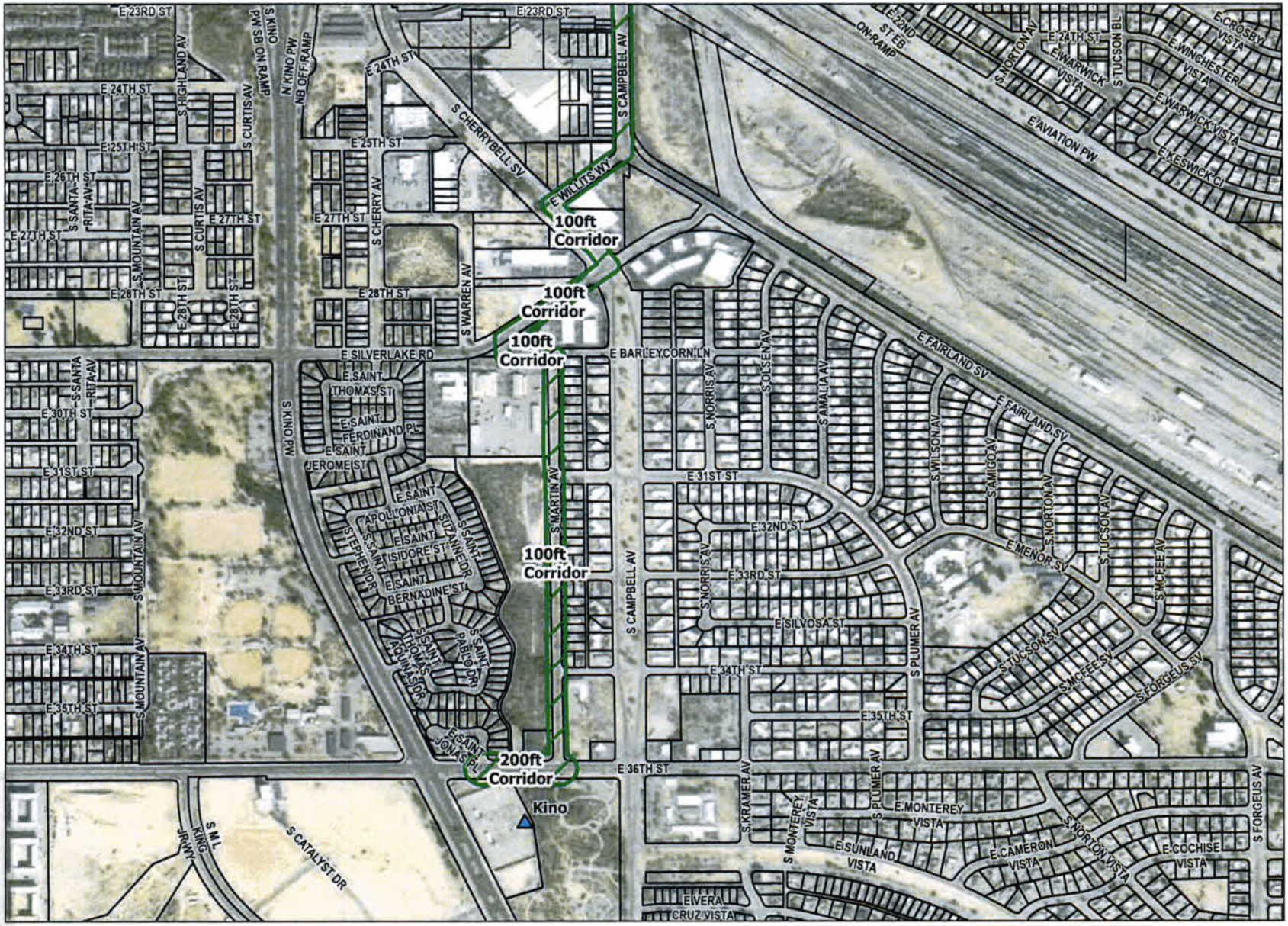

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40-347. Establishment of conversion costs; apportionment of costs; method of payment

A. The order authorizing the establishment of the underground conversion service area shall authorize each public service corporation or public agency whose overhead electric or communication facilities are to be converted to charge the underground conversion costs to each lot or parcel of real property within the underground conversion service area. The underground conversion costs shall be in an amount sufficient to repay the public service corporation or public agency for the following:

1. The remaining undepreciated original costs of the existing overhead electric and communication facilities to be removed as determined in accordance with the uniform system of accounts applicable to the public service corporation or public agency.

2. The actual costs of removing such overhead electric and communication facilities, less the salvage value of the facilities removed.

3. The contribution in aid of construction which the public service corporation or public agency would require under its rules and regulations applicable to underground conversion service areas.

4. If not paid in full as provided in section 40-348, the actual cost of converting to underground the facilities from the public place to the point of delivery on the lot or parcel owned by each owner receiving service, in the case of an electric public service corporation or public agency, or to the connection point within the house or structures, in the case of a communication corporation, less any credit which may be given such owner under the line extension policy of the public service corporation or public agency then in existence.

5. If property belonging to the United States, this state, county, city, school district or any other political subdivision or institution of the state or county is included in the underground conversion service area, and they do not voluntarily assume such costs, the underground conversion cost applicable to such property shall be charged pro rata against the remaining property included within the underground conversion service area.

B. The cost incurred in placing underground the facilities in public places shall be apportioned among the owners of property within the area on the basis of relative size of each parcel by the corporation commission, the board of supervisors or the city or town council. The underground conversion cost, as determined by the method prescribed in subsection A shall not exceed the estimated costs indicated in the joint report prepared by the public service corporation or public agency pursuant to subsection D of section 40-342 and, may be paid in cash by the property owners within sixty days from the date the overhead facilities are removed from public places, or may be paid by a uniform plan applicable to all property owners not paying within the sixty-day period in equal periodic installments over a reasonable period of time, not exceeding fifteen years, as established by the corporation commission, the board of supervisors or the city or town council, together with interest at a rate to be determined by the corporation commission, the board of supervisors or the city or town council but not to exceed eight per cent per annum.

C. If funds become available from other public or private sources to pay all or any part of the underground conversion costs, any such funds shall be applied on a pro rata basis to reduce the underground conversion cost charged against each parcel or lot.

D. Notwithstanding the provisions of subsection B of this section, the public service corporation or public agency serving such area may by agreement with all the owners of the property in an underground conversion service area provide for reimbursement to it of the cost of such conversion on a different basis as to payment or security than that set out by the terms of this article.

40-360.06. Factors to be considered in issuing a certificate of environmental compatibility

A. The committee may approve or deny an application and may impose reasonable conditions on the issuance of a certificate of environmental compatibility and in so doing shall consider the following factors as a basis for its action with respect to the suitability of either plant or transmission line siting plans:

1. Existing plans of this state, local government and private entities for other developments at or in the vicinity of the proposed site.

2. Fish, wildlife and plant life and associated forms of life on which they are dependent.

3. Noise emission levels and interference with communication signals.

4. The proposed availability of the site to the public for recreational purposes, consistent with safety considerations and regulations.

5. Existing scenic areas, historic sites and structures or archaeological sites at or in the vicinity of the proposed site.

6. The total environment of the area.

7. The technical practicability of achieving a proposed objective and the previous experience with equipment and methods available for achieving a proposed objective.

8. The estimated cost of the facilities and site as proposed by the applicant and the estimated cost of the facilities and site as recommended by the committee, recognizing that any significant increase in costs represents a potential increase in the cost of electric energy to the customers or the applicant.

9. Any additional factors that require consideration under applicable federal and state laws pertaining to any such site.

B. The committee shall give special consideration to the protection of areas unique because of biological wealth or because they are habitats for rare and endangered species.

C. Notwithstanding any other provision of this article, the committee shall require in all certificates for facilities that the applicant comply with all applicable nuclear radiation standards and air and water pollution control standards and regulations, but shall not require either of the following:

1. Compliance with performance standards other than those established by the agency having primary jurisdiction over a particular pollution source.

2. That a contractor, subcontractor, material supplier or other person engaged in the construction, maintenance, repair or improvement of any project subject to approval of the commission negotiate, execute or otherwise become a party to any project labor agreement, neutrality agreement as defined in section 34-321, apprenticeship program participation or contribution agreement or other agreement with employees, employees' representatives or any labor organization as a condition of or a factor in the commission's approval of the project. This paragraph does not:

(a) Prohibit private parties from entering into individual collective bargaining relationships.

(b) Regulate or interfere with activity protected by law, including the national labor relations act.

D. Any certificate granted by the committee shall be conditioned on compliance by the applicant with all applicable ordinances, master plans and regulations of the state, a county or an incorporated city or town, except that the committee may grant a certificate notwithstanding any such ordinance, master plan or regulation,

exclusive of franchises, if the committee finds as a fact that compliance with such ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available. When it becomes apparent to the chairman of the committee or to the hearing officer that an issue exists with respect to whether such an ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available, the chairman or hearing officer shall promptly serve notice of such fact by certified mail on the chief executive officer of the area of jurisdiction affected and, notwithstanding any provision of this article to the contrary, shall make such area of jurisdiction a party to the proceedings on its request and shall give it an opportunity to respond on such issue.

48-620. Improvement districts for underground utility and cable television facilities in public rights-of-way and easements; procedures; costs; definitions

A. Subject to the limitations contained in this section, the powers and duties of the governing body of a municipality for establishing underground utility facilities are as provided in this article for other types of improvement districts.

B. Notwithstanding section 48-507, after the governing body passes a resolution or notice declaring its intention to order an improvement district for underground utility facilities, the governing body shall hold a hearing at least thirty days after the completion of the posting and publication of the notice of intention pursuant to section 48-506. At the hearing, the governing body shall consider the issue of ordering an election on the formation of the improvement district and shall receive public comment on the proposed district. Section 48-507, regarding written protests of the proposed improvement, does not apply to a district formed pursuant to this section. The governing body may only order the election on the issue of formation of the district if the owners of real property in the district have signed and submitted petitions to the clerk of the governing body in support of the formation of the district. The petitions shall comply with the following:

1. Clearly state that they are petitions in support of the formation of an underground utility improvement district and shall specifically describe in words or by use of a map the location of the proposed district's boundaries. The petitions shall require the signer's signature, name and address or description of the property that is owned in the district in a manner sufficient to determine ownership through the use of public records.

2. Be signed by owners of a majority of the real property within the boundaries of the proposed district as measured by square footage or acreage owned. Signatures are not required to be notarized and for property with more than one owner, the signature of one owner is binding on the remaining owners of the property. On submittal to the clerk of the governing body, the petitions are a public record. Ownership of property is as of the date of the hearing and is determined by records of the county assessor or other public records regarding property ownership. For purposes of this paragraph, "owner" means a person, association, corporation or other entity without regard to residency.

C. If the governing body finds that sufficient signatures are submitted pursuant to subsection B of this section, the governing body may proceed with a simplified ballot card election pursuant to subsection G of this section. If there are not sufficient signatures, the governing body shall not proceed with the formation of the district. If no registered voters reside within the area of the proposed district, an election is not required and the governing body may declare the formation of the district.

D. The requirement pursuant to section 48-577 that plans and specifications be filed prior to adoption of the resolution of intention may be satisfied by a general plan showing at least the general location and type of facilities to be constructed. Actual plans and specifications shall be filed following the adoption of the resolution ordering the election regarding the improvement but before the election and the recording of the assessment and warrant. A person interested and objecting to an improvement or to the extent of the assessment district for a district established pursuant to this section may file a written protest with the city or town clerk within thirty days after completion or posting of the notice, or within thirty days after the date of the last publication of the notice if that date is after the completion of the posting.

E. The requirement pursuant to section 48-584 for notice of the award of contract may be satisfied by the inclusion in the resolution of intention of the name of the coordinating utility. The fifteen-day period for filing notice of objections under section 48-584, subsection E shall begin on completion of publication and posting of the notice of proposed improvement stating the name of the coordinating utility.

F. The governing body shall determine the boundaries of the district and designate the transmission facilities and, if applicable, any independent parallel facilities, to be placed underground and shall obtain from the coordinating utility an accurate statement of the costs of the project, including an estimate of the average cost in assessments

on an average single family residence in the district. The amount shall be included in the engineer's estimate required by section 48-577. The costs shall include:

1. The amount by which the cost of placing facilities underground would exceed the cost of placing comparable facilities overhead.

2. The reconstruction cost and net depreciation costs of any existing facilities to be removed.

3. The actual costs of removing such existing facilities, less the salvage value of the facilities removed.

4. The charge to finance the costs prescribed in this subsection over a stated period of not to exceed fifteen years.

5. The tax reimbursement amount.

G. On receipt of an accurate estimate of the costs of the project, the governing body shall call a simplified ballot card election in the area affected by the proposed district. The simplified ballot card shall contain the words for a district formation election "district, yes" and "district, no" and for an assessment election "assessment, yes" and "assessment, no". A single simplified ballot card may be used for both the question of the formation of the district and the question of the assessment. The election may be conducted in a simplified format and administered by the governing body. The governing body shall mail to all registered voters and property owners within the proposed district simplified ballot cards with return postage prepaid. The simplified ballot card shall clearly state that to be valid a voted ballot card shall be returned to the governing body within thirty days after the governing body mails the ballot card and a ballot card that is not timely returned shall not be counted. A person who is qualified to vote in a municipal election for that municipality or a property owner who owns land within the proposed improvement district is qualified to vote in an election for a municipal improvement district formed pursuant to this section, except that only residents of or property owners in the area that is within the proposed district may vote. If a majority of the persons voting with the simplified ballot card approves the formation of the district and if a majority of the persons voting with the simplified ballot card approves the assessment, the governing body may form the district and make the assessment. If more than one governing body is affected by a proposed district, each governing body may form its own district for the portion of the work within its jurisdiction. Assessments for districts that are formed for a portion of the same project shall be distributed between districts in proportion to the benefits to be received. When the governing body acquires jurisdiction to order the work, it shall not call for construction bids but may enter into a contract or contracts with the utility, utilities or licensed cable television system whose facilities are to be placed underground. Prior to entering into a contract or contracts the coordinating utility shall submit a final report to the municipality. The amount stated in the final report may be based on detailed engineering studies. If the amount stated in the final report exceeds the amount stated in the preliminary report the governing body may either:

1. Terminate the project.

2. Call a new election on the improvement.

H. The contract shall provide for payment to the utility or licensed cable television system over a term of not to exceed fifteen years of the amount set forth in the final report, shall specify those facilities to be owned by the municipality and those to be owned by the utility, utilities or licensed cable television system and shall contain such provisions for the prepayment of any assessment at the option of any property owner, and such other terms, covenants and conditions as the governing body and the utility, utilities or licensed cable television system determine. The licensed cable television system shall not be entitled to reimbursement except where the cable television system's parallel facilities are installed to replace existing cable television facilities other than independent parallel facilities not included by the governing body in the work. The amount payable on the contract or contracts is payable solely from amounts collected on the assessment levied in the district. A payment or performance bond is not required of a utility or licensed cable television system entering into a contract with the governing body.

I. The municipality may retain an independent engineering consultant to review all reports, estimates and costs provided by the coordinating utility.

J. The coordinating utility shall advance or reimburse a governing body for the costs of forming the district and the cost of printing, advertising and posting incurred or to be incurred by a governing body and shall bear its own expenses for engineering and design, and preparing the reports, plans and specifications. On completion of the work, the coordinating utility shall reimburse a governing body for its reasonable expenses incurred with respect to the district. Unless otherwise provided for in a manner acceptable to the coordinating utility, the amounts advanced or reimbursed shall be included in the contract and in the amount assessed.

K. This section does not amend or modify any existing line extension policies of any utility involved. The costs to be reimbursed under the contract shall be reduced to the extent of amounts paid or to be paid by landowners or from other sources directly to the utility or cable television system for the installation of the facilities.

L. The assessment and warrant may be recorded at any time following approval of the project at an election. The hearing on the assessment may be held at any time not less than twenty days from the date of recording of the assessment and warrant. An additional hearing following notice from the superintendent of streets to the governing body of completion of the work shall be requested only if any member of the governing body or any owner of or any person claiming an interest in any lot that received an assessment, within one year of the date of the notice of completion, files a written notice with the clerk stating that the work has not been performed substantially in accordance with the resolution of intention, the plans and specifications and estimate. The notice shall state in particular the failure to perform and may also state, if applicable, any requested reduction in the assessment of any one or more parcels due solely to the failure of such performance. The notice shall state the name and address of the person filing the notice and shall describe such person's interest in land subject to assessment. The governing body may enforce the contract and may recess the hearing to permit the utility or licensed cable television system to complete the work. If the work cannot be completed, the assessment may be adjusted to take the failure to complete into consideration. The amount due under the agreement with the utility or licensed cable television system shall be adjusted accordingly. Repayment under the contract shall be conditioned on completion of the work and approval of the assessment as provided by law. Unless an objection has been filed, repayment shall begin within nine months of the notice of completion.

M. An improvement district formed pursuant to this section shall not issue bonds, and the assessment for district purposes against the property within the district shall not exceed the amount specified in the engineer's estimate. Notwithstanding any other statute, the assessment for an underground electrical power line shall not be assessed against the owners of the frontage of the right-of-way of the underground power line but shall be assessed against all property owners benefiting from the burial of the power line.

N. The governing body shall provide for the levy and collection of assessments on the real property in the district in the manner provided for in this article. However, the assessment may be paid in installments necessary to pay amounts due under the contract and to reimburse the municipality for expenses incurred as provided in the assessment.

O. A district formed under this section shall not engage in any activity other than contracting for or establishing underground transmission facilities together, where applicable, with parallel facilities.

P. The governing body by resolution may summarily determine that it will participate in the costs of the improvement. If the municipality is willing to assume the total outstanding assessment for the underground utility facilities, the governing body may summarily dissolve the district by resolution after payment of all liabilities including all amounts due under the contract.

Q. The formation of an improvement district for underground utility facilities under this section does not prevent the establishment of other improvement districts which may include all or part of the same property for any purposes authorized by law.

R. If a petition for the formation of an improvement district for underground utilities is presented to the governing body, and the petition purports to be signed by all of the real property owners in the proposed district exclusive of mortgagees and other lienholders, the governing body, after verifying such ownership and making a finding of such fact, may adopt a resolution of intention to order the proposed improvement pursuant to section 48-576 and has immediate jurisdiction to adopt the resolution ordering the improvement pursuant to section 48-581, without the necessity of publication and posting of the resolution of intention provided for in section 48-578.

S. If the governing body determines that a parcel of property is a single family residence and that payment of the assessment would cause a financial hardship on the owners which would be likely to cause a delinquency in payment of the assessment, the assessment for an improvement made under this section shall provide for an extension in the time to pay principal and interest on the assessment against that parcel for a period of time not to exceed ten years. If the governing body determines that the grounds for extension no longer exist, then the extension will be terminated and all payments that would have been due but for the extension shall become due. The assessment shall provide for adjustments in the assessments against the remaining parcels to provide for timely payment under the agreement.

T. Notice of the passage of a resolution of intention for an improvement under this section shall be given to the corporation commission and, where the improvement involves a utility regulated thereby, the rural electrification administration.

U. In this section, unless the context otherwise requires:

1. "Coordinating utility" means the utility whose proposed or existing transmission facilities are to be placed underground. The coordinating utility is responsible for assembling into one report cost estimates and other data provided by each utility or licensed cable television system whose facilities are to be placed underground.

2. "Cost" means all costs of design and construction of facilities.

3. "Facilities" means any works or improvements used or useful in providing electric, communications, licensed cable television service or video service, including poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, studs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances but excluding any works for transmission by microwave or radio. Facilities shall include only transmission facilities and parallel facilities.

4. "Governing body" means the council of a city or town or the board of supervisors of a county.

5. "Independent parallel facilities" means existing parallel facilities that do not rely for their support on poles or other structures to be removed as part of the work. If the utility or licensed cable television system elects to remove the independent parallel facilities but the removal and underground replacement thereof was not included by the governing body in the work, the reconstruction and removal costs of such independent parallel facilities shall not be included in a contract or be assessed.

6. "Parallel facilities" means facilities that run or are permitted to run in the easement in which the transmission facilities are to be placed underground and that may be included underground with the transmission facilities, and facilities appurtenant thereto. Any parallel facilities shall have a right to be included underground and have access to a trench on such reasonable terms and conditions as the coordinating utility and the owners of the parallel facility may determine provided they do not interfere with the installation or operation of the transmission facilities.

7. "Private parallel facilities" means parallel facilities other than those owned or operated by a public utility or licensed cable television system. Private parallel facilities have the rights of parallel facilities except that the costs thereof shall not be included in a contract or be assessed.

8. "Tax reimbursement" means an annual charge for reimbursement for property taxes, or voluntary contributions in lieu of property taxes as provided in chapter 1, article 8 of this title, by applying the tax rates in effect on the date of adoption of the resolution of intention to the amount by which the estimated average taxable value of underground facilities, excluding the value of trenches, backfill and compaction, on completion exceeds the estimated average taxable value of comparable overhead facilities. In this paragraph, "estimated average taxable value" means the average of the estimated taxable value for each year of reimbursement. The value of the trenches, backfill and compaction of the underground facilities shall be attributed to and shall inure to the benefit of the owners of property within the district and shall be owned by the city. Reimbursement shall not be for a period longer than fifteen years.

9. "Transmission facilities" means facilities that are, or are appurtenant to, electric transmission lines of more than twenty-five kilovolts but not more than two hundred thirty kilovolts in size.

Arizona Pub. Serv. Co. v. Paradise Valley

Supreme Court of Arizona

April 22, 1980

No. 14605-PR

Reporter
125 Ariz. 447 *; 610 P.2d 449 **; 1980 Ariz. LEXIS 206 ***

ARIZONA PUBLIC SERVICE COMPANY, a public service corporation, Plaintiff-Appellee, v. TOWN OF PARADISE VALLEY, a municipal corporation, Defendant-Appellant, Bud Tims, Ernest Garfield and Jim Weeks as members of and constituting the Arizona Corporation Commission, Defendants-Appellees

Prior History: **[***1]** Appeal from the Superior Court of Maricopa County

Cause No. C-355464

The Honorable Kenneth C. Chatwin, Judge

Opinion of the Court of Appeals, Division One, Ariz. , P.2d (App. 1979) Vacated

Disposition: Reversed and remanded.

Counsel: Snell & Wilmer by H. William Fox, Phoenix, for plaintiff-appellee.

Roger A. McKee and Douglas A. Jorden, Paradise Valley, for defendant-appellant.

John A. LaSota, Jr., former Atty. Gen., Robert K. Corbin, Atty. Gen. by Charles S. Pierson, Asst. Atty. Gen., Phoenix, for defendants-appellees.

J. LaMar Shelley, Mesa, brief amicus curiae of League of Arizona Cities and Towns.

Judges: In Banc. Cameron, Justice. Struckmeyer, C. J., Holohan, V. C. J., and Hays and Gordon, JJ., concur.

Opinion by: CAMERON

Opinion

[*448] **[**450]** We granted the petition for review of the appellant, Town of Paradise Valley, of a decision and opinion of the Court of Appeals affirming a summary judgment in favor of Arizona Public Service and the members of the Arizona Corporation Commission. A.R.S. § 12-120.24; Rule 23, Rules of Civil Appellate Procedure, 17A A.R.S.

There is only one question on appeal and that is whether the legislature may constitutionally **[***2]** delegate to cities and towns the authority to direct the undergrounding of public utility poles.

The facts necessary for a determination of this matter on appeal are as follows. In 1964, the Town of Paradise Valley passed Ordinance No. 30 requiring new and higher capacity utility lines to be placed underground. The ordinance stated:

> "* * * no person shall erect within the town boundaries and above the surface of the ground any new utility poles and wires except after securing a special permit therefor from the Town Council * * *."

Criminal penalties were provided for failure to comply with the ordinance.

Arizona Public Service replaced some of its existing utility poles without applying to the Town for a special use permit. As a result, Arizona Public Service was charged with a misdemeanor criminal complaint before the town magistrate. Arizona Public Service then instituted a special action in the Superior Court, joining the Arizona Corporation Commission and the Town. The Superior Court, in granting appellee's motion for summary judgment, declared the ordinance invalid. The Town appealed to the Court of Appeals which affirmed the decision of the trial court. **[***3]** We granted the Town's petition for review.

[*449] **[**451]** Because this is a review from the granting of a motion for summary judgment, we must look at the facts in a light most favorable to the party against whom the summary judgment has been taken, in this case, the Town. Rule 56, Arizona Rules of Civil Procedure, 16 A.R.S.; *Hall v. Motorists Ins. Corp.*, 109 Ariz. 334, 509 P.2d 604 (1973). For that reason, we accept the Town's allegations that although the initial cost of undergrounding may be more, the maintenance costs are less and the long term cost is the same or less

than the cost of above ground utility poles.

Our Constitution reads:

> "Art. 15
> "§ 3 Power of commission as to classifications, rates and charges, rules, contracts, and accounts; local regulation
>
> "Section 3. The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations, within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction **[***4]** of business within the State, and may prescribe the forms of contracts and the systems of keeping accounts to be used by such corporations in transacting such business, and make and enforce reasonable rules, regulations, and orders for the convenience, comfort, and safety, and the preservation of the health, of the employees and patrons of such corporations; *Provided, that incorporated cities and towns may be authorized by law to exercise supervision over public service corporations doing business therein, including the regulation of rates and charges to be made and collected by such corporations*; Provided further that classifications, rates, charges, rules, regulations, orders, and forms or systems prescribed or made by said Corporation Commission may from time to time be amended or repealed by such Commission." (Emphasis added)

Early in our history, we held that the Corporation Commission's power was paramount, *State v. Tucson Gas, Electric Light and Power Company*, 15 Ariz. 294, 138 P. 781 (1914), and that the legislature could not delegate powers possessed by the Corporation Commission to a local government unless the Corporation Commission was, at the same time, divested **[***5]** of such powers. *Phoenix Railway Co. v. Lount*, 21 Ariz. 289, 187 P. 933 (1920). In later cases, however, we held that the Corporation Commission's paramount power is limited to rates, charges or classifications and that, as to all other matters, the legislature has the power to take what action it deems appropriate. *Williams v. Pipe Trades Industry Program of Arizona*, 100 Ariz. 14, 409 P.2d 720 (1966); *Southern Pacific Co. v. Arizona Corporation Commission*, 98 Ariz. 339, 404 P.2d 692 (1965). We stated:

> "[T]he paramount power to make all rules and regulations governing public service corporations not specifically and expressly given to the commission by some provision of the Constitution, rests in the legislature, and it may, therefore, either exercise such powers directly or delegate them * * *." *Corporation Commission v. Pacific Greyhound Lines*, 54 Ariz. 159, 176-77, 94 P.2d 443, 450 (1939).

The question before the court, then, is not whether the legislature has the power to authorize the Town to pass an ordinance requiring undergrounding, but whether it has, in fact, done so. In the instant case, we believe that the legislature has given cities and **[***6]** towns the power to require the undergrounding of utility poles as part of the town's zoning powers. The statute reads as follows:

> "A. Pursuant to the provisions of this article, the legislative body of any municipality by ordinance may:
> * * *
> "3. Regulate location, height, bulk, number of stories and size of buildings and structures * * *." A.R.S. § 9-462.01(A)(3).

[*450] **[**452]** This statute is a legislative grant to the cities of the authority to regulate the use, location, height and size of utility poles as part of the towns' general planning and zoning power. The height and location of utility poles is a common subject of planning and zoning statutes and ordinances, *Kahl v. Consolidated Gas, Electric Light & Power Co.*, 60 A.2d 754, 191 Md. 249 (1948). We find nothing in the Arizona statutes which exempts utility poles from the grant of authority to the towns to enact zoning laws. We believe this statute gives the Town the power to require the undergrounding of utility poles in the Town pursuant to statute.

A second statute is cited by the Town and reads as follows:

> "A. In addition to the powers already vested in cities by their respective **[***7]** charters and by general law, cities and their governing bodies may:
> * * *
> "5. Regulate the erection of poles and wires, the laying of street railway tracks, and the operating of street railways in and upon its streets, alleys, public grounds and plazas." A.R.S. § 9-276(A)(5).

The Court of Appeals and the appellees contend that the doctrine of ejusdem generis obviously applies to this

statute, and that therefore the Town has the power to regulate "poles and wires" only in connection with the laying and operation of street railways. We do not agree.

Ejusdem generis is applicable to statutes in which there are listed specific categories followed by a general category:

> "Where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class, or nature as those specifically enumerated, unless there is a clear manifestation of a contrary purpose. A statute enumerating things inferior cannot, by general words, be construed so as to extend to and embrace those which are **[***8]** superior. In accordance with the rule of ejusdem generis, such terms, as 'other,' 'other thing,' 'others,' or 'any other,' when preceded by a specific enumeration, are commonly given a restricted meaning, and limited to articles of the same nature as those previously described. * * *" 25 R.C.L. §§ 996, et seq., cited in 39 A.L.R. 1404.

In an early case of this court wherein the legislature enumerated nine particular businesses engaged primarily in the tourist industry, such as hotels, dude ranches, etc., followed by the term "or any other business or occupation charging * * * rents," we said:

> "The rule of ejusdem generis invoked by appellant removes any doubt that may exist as to its intention in this respect, if applicable, and it occurs to us that it is. According to it the Legislature, in following the enumeration of the nine particular businesses by the general term 'or any other business or occupation charging * * * rents,' intended to limit or restrict the meaning of this general language to businesses or occupations of the same kind, class or character as those specifically mentioned, that is, to those furnishing living accommodations to tourists or transients." **[***9]** *White v. Moore*, 46 Ariz. 48, 57, 46 P.2d 1077, 1081 (1935). See also *State Board of Barber Examiners v. Walker*, 67 Ariz. 156, 192 P.2d 723 (1948).

A.R.S. § 9-276(A)(5) is not a case of a general category following the enumeration of specific categories. Section 5 gives the Town the power to regulate three different items -- the erection of poles and wires, the laying of street railway tracks, and the operation of street railways on the streets, alleys, and public grounds and plazas of the towns. Each grant of authority stands equal and alone.

The doctrine of ejusdem generis, like other rules of statutory construction, is an aid in ascertaining the legislative intent. *United States v. Gilliland*, 312 U.S. 86, 61 S.Ct. 518, 85 L.Ed. 598 (1941); *Orr Ditch* ***[*451]*** **[**453]** *and Water Co. v. Justice Ct. of Reno*, 64 Nev. 138, 178 P.2d 558 (1947). Where the intent of the legislature is apparent, it may not be used to obscure and defeat the intent and purpose of the legislation. *United States v. Alpers*, 338 U.S. 680, 70 S.Ct. 352, 94 L.Ed. 457 (1950); *People v. McGuane*, 13 Ill.2d 520, 150 N.E.2d 168, 71 A.L.R.2d 580, cert. denied 358 U.S. 828, 79 **[***10]** S.Ct. 46, 3 L.Ed.2d 67 (1958). We do not believe that the doctrine applies here.

Appellees further rely on A.R.S. § 40-341, et seq., for the position that the legislature intended that cities and towns should not have the authority to require undergrounding at the expense of the utility. § 40-341, et seq., provide for the creation of underground conversion districts for the purpose of converting overhead electric lines to underground facilities to be paid for by the property holder in the district and not the utility. § 40-344(J) recognizes the role of the cities and towns by stating that:

> "J. The corporation commission or the board of supervisors shall not establish any underground conversion service area without prior approval of such establishment by resolution of the local government."

We do not believe this statute is evidence of a legislative intent that the cities and towns do not have power over utility poles in the town. The fact that property owners may petition for the creation of an underground conversion district and be bound to pay for the undergrounding instead of the utility, does not prevent the Town from mandating the undergrounding at utility expense.

[*11]** Finally, reference is made to A.R.S. § 40-360, et seq., concerning the creation of a siting committee for transmission lines of 115 KV or greater. The lines in the Town of Paradise Valley are mostly 12 KV, with some 69 KV. The statute does not apply to lines in the Town. Even so, the statute states as to the high energy transmission lines:

> "Any certificate granted by the committee shall be conditioned on compliance by the applicant with all

> applicable ordinances, master plans and regulations of the state, a county or an incorporated city or town, except that the committee may grant a certificate notwithstanding any such ordinance, master plan or regulation, exclusive of franchises, if the committee finds as a fact that compliance with such ordinance, master plan or regulation is unreasonably restrictive and compliance therewith is not feasible in view of technology available." A.R.S. § 40-360.06(D).

These exceptions evidence a legislative recognition that the cities and towns have the power to act in this area.

We believe that, in the absence of a clear statewide preemptive policy not shown here, local governments can prescribe undergrounding within their boundaries. **[***12]** See *Kahl v. Consolidated Gas, Electric Light & Power Co.*, supra; *Benzinger v. Union Light, Heat & Power Co.*, 293 Ky. 747, 170 S.W.2d 38 (1943); *Central Me. Power Co. v. Waterville Urban Ren'l Auth.*, 281 A.2d 233 (Me.1971); *Sleepy Hollow Lake, Inc. v. Public Service Commission*, 352 N.Y.S.2d 274, 43 A.D.2d 439 (1974); 7 McQuillin, Municipal Corporations, § 24.588 (3d ed. 1968).

Reversed and remanded for proceedings not inconsistent with this opinion.
